रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 22] नई दिल्ली, जून 7—जून 13, 2026, शनिवार/ज्येष्ठ 17—ज्येष्ठ 23, 1948
No. 22] NEW DELHI, JUNE 7— JUNE 13, 2026, SATURDAY/JYAISHTHA 17— JYAISHTHA 23, 1948

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

शिक्षा मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 5 जून, 2026

का.आ. 1118.—लोक परिसर (अनधिकृत कब्जादारियों को बेदकल करना) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार एतद्वारा नीचे दी गई तालिका के कॉलम (1) में उल्लिखित अधिकारी, जो भारत सरकार के राजपत्रित अधिकारी की रेंक के बराबर के अधिकारी है, को उक्त अधिनियम के प्रयोजनाथ संपदा अधिकारी के रूप में नियुक्त करती है, जो उक्त तालिका के कॉलम (2) में विनिर्दिष्ट लोक परिसरों के संबंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के भीतर उत्त अधिनियम द्वारा अथवा उसके तहत संपदा अधिकारियों को सोंपे गए कार्यो का निष्पादन करेंगे और प्रदत्त शक्तियों का प्रयोग करेंगे:-

तालिका	
अधिकारी का पदनाम	**लोक परिसरों की श्रेणियां और क्षेत्राधिकार की स्थानीय सीमाएं**
(1)	**(2)**
रजिस्ट्रार, भारतीय इंजीनियरिंग विज्ञान और प्रौद्योगिकी संस्थान (आईआईईएसटी), शिबपुर.	आईआईईएसटी, शिबपुर से संबंधित और उसके प्रशासनिक नियंत्रण में आने वाले सभी परिसर

[फा. सं. 32 - 1 / 2026 -टीएस.III]

पवन कुमार, अवर सचिव

MINISTRY OF EDUCATION

(Department of Higher Education)

New Delhi, the 5th June, 2026

S.O. 1118.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column **(1)** of the Table below being an officer equivalent to the rank of gazetted officer of the Government of India to be the Estate Officer for the purposes of the said Act who shall exercise the powers conferred and perform the duties imposed on estate officers by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in column **(2)** of the said Table:-

Table	
Designation of Officer	**Categories of public premises and local limits of jurisdiction.**
(1)	**(2)**
Registrar, Indian Institute of Engineering Science and Technology (IIEST), Shibpur.	All the premises belonging to and under the administrative control of the IIEST, Shibpur.

[F. No. 32 - 1 / 2026 -TS.III]

PAWAN KUMAR, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 29 मई, 2026

का.आ. 1119.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में दूरदर्शन केंद्र, देहरादून जिनके 80% प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/02/2025-हिंदी]

तरुण कुमार, उप निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 29th May, 2026

S.O. 1119.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the office of Directorate General, Doordarshan namely Doordarshan Kendra, Dehradun whereof more than 80% of the staff have acquired the working knowledge of Hindi.

[F. No. E-11017/02/2025-Hindi]

TARUN KUMAR, Dy. Director (O.L.)

आवासन और शहरी कार्य मंत्रालय

नई दिल्ली, 29 मई, 2026

का.आ. 1120.— केंद्रीय सरकार एतद्वारा आवासन और शहरी कार्य मंत्रालय के प्रशासनिक नियंत्रणाधीन केंद्रीय लोक निर्माण विभाग के निम्नलिखित कार्यालयों, जिनके 80% से अधिक अधिकारियों और कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम-10 के उप-नियम (4) के अंतर्गत अधिसूचित करती है :

1. कार्यपालक अभियंता वैद्युत (शिमला), केन्द्रीय लोक निर्माण विभाग, कनेडी कॉटेज शिमला-171004 (हिमाचल प्रदेश)

2. मुख्य अभियंता सह कार्यकारी निदेशक, परियोजना अंचल चंडीगढ़, केन्द्रीय लोक निर्माण विभाग, केन्द्रीय सदन, द्वितीय तल, सैक्टर 9 ए-160002 (चंडीगढ़)

3. मुख्य अभियंता (वैद्युत). संसद वैद्युत कार्य अंचल, केन्द्रीय लोक निर्माण विभाग, संसद ज्ञानपीठ भवन, पं. पंत मार्ग नई दिल्ली-110001 (दिल्ली)

4. अधीक्षण अभियंता (वैद्युत), संसद वैद्युत कार्य परिमंडल, केन्द्रीय लोक निर्माण विभाग, संसद भवन परिसर, पं. पंत मार्ग, नई दिल्ली-110001 (दिल्ली)

5. कार्यपालक अभियंता (वैद्युत), संसद भवन वैद्युत कार्य मंडल, केन्द्रीय लोक निर्माण विभाग, संसद भवन परिसर, नई दिल्ली-110001 (दिल्ली)

6. कार्यपालक अभियंता (वैद्युत), संसद सौंध वैयुत कार्य मंडल, केन्द्रीय लोक निर्माण विभाग, 36 जी.आर.जी. रोड नई दिल्ली-110001 (दिल्ली)

7. कार्यपालक अभियंता (वैद्युत), संसद ज्ञानपीठ वैद्युत कार्य मंडल, केन्द्रीय लोक निर्माण विभाग, संसद ज्ञानपीठ भवन, संसद भवन परिसर, पं. पंत मार्ग नई दिल्ली-110001 (दिल्ली)

8. संसद भवन सिविल कार्य मंडल, केन्द्रीय लोक निर्माण विभाग, 36, गुरुद्वारा रकाब गंज रोड, नई दिल्ली- 110001 (दिल्ली)

9. मुख्य अभियंता, संसदीय सिविल कार्य अंचल, संसदीय ज्ञानपीठ भवन, संसद भवन परिसर, केन्द्रीय लोक निर्माण विभाग, नई दिल्ली 110001 (दिल्ली)

10. संसदीय परिसर सिविल कार्य मंडल, संसदीय ज्ञानपीठ भवन, संसद भवन परिसर, संसद मार्ग, केन्द्रीय लोक निर्माण विभाग, नई दिल्ली 110001 (दिल्ली)

11. संसदीय सिविल कार्य परिमंडल, संसदीय ज्ञानपीठ भवन, संसद भवन परिसर, संसद मार्ग, नई दिल्ली-110001 (दिल्ली)

12. कार्यपालक अभियंता। शिमला, केन्द्रीय लोक निर्माण विभाग, कनेडी कॉटेज शिमला-171004 (हिमांचल प्रदेश)

13. अधीक्षण अभियंता, मकान नं.–1, टाईप-V, भारतीय प्राणी सर्वेक्षण आवासीय परिसर, विजय नगर, जबलपुर-482002 (मध्य प्रदेश)

14. कार्यपालक अभियंता ग्वालियर, केन्द्रीय लोक निर्माण विभाग, 35-सिटी सेंटर, ग्वालियर- 474011 (मध्य प्रदेश)

15. कार्यालय अधीक्षण अभियंता एवं परियोजना निदेशक, भोपाल परियोजना परिमंडल, निर्माण सदन, 52-ए, अरेरा हिल्स-462011 (भोपाल)

16. कार्यपालक अभियंता (पुणे)- I, निर्माण भवन, मुकुन्द नगर, पुणे-411037 (महाराष्ट्र)

17. कार्यपालक अभियंता (पुणे)-II, मुकुन्द नगर, नियर रंका अस्पताल, पुणे-411037 (महाराष्ट्र)

18. कार्यपालक अभियंता (वैद्युत), केन्द्रीय लोक निर्माण विभाग, निर्माण भवन, मुकुंदनगर, पुणे- 411037 (महाराष्ट्र)

19. कार्यपालक अभियंता (वैद्युत), कोच्चि केन्द्रीय वैद्युत मण्डल, चौथी मंजिल, केंद्रीय भवन, काक्कनाड, कोच्चि-682037 (केरल)

20. कार्यपालक अभियंता कोच्चिन, केन्द्रीय भवन, काक्कनाड, कोच्चिन-682037 (केरल)

21. कार्यपालक अभियंता गांधीनगर II, तीसरी मंजिल, केंद्रीय निर्माण सदन, केन्द्रीय लोक निर्माण विभाग, सेक्टर 10-ए, गांधीनगर-382010 (गुजरात)

22. उपनिदेशक (उद्यान), पहली मंजिल, कैंद्रीय निर्माण सदन, केंद्रीय लोक निर्माण विभाग, सेक्टर 10- ए, गांधीनगर-382010 (गुजरात)

23. कार्यपालक अभियंता (वैद्युत), गांधीनगर II, दूसरी मंजिल, केंद्रीय निर्माण सदन, केंद्रीय लोक निर्माण विभाग, सेक्टर 10-ए, गांधीनगर-382010 (गुजरात)

[फा. सं. ई- 11017/5/2013-हिंदी]
गोपाल प्रसाद, आर्थिक सलाहकार

MINISTRY OF HOUSING AND URBAN AFFAIRS

New Delhi, the 29th May, 2026

S.O. 1120.— In pursuance of Sub-rule (4) of Rule 10 of Official Language (Use for official purpose of the Union) Rule, 1976, the Central Government hereby notifies the following offices of the Central Public Works Department under administrative control of Ministry of Housing & Urban Affairs, where more than 80% of officers/ employees have attained working. knowledge of Hindi:

1. Office of Executive Engineer (Electrical), Central Public Works Department, Kennedy Cottage, Shimla-171004(Himachal Pradesh)

2. Office of Chief Engineer-cum-Executive Director, Project Zone Chandigarh, Central Public Works Department, Kendriya Sadan, Sector 9A-160002 (Chandigarh)

3. Office of the Chief Engineer (Electrical), Parliament Electrical Works Zone, Central Public Works Department, Sansad Gyanpeeth Bhawan, Pt. Pant Marg, New Delhi-110001 (Delhi)

4. Office of the Superintending Engineer (Electrical), Parliament Electrical Works Circle, Central Public Works Department, Parliament House Complex, Pt. Pant Marg, New Delhi 110001 (Delhi)

5. Office of the Executive Engineer (Electrical), Parliament House Electrical Works Division, Central Public Works Department, Parliament House Complex, New Delhi 110001 (Delhi)

6. Office of the Executive Engineer (Electrical), Sansad Saundh Electrical Works Division, Central Public Works Department, 36 GRG Road, New Delhi-110001 (Delhi)

7. Office of the Executive Engineer (Electrical), Sansad Gyanpeeth Electrical Works Division, Central Public Works Department, Sansad Gyanpeeth Bhawan, Parliament House Complex, Pt. Pant Marg, New Delhi-110001 (Delhi)

8. Parliament House Civil Works Division, Central Public Works Department, 36, Gurudwara Rakab Ganj Road, New Delhi-110001 (Delhi)

9. Chief Engineer, Parliamentary Civil Works Zone, Sansad Gyanpeeth Bhawan, Parliament House Complex, Central Public Works Department, New Delhi-110001 (Delhi)

10. Parliamentary Complex Civil Works Division, Sansad Gyanpeeth Bhawan, Parliament House Complex, Sansad Marg, Central Public Works Department, New Delhi-110001 (Delhi)

11. Parliamentary Civil Works Circle, Sansad Gyanpeeth Bhawan, Parliament House Complex, Sansad Marg, New Delhi-110001 (Delhi)

12. Office of the Executive Engineer-I, Shimla, Central Public Works Department, Kennedy Cottage, Shimla-171004 (Himachal Pradesh)

13. Office of the Superintending Engineer, House No.-1, Type-V, Zoological Survey of India Residential Complex, Vijay Nagar, Jabalpur-482002 (Madhya Pradesh)

14. Office of the Executive Engineer, Gwalior, Central Public Works Department, 35 City Centre, Gwalior-474011 (Madhya Pradesh)

15. Office of the Superintending Engineer & Project Director, Bhopal Project Circle, Nirman Sadan, 52-A, Arera Hills, Bhopal.

16. Executive Engineer (Pune)-1, Nirman Bhawan, Mukund Nagar, Pune-411037 (Maharashtra)

17. Office of the Executive Engineer (Pune)-II, Mukund Nagar, Near Ranka Hospital, Pune- 411037 (Maharashtra)

18. Office of the Executive Engineer (Electrical), Central Public Works Department, Nirman Bhawan, Mukund Nagar, Pune-411037 (Maharashtra)

19. Office of the Executive Engineer (Electrical), Kochi Central Electrical Division, 4th Floor, Kendriya Bhawan, Kakkanad, Kochi-682037 (Kerala)

20. Office of the Executive Engineer Cochin, Kendriya Bhawan, Kakkanad, Cochin-682037

21. Office of the Executive Engineer, Central Public Works Department, Gandhinagar-II, 3rd Floor, Kendriya Nirman Sadan, Central Public Works Department, Sector 10A, Gandhinagar- 382010 (Gujarat)

22. Office of the Executive Engineer (Electrical), Central Public Works Department, Gandhinagar-II, 2nd Floor, Kendriya Nirman Sadan, Central Public Works Department, Sector 10A, Gandhinagar-382010 (Gujarat)

23. Office of the Deputy Director (Horticulture), Central Public Works Department, Gandhinagar-II, 1st Floor, Kendriya Nirman Sadan, Central Public Works Department, Sector 10A, Gandhinagar-382010 (Gujarat)

[F. No. E-11017/5/2013-Hindi]

GOPAL PRASAD, Economic Advisor

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 2 जून, 2026

का.आ. 1121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (82/2001) प्रकाशित करती है।

[सं. 12012/526/2000-आई आर (बी-I]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 2nd June, 2026

S.O. 1121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 82/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. 12012/526/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 26th day of March, 2026

INDUSTRIAL DISPUTE No. 82/2001

Between:

Sri G. Sathish Kumar,

R/o 7-160,

Champapet,

Opp DMRL Maruthinagar,

Ranga Reddy District.

… Petitioner

And

The Assistant General Manager,

State Bank of India,

(Personnel & HRD Department)

Local Head Office,

Bank Street, Koti,

Hyderabad – 500 095. …..Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/526/2000-IR(B.I) dated 14.06.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri G. Sathish Kumar, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 82/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing

for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank at Secunderabad Main branch as a Messenger on 1.6.1998 and worked for 51days till July, 1988 in the first spell. He worked in different spells upto 18.3.1997. It is submitted that Respondent has terminated the services of Petitioner without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. It is submitted that he could not secure any alternative employment ti1l date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W10, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri G. Sathish Kumar, a Temporary/Messenger with effect from March, 1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. Issue No.I:- The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in

any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment.*

In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Secunderabad Branch, on 1.6.1988 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. Further WW1 states that his last drawn salary was Rs.2800/- per month. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Secundrabad Main branch of the Respondent and Ex.W1 is the Service certificate for 51 days period of 1.7.1975 to 31.12.1987 . Ex. W2 is the Notification. Ex. W3 is the Application Format. Ex. W4 is the interview call letter. Ex. W5 is the Service certificate for 197 days period of 1.1.1992 to 15.07.1992. Ex. W6 is the Service certificate for 199 days period of 28.12.1992 to 17.7.1993 dated 17.07.1993. Ex. W7 is the Service certificate for 198 days from 31.5.1994 to 27.11.1994. Ex. W8 is the Service Certificate for 199 days for the period 17.06.1995 to 19.1.1996 dt. 22.01.1996. Ex. W9 is the Service certificate dated 14.08.1996. Ex. W10 is the Service certificate for 199 days from the period of 30.08.1996 to 18.3.1997 dated 18.03.1997.

21. Further WW1 states that he worked for more than 240 days continuously in three separate spells in one year period of time and he worked for 199 days continuously during the period from June, 1995 to January, 1996, Ex.W8 is the certificate in this regard. He worked for 199 days continuously in another spell from January, 1996 to August, 1996 at HAL campus and Ex.W9 is the concerned certificate. Lastly he had worked for 199 days from 30.8.1996 to 18.3.1997. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as temporary messenger in the year 1988 for a period of 51 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W1, W5 to W9. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April,1996	30
May, 1996	31
June, 1996	30
July, 1996	31
August, 1996	14
30.8.1996 to 18.3.1997	199

Thus, sum of working days as shown in the above table is 335 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 2 separate spells in a period of one year. He had worked continuously for 51 days at Secunderabad branch. Lastly, he worked for 199 days each in HAL Campus and Secunderabad branch continuously during the period from January, 1996 to August, 1996 and from 30.8.1996 to 18.3.1997. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1975 upto the date of his termination i.e., 18.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

……..

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or

daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a

direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1975 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 13th August 1987 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"I, therefore pray that this Hon'ble Court may be pleased to pass an award granting me the relief of reinstatement with full back wages, continuity of service, and all other attendant benefits ."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri G. Sathish Kumar, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 26th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri G. Sathish Kumar	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate
Ex.W2:	Photocopy of Notification
Ex.W3:	Photocopy of Application Format
Ex.W4:	Photocopy of call letter for interview
Ex.W5:	Photocopy of Panel list
Ex.W6:	Photocopy of Service certificate
Ex.W7:	Photocopy of Service certificate
Ex.W8:	Photocopy of Service certificate
Ex.W9:	Photocopy of Service certificate dt.14.8.1996
Ex.W10:	Photocopy of Service certificate dt.18.03.1997

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87

Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88

Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988

Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991

Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995

Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non-messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1122.—औद्योगिक विवाद अधिनियमए 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (31/2003) प्रकाशित करती है।

[सं. 12012/204/2002-आई आर (बी-I]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.31/2003) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/204/2002- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 25th day of March, 2026

INDUSTRIAL DISPUTE No. 31/2003

Between:

Sri K. Prabhakara Rao,

S/o Ananda Rao (Late)

Elamarru (P.O.)

Pedaparupudi(M),

Krishna Dist.. … Petitioner

And

The Asst. General Manager,
State Bank of India,
Zonal Office, Bank Street, RG-II,
Labbipet,Vijayawada – 520 003. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate
For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

Matter placed today before Tribunal for order. perused the record. This industrial dispute was received from Government of India, Ministry of Labour by its order No. L-12012/204/2002-IR(B.I) dated 29.1.2003 which has been referred under section 10(1)(d) of the I.D. Act, 1947 for adjudication, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Vijayawada Zone in terminating the services of Sri K. Prabhakar Rao, Ex.Temporary Messenger, is justified? If not, what relief workman is entitled?"

After receipt of the reference, it was numbered as ID No. 31/2003 and notices were issued to both the Workman and the management.

2. Petitioner has filed his claim statement and as per his claim he has worked continuously in the Respondent organization during the period from 1988-1995 but, his services has been terminated without any reasonable ground or following any principle and in violation of provision of ID Act and prayed to reinstate him with all benefits from the date of his actual termination.

3. Respondent has filed the counter wherein he has denied the allegations made in claim statement by the petitioner and contended that Petitioner had not worked for 240 days in 12 months of any calendar year just preceding from date of termination. Therefore, the provision of Sec.25F of I.D. Act, 1947 is not applicable to the Petitioner case and his claim statement is liable to be dismissed.

4. Perused the record. As per provision contained u/s.25F of the Act, the workman has to put in 240 days continuous service just preceding from the date of his termination in a 12 month of a calendar year. But, despite sufficient opportunity Petitioner has failed to adduce any oral or documentary evidence in support of his claim of 240 days of the service in a calendar year just preceding from the date of his termination. Therefore, the claim of the Petitioner is not substantiated by any oral or documentary evidence. Therefore, 'No Claim' award is passed.

Award is passed. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant and corrected by me on this the 25th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 जून, 2026

का.आ. 1123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (21/2001) प्रकाशित करती है।

[सं. 12012/324/2000-आई आर (बी-I]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 21/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/324/2000- IR(B-I)]

SALONI, Dy. Secy.

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 26th day of March, 2026

INDUSTRIAL DISPUTE No. 21/2001

Between:

Sri B. Dastaiah,
C/o B. Sangaiah, H.No. 8-3-228/883,
Rahmathagar Yoosafguda,
Hyderabad-45.

. … Petitioner

And

The Assistant General Manager,
State Bank of India,
(Personnel & HRD Department)
Local Head Office,
Bank Street, Koti,
Hyderabad – 500 095.

…..Respondent

Appearances:

For the Petitioner : M/s. V. Mallik, K. Shankar Rao, M. Madhusudhan & Galaiah Velugu, Advocates

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/324/2000-IR(B.I) dated 19.04.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri B. Dastaiah, Temporary/Non-Messenger, by way of oral orders with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 21/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Non-Messenger from 1987 to 1997, and has rendered unblemished service spreading over a period of about 10 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W19, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri B. Dastaiah, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:- The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Nizampet, Branch, on 14.4.1987 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Main branch of the Respondent and Ex.W1 is the Transfer Certificate Petitioner. Ex. W2 is the Caste Certificate of Petitioner. Ex. W3 is the Service Certificate for 75 days dated 20.08.1986. Ex. W4 is the Call letter for interview. Ex. W5 is another copy of Ex.W4. Ex. W6 is the Call letter for interview. Ex. W7 is the Panel list. Ex. W8 is the panel list. Ex. W9 is the Service certificate 190 days dated 30.04.1993. Ex. W10 is the Service certificate dated 02.02.1994. Ex. W11 is the Service certificate dated 07.12.1994. Ex. W12 is the Service certificate for 197 days dated 08.12.1995. Ex.W13 is the Service certificate for 3 days from the period 21.12.1995 to 23.12.1995 dated 28.12.1995. Ex. W14 is the Service certificate dated 26.2.1996. Ex. W15 is the Service Certificate dated 9.07.1996 for 7 days. Ex. W16 is the Service Certificate dated 29.06.1996 for 21 days. Ex. W17 is the Service Certificate for 193 days dated 02.04.1997. Ex. W18 is the Service certificate for 28 days dated 31.03.1997. Ex. W19 is the Failure report of conciliation.

21. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a temporary messenger on 14.4.87 for a period of 75 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W14 to W18. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
31.5.1996 to 20.6.1996	21
August, 1996	13
September, 1996	30
October, 1996	31
November, 1996	30
December, 1996	31
January, 1997	30
February, 1997	28
March, 1997	28

Thus, sum of working days as shown in the above table is 242 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social

security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 3 separate spells in a period of one year. He had worked continuously for 197 days during the period from May, 1995 to 15.11.95 at Nizampet branch. Lastly, he worked for 193 days continuously during the period from August, 1996 to February, 1997 in Balkampet branch. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1987 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and

deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

…….

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not

only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1987 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 13th August 1987 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"I, therefore pray that this Hon'ble Court may be pleased to pass an award granting me the relief of reinstatement with full back wages, continuity of service, and all other attendant benefits including damages, compensation and costs of the case etc., in the circumstances of the case."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri B. Dastaiah, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 26th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri B. Dastaiah	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of Transfer Certificate
Ex. W2:	Photocopy of Caste certificate
Ex.W3:	Photocopy of Service Certificate dated 20.08.1986
Ex.W4:	Photocopy of Call letter for interview
Ex.W5:	Photocopy of Call letter for interview
Ex.W6:	Photocopy of call letter for interview.
Ex.W7:	Photocopy of Panel list
Ex.W8:	Photocopy of Panel list
Ex.W9:	Photocopy of Service certificate dated 30.04.1993
Ex.W10:	Photocopy of Service certificate dated 02.02.1994
Ex.W11:	Photocopy of Service certificate 07.12.1994
Ex.W12:	Photocopy of Service certificate dated 08.12.1995
Ex.W13:	Photocopy of Service certificate 28.12.1995
Ex.W14:	Photocopy of Service certificate dated 26.2.1996
Ex.W15:	Photocopy of Service Certificate dated 9.07.1996
Ex. W16:	Photocopy of Service Certificated dated 02.04.1997
Ex. W17:	Photocopy of Service certificate dated 02.04.1997
Ex. W18:	Photocopy of Service certificate dated 31.03.1997
Ex. W19:	Photocopy of Failure report of conciliation

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (160/2001) प्रकाशित करती है।

[सं. 12012/10/2001-आई आर (बी-I]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 160/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/10/2001- IR(B-I)]

SALONI, Dy. Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 1st day of April, 2026

INDUSTRIAL DISPUTE No. 160/2001

Between:

Sri M. Govindam,
S/o M. Doraswamy,
P.D.V kandiga Nalagampalli,
Bangarupalavam (M)
Chittor Dist 517001. … Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office Region-II,

Tirupathi-517501. …..Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri K. Rathangapani Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/10/2001-IR(B.I) dated 16.08.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Vijaywada Zone in dismissing services of Shri M. Govindam, Ex-Messenger, is justified? If not, what relief the Workman is entitled?"

After receipt of the reference, it was numbered as ID No. 160/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank as Messenger on 1989 to 1997 and rendered unblemished service spreading over a period of about 9 years and by dint of hard work till his services were terminated by oral orders with effect from 1.04.1997. It is submitted that Respondent has terminated the services of Petitioner on 31.3.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is submitted that he could not secure any alternative employment till date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the*

Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W4, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Vijaywada, in terminating the services of Workman Sri M. Govindam, a Ex-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:-The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"*It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed.*"

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification*

enacted in Section 25-F"

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Greamspet Branch, Chittor on 15.11.1989 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. Further WW1 states that his last drawn salary was Rs.2800/- per month. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Greamspet branch of the Respondent and Ex.W1 is the Service certificate. Ex. W2 is the call letter for interview. Ex. W3 is the Panel list. Ex. W4 is the Service particulars.

21. Further WW1 states that he worked for more than 240 days continuously in separate spells in one year period of time and he worked for 240 days continuously during the period from April, 1996 to March, 1997 Ex.W4 is the certificate in this regard. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment on temporary basis for a period of 83 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W4. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April,1996	25
May, 1996	24
June, 1996	21
July, 1996	27
August, 1996	22
September, 1996	7
October, 1996	31
November, 1996	10
December, 1996	30
February, 1997	24
March, 1997	19

Thus, sum of working days as shown in the above table is 240 days which is equal to 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for 240 days continuously in different spells in a period of one year ie., from April, 1996 to 31.3.97 in Respondent bank. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel

witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1987 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

……..

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:**- In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 8 years i.e., from 1989 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1989 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 13th August 1987 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"To direct the management to reinstate and absorb the workman in the service of the bank and grant all incidental and consequential benefits of reinstatement, back wages, continuity of service etc..."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Govindam, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 1st day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Govindam	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate
Ex.W2:	Photocopy of call letter for interview
Ex.W3:	Photocopy of panel list
Ex.W4:	Photocopy of Service particulars

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (200/2001) प्रकाशित करती है।

[सं. 12012/36/2001-आई आर (बी-I]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.200/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/36/2001- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 1st day of April, 2026

INDUSTRIAL DISPUTE No. 200/2001

Between:

Sri E. Yellaiah,
C/o G. John,
R/o H.No. 11-3-664/482,
Sanjeevpuram,
Prasigutta,
Secunderabad-500361.

. … Petitioner

And

The Assistant General Manager,
State Bank of India,
(Personnel & HRD Department)
Local Head Office,
Bank Street, Koti,
Hyderabad – 500 095. …..Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/36/2001-IR(B.I) dated 06.09.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri E. Yellaiah, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 200/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Non-Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank at he joined the services of the Respondent Bank at Peddampuram branch on 11.02.1986 and worked for 85 days till 31.8.1986 as a Messenger. It is submitted that the services of the Petitioner were terminated with verbal orders dt. 31.03.1997 without assigning any valid reasons. It is submitted that Respondent has terminated the services of Petitioner on 31.3.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is submitted that he could not secure any alternative employment till date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W18, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri E. Yellaiah, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:-The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to

have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Peddamupuram, Branch, warangal on 11.2.1986 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Main branch of the Respondent and Ex.W1 is the Study Certificate of the Petitioner. Ex. W2 is the Marks memo. Ex. W3 is the Study certificate of the Petitioner. Ex. W4 is the Caste Certificate. Ex. W5 is the Transfer Certificate. Ex. W6 is the Service certificate dated 1.09.1986. Ex. W7 is the Service certificate dated 11.08.1988. Ex. W8 is the Application format. Ex.W9 is the Service certificate dated 08.04.1989. Ex. W10 is the call letter for interview. Ex. W11 is the panel list Ex. W12 is the Service certificate dated 9.03.1993. Ex.W13 is the Service Certificate for 198 days from 30.05.1993 to 30.11.1993 dated 30.11.1993 Ex. W14 is the Service Certificate for 195 days dated 07.12.1994 Ex. W15 is the Service Certificate dated 13.7.1995. Ex. W16 is the Service certificate dated 18.03.1997. Ex. W17 is the Service Certificate dated 15.02.1997. Ex. W18 is the Service Certificate dated 21.05.1997.

21. Further WW1 states that he worked for more than 240 days continuously in two separate spells in one year period of time and he worked for 191 days continuously during the period from December, 1995 to June, 1996, Ex.W16 is the certificate in this regard. He worked for 198 days continuously in another spell from July, 1996 to February, 1997, Ex.W17 is the certificate in this regard. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a messenger on temporary basis on 11.2.1986 for a period of 85 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W6, W7, W12 to W18. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April,1996	30
May, 1996	31
June, 1996	11
July, 1996	13
August, 1996	24
September, 1996	30
October, 1996	31
November, 1996	29
December, 1996	30
January, 1997	31
February, 1997	10

Thus, sum of working days as shown in the above table is 270 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 2 separate spells in a period of one year. He worked for 191 days continuously during the period from December, 1995 to June, 1996, Ex.W16 is the certificate in this regard. He worked for 198 days continuously in another spell from July, 1996 to February, 1997, Ex.W17 is the certificate in this regard. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is

true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1986 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

……..

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the

termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1986 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 13th August 1987 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"It is therefore prayed that this Hon'ble Court may be pleased to pass an award directing the management of the Respondent bank to reinstate the Petitioner herein back into service with full back wages, continuity of service, and all other attendant benefits."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri E. Yellaiah, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 1st day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri E. Yellaiah	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of Study Certificate
Ex.W2:	Photocopy of Marks memo
Ex.W3:	Photocopy of Study certificate
Ex.W4:	Photocopy of Caste Certificate
Ex.W5:	Photocopy of Transfer Certificate
Ex.W6:	Photocopy of Service certificate dated 1.09.1986
Ex.W7:	Photocopy of Service certificate dated 11.08.1988
Ex.W8:	Photocopy of Application format
Ex.W9:	Photocopy of Service certificate dated 08.04.1989
Ex.W10:	Photocopy of call letter for interview
Ex.W11:	Photocopy of panel list
Ex.W12:	Photocopy of Service certificate dated 9.03.1993
Ex.W13:	Photocopy of Service Certificate dated 30.11.1993
Ex.W14:	Photocopy of Service certificate dated 07.12.1994
Ex.W15:	Photocopy of Service certificate dated 13.7.1995
Ex.W16:	Photocopy of Service certificate dated 18.03.1997
Ex.W17:	Photocopy of Service Certificate dated 15.02.1997
Ex.W18:	Photocopy of Service Certificate dated 21.05.1997

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (83/2001) प्रकाशित करती है।

[सं. 12012/527/2000-आई आर (बी-I]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1126.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 83/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/527/2000- IR(B-I)]

SALONI, Dy. Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 26th day of March, 2026

INDUSTRIAL DISPUTE No. 83/2001

Between:

Sri M. Murali Manohar,
S/o Muthyala Swamy,
R/o 1-82-23, Sitarampuram,
Bowenpally,
Secunderabad 500003

. … Petitioner

And

The Assistant General Manager,
State Bank of India,
(Personnel & HRD Department)
Local Head Office,
Bank Street, Koti,
Hyderabad – 500 095. ….. Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/527/2000-IR(B.I) dated 14.06.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Murali Manohar, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 83/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank at Secundrabad Main Branch, on 1.1.1986 and worked for 77 days, upto 31.12.1987 as a Canteen Boy, Water Boy Messenger and Duster work boy etc, After working for different spells he was provided with work in the same post for another 200 days during 20.11.1995 to 0.06.1996. Thereafter he was provided with work for 193 days at M.G Road branch, Secunderabad as Messenger during June, 1996 to December, 1996. Lastly he was provided with work at Balanagar branch for 98 days during 21.12.199 to 31.3.1997 as a Messenger. His last drawn salry was Rs. 2,768/- per month. It is submitted that Respondent has terminated the services of Petitioner on 31.3.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is submitted that he could not secure any alternative employment ti1l date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W15, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri M. Murali Manohar, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:-The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered*

uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Branch, Hyderabad on 1.1.1986 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. Further WW1 states that his last drawn salary was Rs.2768/- per month. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Secundrabad Main branch of the Respondent and Ex.W1 is the Transfer Certificate Petitioner. Ex. W2 is the caste Certificate of the Petitioner.

Ex. W3 is the Salary Certificate of the Petitioner. Ex. W4 is the interview call letter. Ex. W5 is the Panel list and Petitioner's name was at Sl.No 15. Ex.W6 is the Service certificate which shows that petitioner worked as a Messenger dt. 18.12.1990. Ex. W7 is the Service certificate for a period of 179 days from 7.1.1991 to 6.07.1991. Ex. W8 is the Service Certificate for 199 days for the period 16.01.1992 to 20.08.1992 dt. 21.01.1994. Ex. W9 is the Service certificate from the period 19.10.1992 to 30.4.1993 Ex. W10 is the Service certificate for 199 days from the period of 17.04.1994 to 31.10.1994 dated 3.05.1996. Ex. W11 is the Service certificate of the Petitioner Ex. W12 is the Service certificate for 200 days dated 30.0.1995. Ex. W13 is the Service Certificate dated 3.05.1997 Ex. W14 is the Service certificate Ex. W15 is the Service certificate in various other branches.

21. Further WW1 states that he worked for more than 240 days continuously in three separate spells in one year period of time and he worked for 200 days continuously in a spell from November, 1995 to June, 1996 at Balanagar branch and Ex.W13 is the concerned certificate. He had worked for 193 days from June, 1996 to December, 1996. Lastly, he had worked for 98 days from December, 1996 to March, 1997. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a messenger and non-messenger on temporary basis in the year 1986 for a period of 77 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W3, W6, W7, W8, W9, W11, W10, W12,W13, and W15. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April,1996	30
May, 1996	31
June, 1996	24[6+18)
July, 1996	31
August, 1996	31
September, 1996	29 (16+13)
October, 1996	31
November, 1996	30
December, 1996	30(22+8)
January, 1997	31
February, 1997	28
March, 1997	31

Thus, sum of working days as shown in the above table is 257 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 3 separate spells in a period of one year. He he worked for 200 days continuously in a spell from November, 1995 to June, 1996 at Balanagar branch and Ex.W13 is the concerned certificate. He had worked for 193 days from June, 1996 to December, 1996. Lastly, he had worked for 98 days from December, 1996 to March, 1997. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1986 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

…….

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1986 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 13th August 1987 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"I, therefore pray that this Hon'ble Court may be pleased to pass an award granting me the relief of reinstatement with full back wages, continuity of service, and all other attendant benefits including damages, compensation and costs of the case etc., in the circumstances of the case."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Murali Manohar, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 26th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Murali Manohar	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of transfer certificate
Ex.W2:	Photocopy of caste certificate
Ex.W3:	Photocopy of salary certificate
Ex.W4:	Photocopy of interview call letter
Ex.W5:	Photocopy of Panel list
Ex.W6:	Photocopy of Service certificate dt.18.12.1990
Ex.W7:	Photocopy of Service certificate dt.15.07.1991
Ex.W8:	Photocopy of Service certificate dt.24.1.1994
Ex.W9:	Photocopy of Service certificate
Ex.W10:	Photocopy of Service certificate dt.03.05.1996
Ex.W11:	Photocopy of Service certificate dt. 24.1.94
Ex.W12:	Photocopy of Service certificate 30.06.1995
Ex.W13:	Photocopy of Service certificate dt. 03.05.1997
Ex.W14:	Photocopy of Service certificate dt. 11.4.97
Ex.W15:	Photocopy of Service certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (189/2001) प्रकाशित करती है।

[सं. 12012/79/2001-आई आर (बी-I]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 189/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/79/2001- IR(B-I)]

SALONI, Dy. Directo

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of March, 2026

INDUSTRIAL DISPUTE No. 189/2001

Between:

Sri M. Shyam Rao,

S/o Laxmi Narasimha,

R/o H.No. 6-1-269/12,

Padma Rao Nagar,

Secunderabad - 500025.

… Petitioner

And

The Assistant General Manager,

State Bank of India,

(Personnel & HRD Department)

Local Head Office,

Bank Street, Koti,

Hyderabad – 500 095.

…..Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/79/2001-IR(B.I) dated 10.08.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Shyam Rao, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 189/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch

cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Messenger on 1984 to 1997 and rendered unblemished service spreading over a period of about 13 years and by dint of hard work till his services were terminated by oral orders with effect from 1.4.1997. It is submitted that he could not secure any alternative employment ti1l date, inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of

temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W16, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri M. Shyam Rao, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:-The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar

year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Padmaraonagar Branch, as a

Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked with the Respondent and Ex.W1 is the Notification. Ex. W2 is the Appointment letter. Ex. W3 is the Services particulars of Petitioner. Ex. W4 is the Service certificate dated 8.8.1988. Ex. W5 is the Service Certificate dated 3.07.1989. Ex. W6 is the Service certificate dated 6.5.1992. Ex. W7 is the Service certificate dated 27.12.1993. Ex. W8 is the Service certificate for 200 days period of 17.10.1994 to 12.05.1995 dated 01.09.1995. Ex. W9 is the Service certificate for 69 days period of 1.10.1995 to 23.12.1995 dated 30.12.1995. Ex. W10 is the Service certificate for 180 days period of 14.02.1996 to 14.08.1996 dated 26.08.1996. Ex. W11 is the Service certificate for 198 days dated 09.04.1997 Ex. W12 is the Study certificate. Ex.W13 is the Transfer Certificate Ex. W14 is the Caste certificate. Ex. W15 is the Bonus Notification. Ex. W16 is the ALC(C) proceedings dated 1.01.1998.

21. Further WW1 states that he worked for more than 240 days continuously in two separate spells in one year period of time and he worked for 180 days continuously during the period from 14.2.1996 to 14.8.96, Ex.W10 is the certificate in this regard. Lastly, worked for 198 days continuously in another spell from 12.9.1996 to 29.3.1997 at HAL campus branch and Ex.W11 is the concerned certificate. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a messenger at Padmaraonagar branch on temporary basis for a period of 32 days initially. Further, witness states that he was not engaged in response to any notification issued by the bank. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W3, W4, W5, W6, W7, W8, W9, W9 and W11. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April'96 to 14.8.1996	133
September, 1996	19
October, 1996	31
November, 1996	30
December, 1996	30
January, 1997	31
February, 1997	28
March, 1997	29

Thus, sum of working days as shown in the above table is 331 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 13 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 13 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before

termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 2 separate spells in a period of one year. He worked for more than 240 days continuously in two separate spells in one year period of time and he worked for 180 days continuously during the period from 14.2.1996 to 14.8.96, Ex.W10 is the certificate in this regard. Lastly, worked for 198 days continuously in another spell from 12.9.1996 to 29.3.1997 at HAL campus branch and Ex.W11 is the concerned certificate. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1987 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

…….

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:**- In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1984 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 1984 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"I, therefore pray that this Hon'ble Court may be pleased to pass an award granting me the relief of reinstatement with full back wages, continuity of service, and all other attendant benefits including damages, compensation and costs of the case etc., in the circumstances of the case."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Shyam Rao, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Shyam Rao	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of Notification
Ex.W2:	Photocopy of Appointment letter
Ex.W3:	Photocopy of Service particulars
Ex.W4:	Photocopy of Service certificate dated 8.08.1998
Ex.W5:	Photocopy of. Service certificate dated 17.01.1993
Ex.W6:	Photocopy of Service certificate dated 03.07.1989
Ex.W7:	Photocopy of Service certificate dated 27.12.1993
Ex.W8:	Photocopy of Service certificate dated 1.09.1995
Ex.W9:	Photocopy of Service certificate dated 30.12.1995
Ex.W10:	Photocopy of Service certificate 26.08.1996
Ex.W11:	Photocopy of Service certificate dated 09.04.1997
Ex.W12:	Photocopy of marks memo of X class
Ex.W13:	Photocopy of Transfer Certificate
Ex.W14:	Photocopy of Caste certificate
Ex.W15:	Photocopy of Bonus Notification
Ex.W16:	Photocopy of ALC proceedings dated 1.1.1998

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non-messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (198/2001) प्रकाशित करती है।

[सं. एल-12012/33/2001-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 198/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/33/2001-IR(B-I]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of March, 2026

INDUSTRIAL DISPUTE No. 198/2001

Between:

Sri M. Jagan Mohan,
S/o M. Ramulu,
R/o 6-1-487/1/19,
Indranagar,
Khairatabad,
Hyderabad.

…. Petitioner

And

The Assistant General Manager,
State Bank of India,
(Personnel & HRD Department)
Local Head Office,
Bank Street, Koti,
Hyderabad – 500 095. …..Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/33/2001-IR(B.I) dated 06.09.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Jagan Mohan, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 198/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Non-Messenger (temporary

employee). The Petitioner have joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Messenger from 1986 to 1997 and rendered unblemished service spreading over a period of about 11 years, and by dint of hard work till his services were terminated by oral orders with effect from 1.4.1997. It is submitted that Respondent has terminated the services of Petitioner on 31.3.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is submitted that he could not secure any alternative employment ti1l date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W15, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri M. Jagan Mohan, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:-The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"*It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed.*"

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service.*"

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Branch, Hyderabad from 1986 as a Non-Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked with the Respondent and Ex.W1 is the notification. Ex. W2 is the Service certificate dt 30.06.1986. Ex. W3 is the call letter for interview dt 15.05.1989. Ex. W4 is the Service certificate dt 16.05.1992. Ex. W5 is the service certificate 29.06.1992. Ex. W6 is the Service certificate 19.03.1993. Ex. W7 is the Service certificate for the period of 09.11.1993 to 18.11.1993. Ex. W8 is the Service Certificate for 02.06.1995. Ex. W9 is the Service certificate from the period dated 04.08.1995. Ex. W10 is the Service certificate 107 days for the period of 22.08.1995 to 27.11.1995 dated 15.03.1996. Ex. W11 is the Service certificate 80 days for the period of 3.04.1996 to 29.06.1996 Ex. W12 is the Service certificate for 101 days from the period 13.07.1996 to 22.10.1996 dated 23.07.1997. Ex.W13 is the Service Certificate for 158 days dated 16.05.1997. Ex. W14 is the caste certificate Ex. W15 is the circular letter dated 14.07.1999.

20. Further WW1 states that he worked for more than 240 days continuously in three separate spells in one year period of time and he worked for 88 days continuously during the period from 3.4.96 to 29.6.96, Ex.W11 is the certificate in this regard. He worked for 101 days continuously in another spell from 13.7.1996 to 22.10.1996 at Local Head Office, and Ex.W12 is the concerned certificate. Lastly he had worked for 158 days from October, 1996 to March, 1997. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a temporary messenger in the year 1986 for a period of 77 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W2, W4 to W13. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April,1996 to June, 1996	88
July, 1996 to October, 1996	109(101+8)
November, 1996	30
December, 1996	31
January, 1997	31
February, 1997	28
March, 1997	30

Thus, sum of working days as shown in the above table is 347 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as

mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 3 separate spells in a period of one year. He worked for 88 days continuously during the period from 3.4.96 to 29.6.96, Ex.W11 is the certificate in this regard. He worked for 101 days continuously in another spell from 13.7.1996 to 22.10.1996 at Local Head Office, and Ex.W12 is the concerned certificate. Lastly, he had worked for 158 days from October, 1996 to March, 1997. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in

evidence goes to reveal that during the period from 1987 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

…….

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid

retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1986 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 13th August 1987 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"To direct the management to reinstate and absorb the workman in the service of the bank and grant all incidental and consequential benefits of reinstatement, back wages, continuity of service etc..."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and

material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri M. Jagan Mohan, Temporary Non-Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Jagan Mohan	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of call letter for interview
Ex.W2:	Photocopy of Service certificate dt 30.0.1986
Ex.W3:	Photocopy of letter dt 15.05.1989
Ex.W4:	Photocopy of Service certificate dt 1.05.1992
Ex.W5:	Photocopy of service certificate 29.0.1992
Ex.W6:	Photocopy of. Service certificate 19.03.1993
Ex.W7:	Photocopy of Service certificate for the period of 09.11.1993 to 18.11.1993
Ex.W8:	Photocopy of Service Certificate for 02.06.1995
Ex.W9:	Photocopy of Service certificate dated 04.08.1995
Ex.W10:	Photocopy of Service certificate dated 15.03.1996.
Ex.W11:	Photocopy of Service certificate
Ex.W12:	Photocopy of Service certificate for dated 23.07.1997
Ex.W13:	Photocopy of Service Certificate dated 16.05.1997
Ex.W14:	Photocopy of caste certificate
Ex.W15:	Photocopy of circular letter dated 14.07.1999

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88

Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 23 मार्च, 2026

का.आ. 1129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, धनबाद-I** के पंचाट (**संदर्भ संख्या** 176/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को **10/03/2026** को प्राप्त हुआ था।

[सं. एल-20012/247/2001-आईआर-(सीएम-I)]

जयदीप यादव, उप निदेशक

New Delhi, the 23rd March, 2026

S.O. 1129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 176/2001)** of **the Central Government Industrial Tribunal-cum-Labour Court, Dhanbad-I** as shown in the Annexure, in the industrial dispute between the Management of **CCL.** and **their workmen** received by the Central Government on **10/03/2026**.

[No. L-20012/247/2001– IR (CM-I)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,DHANBAD

In the matter of reference U/S 10 (1) (d)& (2A) of I.D.Act. 1947.

Reference Case No. 176/2001

Parties:

Employer in relation to the management of N.S.D. Colliery

of M/s. CCL, Bokaro

AND

Their Workman

Present: Shri Sachindra Kumar Pandey

Presiding Officer

Appearances:

For the Employers :- None.

For the workman :- None.

State : Jharkhand. Industry:-Coal

Dated 04/02/2026

AWARD

In exercise of powers conferred under clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947),Government Of India through the Ministry of Labour, vide its Order No.L-20012/247/2001 -IR(C-I) dated 10/08/2001 has been pleased to refer the following dispute between the employer i.e. management of N.S.D. Colliery of M/s. CCL, Bokaro and their workman through Secretary, Rashtriya Koyla Mazdoor Union, Bokaro for adjudication by this Tribunal:

SCHEDULE

"Whether the action of the management of N.S.D. Colliery of M/s C.C.L., not providing employment to Shri Guju Mahato Younger brother of deceased employee Late Sukar Mahato is justified? If not to what relief is the workman concerned entitled?"

2. This case is taken through Special Campaign organized by Ministry of Labour & Employment, Govt. of India for disposal of pending cases.

3. On receiving order no. L-20012/247/2001 -IR(C-I) dated 10/08/2001 Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, Reference case no. 176 of 2001 was registered on 10.09.2001 and thereafter the notices were sent to the parties with a direction to appear and submit their written statements along with relevant documents and witnesses in support of their claims.

4. After service of notice, both parties appeared previously and filed their authorities, W/S and subsequently rejoinder. It further appears that after 2006 this case was put up after a long gap on 10.09.2021 and registered notices were issued to both the parties but workman/union failed to appear before this Tribunal. However Sri D.K. Verma, Ld. Advocate on behalf of the management appeared.

5. On perusal of the entire case record it transpires that workman/union never appeared before this Tribunal since 2021 which shows that he has lost his interest in this case and therefore, for the ends of justice, this case deserves to be dismissed for non prosecution.

6. Hence,

ORDERED

that this case is hereby dismissed for non prosecution and a "No Dispute Award" be drawn up in respect of the above reference case. Let the copies of Award in duplicate be sent to the Ministry of Labour & Employment, Government of India, New Delhi for information and notification.

SACHINDRA KUMAR PANDEY, Presiding Officer

नई दिल्ली, 2 जून, 2026

का.आ. 1130—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (202/2001) प्रकाशित करती है।

[सं. एल-12012/38/2001-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 202/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/38/2001-IR(B-I]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of April, 2026

INDUSTRIAL DISPUTE No. 202/2001

Between:

Sri. T. Parishudha Rao,
S/o Simon,
R/o Siddartha Apts,
Plot No. 302,
Ameerpet,
Hyderabad-16.

. … Petitioner

And

The Assistant General Manager,
(Personnel & HRD Department)
State Bank of India,
Local Head Office,
Bank Street, Koti,
Hyderabad – 500 095.

…..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/38/2001-IR(B.I) dated 06.09.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri. T. Parishudha Rao, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 202/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important

aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Management Institution as Messenger on 1988 to 1997 and rendered unblemished service spreading over a period of about 9 years and by dint of hard work till his services were terminated by oral orders with effect from 1.04.1997. It is submitted that the services of the Petitioner were terminated with verbal orders dt. 31.03.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is submitted that he could not secure any alternative employment till date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W15, including appointment letters, interview letters, and service certificates showing employment across various periods. To corroborate the claim of the Petitioner he has filed a document through application, taken on record. The document is marked as Ex.W16, which goes to show that eh Petitioner has worked with the Respondent for more than 240 days in a calendar year just preceding from the date of termination. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri. T. Parishudha Rao, a Temporary/Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:-The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in *Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour* Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in *Sur Enamel and Stamping Works (P) Ltd* case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Airport branch, SBI, Hyderabad on 1.7.1988 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given his any order of termination. Further, WW1 states that he had worked in the branches of the Respondent, and documents marked by WW1 are as follows: Ex.W1 is the service certificate dated 08.08.1988. Ex. W2 is the notification. Ex. W3 is the call letter for interview. Ex. W4 is the Panel list. Ex.W5 is the service certificate dated 27.03.1997. Ex. W6 is the Service certificate dated 3.12.92. Ex. W7 is the Service certificate. Ex. W8 is the Service certificate dated 07.8.93. Ex. W9 is the Service certificate dated 29.05.1997. Ex. W10 is the service certificate dated 23.12.1994. Ex. W11 is the Service certificate dated 29.05.1997. Ex W12 is the service certificate for 197 days. Ex. W13 is the service certificate for 197 days from August 1996 to March, 1997. Ex. W14 is the caste certificate. Ex. W15 is the transfer certificate. Ex.W16 is the service certificate dated 29.5.97 for 195 days for the period from 9.1.96 to 24.7.96

21. Further WW1 states that he worked for more than 240 days continuously in two separate spells in one year

period of time and he worked for days continuously at Hyderabad Public School branch during the period from 1.4.1996 to 24.7.96, Ex.W16 is the certificate in this regard. Lastly, he had worked for 197 days from August, 1996 to March, 1997. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a messenger on temporary basis for a period of 31 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously, and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service.

Month	Working days
April, 1996	30
May, 1996	31
June, 1996	30
July, 1996	24
August, 1996	05
September, 1996	30
October, 1996	24
November, 1996	30
December, 1996	30
January, 1997	31
February, 1997	28
March, 1997	19
total	312

Thus, sum of working days as shown in the above table is 312 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 9 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 9 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in *Mahindra & Mahindra Ltd., Nagpur* (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than 9 years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to his under the provision of Industrial Disputes Act, 1947.

24. On the other hand, Respondent in evidence has examined MW1 witness Sri Aluru Rama Rao who has reiterated the contention made in the counter regarding engagement of working days of the Workman. He has stated that there is a procedure for appointment of messengers/non-messengers in the bank on regular basis. Petitioner was not sponsored by any employment exchange. He did not undergo the regular process of selection required for appointment as a regular messenger. The Petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The Petitioner and other temporary employees were not terminated from service by the bank. The vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Further, this witness was cross examined by the Petitioner Counsel and in his cross examination witness MW1 states that he do not know the Petitioner individually and he did not give any appointment order either temporarily casually or whatever it is in the capacity of Personnel Officer Zonal office, Hyderabad module. Further, witness states in cross examination that since they are casual and temporary Workers they were not appointed after 31.3.1997 as all available vacancies were filled in by that time with the available panels. As there were no available vacancies and the panels were lapsed hence, the bank could not absorb any of these people in a regular basis. The Learned Counsel for Respondent has further contended that the Petitioner witness WW1 in his statement has admitted that he has not completed 240 days in any year therefore his termination from employment is not in contravention of the provision of section 25 F.

25. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 3 separate spells in a period of one year. He worked for 115 days continuously at Hyderabad Public School branch during the period from 1.4.1996 to 24.7.96, Ex.W16 is the certificate in this regard. Lastly, he had worked for 197 days from August, 1996 to March, 1997. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1988 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 9 years

and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

.....

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of *Section 25-F(b)*.

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the

period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

26. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

27. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment

rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 9 years i.e., from 1988 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

28. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1988 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 25 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

29. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

30. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 1988 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"To direct the management to reinstate and absorb the workman in the service of the bank and grant all incidental and consequential benefits of reinstatement, back wages, continuity of service etc..."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in

respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri. T. Parishudha Rao, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 17th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri. T. Parishudha Rao	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate dated 08.08.1988
Ex.W2:	Photocopy of notification
Ex.W3:	Photocopy of call letter for interview
Ex.W4:	Photocopy of Panel list
Ex.W5:	Photocopy of the service certificate dated 27.03.1997
Ex.W6:	Photocopy of Service certificate dated 3.12.92
Ex.W7:	Photocopy of Service certificate
Ex.W8:	Photocopy of the Service certificate dated 07.8.93
Ex.W9:	Photocopy of the Service certificate dated 29.05.1997
Ex.W10:	Photocopy of service certificate dated 23.12.1994
Ex.W11:	Photocopy of Service certificate dated 29.05.1997
Ex.W12:	Photocopy of Service certificate
Ex.W13:	Photocopy of Service certificate
Ex.W14:	Photocopy of letter to employment exchange by the Respondent
Ex.W15:	Photocopy of circular letter dated 14.07.1999
Ex.W16:	Photocopy of the Service certificate dated 29.05.1997

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995

Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non-messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (19/2004) प्रकाशित करती है।

[सं. एल-12025/01/2026-आई आर (बी-I)-145]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 19/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2026-IR(B-I)-145]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 16th day of April, 2026

INDUSTRIAL DISPUTE L.C.No. 19/2004

Between:

Sri A.A. Narasimhulu,
S/o A. Macherlappa,
R/o Kanaganapalii (V & M),
Pin code-515641, Anatapur Dist. … Petitioner

And

1. The Chief General Manager,
   Local Head Office,
   State Bank of India, Koti,
   Bank Street,
   Hyderabad.
2. The Asst. General Manager,
   State Bank of India,
   Zonal office, Tirupathi.
   Chittoor Dist. …..Respondents

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

Sri A.A. Narasimhulu, who worked as Messenger (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents State Bank of India seeking for reinstatement into service as Messenger duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deem fit.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee).

The Petitioner have joined the service of the Respondent Bank and worked from 1988 to 1997 and rendered unblemished service spreading over a period of about 10 years. It is submitted that the services of the Petitioner were terminated with verbal orders dt. 31.03.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is submitted that he could not secure any alternative employment till date inspite of his best efforts. It is submitted that there is sufficient work with the Respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W17, including appointment letters, interview letters, and service certificates showing employment across various periods. However, Respondent has failed to controvert the claim and evidence of the Petitioner by adducing any oral or documentary evidence. Therefore, the claim of the Petitioner that he was terminated illegally and in contravention of the provision of Sec.25F is proved.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri A.A. Narasimhulu, a Temporary/Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. Issue No.I:- The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in *Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour* Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in *Sur Enamel and Stamping Works (P) Ltd* case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to

have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Kanaganapalli Branch, from June, 1988 to July, 1988 for 59 days as a temporary sweeper and temporary Messenger and worked continuously in that branch depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Kanaganapalli branch of the Respondent and Ex.W1 to W11 are the Service certificates for for the period of June, 1988 to March, 1997. Ex. W12 is the Copy of SSC fail memo. Ex. W13 is the paper notification. Ex.W14 & W15 are the letters iinforming that he has been selected in the interview and final selection for permanent absorption. Ex.W16 is the certificate dated 27.10.93 empanelling Petitioner and showing his No. as 5216. Ex.W17 is the panel list.

21. Further WW1 states that he worked for more than 240 days continuously in different spells in one year period of time and he worked for 260 days continuously during the period from April, 1996 to March, 1997, Ex.W7, W9 and W10 are the certificates in this regard. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a messenger on temporary basis in the year 1988. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service.

Month	Working days
April,1996	27
May, 1996	28
June, 1996	20
July, 1996	31 (15+16)
August, 1996	31 (16+15)
September, 1996	29 (01+28)
October, 1996	28
November, 1996	28
December, 1996	31
Total	253

Thus, sum of working days as shown in the above table is 253 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to

Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 9 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 9 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in *Mahindra & Mahindra Ltd., Nagpur* (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than 9 years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in different spells in a period of one year. He worked for 59 days continuously during the period from June, 1988 to July, 1988 at Kanaganapalli branch. Ex.W1 is the certificate in this regard. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary

evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1988 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 9 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

…….

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of *Section 25-F(b)*.

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time

available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:-** In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 9 years i.e., from 1988 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1988 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for Petitioner has also argued that the Petitioner Workman is entitled for regularization in the employment of the Respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the Petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the Respondent bank in different spells from June, 1988 till 31st March 1997. But the Respondent has terminated his services without assigning any valid reason. Further, it is alleged that Respondent has retained his juniors in his services and Respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the Respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the Respondent employment. The relief clause of the claim statement reads out as here under:-

"To direct the management to reinstate and absorb the workman in the service of the bank and grant all incidental and consequential benefits of reinstatement, back wages, continuity of service etc..."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of Respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and

material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri A.A. Narasimhulu, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 16th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri A.A. Narasimhulu	MW1: NIL

Documents marked for the Petitioner

Ex.W1:	Photocopy of Service Certificate dated 6.8.88
Ex.W2:	Photocopy of Service Certificate dated 1.12.88
Ex.W3:	Photocopy of Service Certificate dated 16.9.91
Ex.W4:	Photocopy of Service Certificate dated 9.7.90
Ex.W5:	Photocopy of Service Certificate dated 3.4.96
Ex.W6:	Photocopy of Service particulars
Ex.W7:	Photocopy of Service Certificate dated 3.12.96
Ex.W8:	Photocopy of Service Certificate
Ex.W9:	Photocopy of Service Certificate dated 3.12.1996
Ex.W10:	Photocopy of Service Certificate dated 20.1.1997
Ex.W11:	Photocopy of Service Certificate dated 9.6.2001
Ex.W12:	Photocopy of the Copy of SSC fail memo
Ex.W13:	Photocopy of the paper notification
Ex.W14:	Photocopy of letter informing that Petitioner selected in the interview
Ex.W15:	Photocopy of final selection for permanent absorption
Ex.W16:	Photocopy of the certificate dated 27.10.93 empanelling Petitioner and showing his No. as 5216
Ex.W17:	Photocopy of the panel list.

Documents marked for the Respondent

NIL

नई दिल्ली, 2 जून, 2026

का.आ. 1132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (48/2001) प्रकाशित करती है।

[सं. एल-12012/381/2000-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 48/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/381/2000-IR(B-I]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 27th day of March, 2026

INDUSTRIAL DISPUTE No. 48/2001

Between:

Sri MD. Abdul Sattar,

H.No. 9-11-161,

Jinci Bazar, Golconda Fort,

Hyderabad – 500 008.

. … Petitioner

And

The Assistant General Manager,

State Bank of India,

(Personnel & HRD Department)

Local Head Office,

Bank Street, Koti,

Hyderabad – 500 095.

…..Respondent

Appearances:

For the Petitioner : Sri M. Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/381/2000-IR(B.I) dated 26.06.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri Md. Abdul Sattar, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled to?"

After receipt of the reference, it was numbered as ID No. 48/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Messenger on 1988-1997 and rendered unblemished service spreading over a period of about 9 years, and by dint of hard work till his services were terminated by oral orders with effect from 1.4.1997. It is submitted that he could not secure any alternative employment ti1l date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W11, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri MD. Abdul Sattar, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. Issue No.I:- The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—

(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent in 1988 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Main branch of the Respondent and Ex. W1 is the Notification. Ex. W2 is the Service Certificate for 89 days period of 04.05.1988 to 31.07.1988 dated 15.07.1992. Ex. W3 is the Call letter for interview. Ex. W4 is the Appointment letter. Ex. W5 is the Service certificate for 200 days period of 12.04.1993 to 31.10.1993 dated 15.12.1993. Ex. W6 is the Service certificate for 200 days during the period of 2.04.1994 to 21.10.1994 . Ex. W7 is the Service certificate for 200 days 18.04.1995 to 06.11.1995 dated 15.11.1995. Ex. W8 is the Service certificate for 190 days period of 22.11.1995 to 31 05.1996 dated 03.06.1996. Ex. W9 is the Service certificate 200 days period of 06.06.1996 to dated 08.01.1997. Ex. W10 is the letter to Employment Exchange. Ex. W11 is the Audit Report dated 14.07.1999.

21. Further WW1 states that he worked for more than 240 days continuously in two separate spells in one year period of time and he worked for 200 days during the period of 22.11.1995 to 31 05.1996 continuously Ex.W8 is the certificate in this regard. He worked for 200 days continuously in another spell from 6.6.1996 to 8.1.1997 at Saifabad branch and Ex.W9 is the concerned certificate. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service.

22. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as Messenger. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W5, W6, W7, W8, and W9. Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

The details of working days are shown in table given below:-

Month	Working days
April &May, 1996	59 (190-131 days as per Ex.W8)
6.6.96 to 8.1. 1997	200 days

Thus, sum of working days as shown in the above table is 259 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide

intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its** decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 200 days continuously vide his service record in 1993, 1994, 1995, 1996 and 1997. Lastly, he worked for 200 days continuously during the period from 6.6.96 to 8.1.97 in Saifabad branch. Although the witness WW1 was cross examined by the Respondent but nothing has been elicited to discredit the testimony of the witness. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1988 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 9 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,** therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

…….

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:**- In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 9 years i.e., from 1988 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1988 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court, payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 1988 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"To direct the management to reinstate and absorb the workman in the service of the bank and grant all incidental and consequential benefits of reinstatement, back wages, continuity of service etc.."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri MD. Abdul Sattar, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 27th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri MD. Abdul Sattar	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of Notification
Ex. W2:	Photocopy of Service Certificate dated 15.07.1992
Ex.W3:	Photocopy of call letter for interview
Ex.W4:	Photocopy of Appointment letter
Ex.W5:	Photocopy of Service Certificate dated 15.12.1993
Ex.W6:	Photocopy of Service Certificate
Ex.W7:	Photocopy of Service Certificate dated 15.11.1995
Ex.W8:	Photocopy of Service Certificate dated 03.06.1996
Ex.W9:	Photocopy of Service certificate dated 17.01.1997
Ex.W10:	Photocopy of letter to Employment Exchange
Ex.W11:	Photocopy of Audit Report dated 14.07.1999

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1133.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (95/2001) प्रकाशित करती है।

[सं. एल-12012/388/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.95/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/388/2000- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 26th day of March, 2026

INDUSTRIAL DISPUTE No. 95/2001

Between:

Sri Mohd. Gouse,
S/o Mohd Yousuf,
R/o H.No. 19-2-21-23/55/4/29/2,
Bharathnagar, Kalapattar,
Hyderabad.

. … Petitioner

And

The Assistant General Manager,
State Bank of India,
(Personnel & HRD Department)
Local Head Office,
Bank Street, Koti,
Hyderabad – 500 095. …..Respondent

Appearances:

For the Petitioner : M/s. V. Mallik, K. Shankar Rao, M. Madhusudhan & Galaiah Velugu, Advocates
For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/388/2000-IR(B.I) dated 17.07.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri Md. Gouse, Temporary/Non-Messenger, SBI with effect from 31.3.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 95/2001 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.2019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement is that the Petitioner herein was engaged by the Respondent Bank—State Bank of India—as a Messenger (temporary employee). The Petitioner have joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Messenger from 1985 to 1992 and rendered unblemished service spreading over a period of about 12 years, and by dint of hard work till his services were terminated by oral orders with effect from 1.4.1997. It is submitted that Respondent has terminated the services of Petitioner on 31.3.1997 without assigning any valid reasons. But the Respondent has retained Petitioner's juniors in service. The Respondent has failed to take the prior permission from the government for his retrenchment. It is further submitted that Petitioner is suffering a lot because of poverty and unemployment, having old, aged parents, 3 sons, and 2 daughters and his wife is looking after

household work. It is submitted that he could not secure any alternative employment till date inspite of his best efforts. It is submitted that there is sufficient work with the respondent and extending the opportunities to others denying the Petitioner is unjust and contrary to law. Hence, the action of the Respondent is not justified. Therefore, it is prayed to grant the relief of reinstatement with full back wages and all attendant benefits.

4. The Respondent Bank contends that the reference made is untenable under the Industrial Disputes Act, 1947 as the Bank temporarily engaged subordinate staff—messengers, sweepers, etc.—strictly on a need-based, ad hoc basis to ensure uninterrupted operations to address staff shortages due to leave vacancies and constraints imposed by the Government of India and RBI on hiring.

5. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments. Various discussions were held to resolve the said issue, resulting in five settlement agreements between the Bank and the Workmen.

6. The first settlement dated 17.11.1987 (under Sec. 2(p) r/w Sec. 18(1) of the ID Act) categorized temporary employees and provided for consideration of permanent absorption against vacancies between 1987–1991. The second settlement dated 16.07.1988 extended this period to 1987–1992. The third settlement dated 27.10.1988 reaffirmed consideration of vacancies arising from 1988–1992. Following these, the Government of India issued recruitment guidelines on 16.08.1990, recommending settlement-based absorption for temporary employees with more than 240 days of service in a 12-month block. For those with fewer days, the guidelines allowed for discretion-based conciliation.

7. Despite this, the Bank, in a liberal approach, considered even those with less than 90 days' service and those employed since 1975. However, para 6(k) of the approach paper clarified that this would be a one-time exercise resolving all past claims. Subsequently, the fourth settlement dated 09.01.1991 extended panel validity to 1994, with daily wagers considered for 1995–1996 vacancies. It is submitted that Zone-wise panels (1989 for temporary employees and 1992 for daily wagers) were also created, listing candidates in descending order of service from 01.07.1975 to 31.07.1988.

8. The Federation also sought implementation through the Regional Labour Commissioner (Central), resulting in a conciliation agreement on 09.02.1995. This led to the fifth settlement dated 30.07.1996. Finally, on 27.02.1997, a Memorandum of Understanding recorded that 403 messengerial vacancies were identified and would be filled from the 1989 panel. Both panels were agreed to lapse on 31.03.1997. Thus, the Workman, who served less than 240 days in any 12-month block during the reference period, has no legal claim outside these settlements.

9. It is further argued that the Workman's case has already been considered under the five settlements. The settlements were time-bound and binding on both parties, hence, the Bank was not obligated to absorb all empanelled candidates. Sustaining panels beyond 31.03.1997 would contradict the settlements and constitutional principles (Articles 14 & 16), amounting to backdoor regularization.

10. The Hon'ble High Court in WP No.12964/94 has affirmed that such settlements are binding and temporary service does not create a right to regularization unless the Workman can show violation of a specific settlement term, which is not the case here. The Hon'ble High Court in WP No.12964/94, held as follows,

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."*

11. Hence, the Workman's claim was held misconceived. Furthermore, if the panels were not allowed to lapse, it would undermine open recruitment processes, violating constitutional rights of other eligible candidates under Articles 14 and 16 of the Constitution as well as contrary to the settlements.

12. Similarly placed ex-temporary employees approached the High Court via WP No. 9206/1995. Though allowed by the Single Judge, the Division Bench reversed the decision in WA No. 86/1998. The Supreme Court subsequently dismissed SLP Nos. 11886-11888/1998, making the original judgment irrelevant.

13. The Workman (WW1) filed and relied on documents Ex.W1 to W6, including appointment letters, interview letters, and service certificates showing employment across various periods. The Respondent examined MW1, Sri Alluru Rama Rao, and produced 12 documents (Ex.M1–M12), including all five settlements, panel details, and judgments of the Hon'ble High Court and Supreme Court, conclusively supporting the Bank's position.

14. The Workman also cited various judicial precedents which shall be addressed in the relevant portion of this Award.

15. Heard the argument of Learned Counsel for Workman as well as for Respondent.

16. On the basis of pleadings and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the action of State Bank of India, Local Head Office, Hyderabad in terminating the services of Workman Sri Md. Ghouse, a Temporary/Non-Messenger with effect from 31.3.1997 is justified?

II. To what relief if any the Workman is entitled for?

Findings:-

17. **Issue No.I**:- The Workman alleged that Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof illegally. Further, he alleges that he has been terminated from service in violation of provision contained under Section 25 F of I.D. Act, 1947 and same is liable to be set aside.

18. On the other hand, Respondent counsel contended that Workman has not worked continuously for 240 days in any preceding calendar year and reference of the industrial dispute is not maintainable. Before examining the claim of the Workman on merit it would be apposite to have a glance on the relevant provision pertaining to retrenchment of workman under I.D. Act, 1947.

2(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—
(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 view of the definition of retrenchment, perused the record. The Workman claims that he had been terminated from the service of the Respondent in contravention of the provision of ID Act. The case of the Workman does not fall in any exclusive clause of section 2(oo). Therefore, he is included in the category of retrenchment as defined under section 2(oo) of the I.D.Act, 1947.

Section 25F provides:-

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:
(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].
Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides
Definition of continuous service.- For the purposes of this Chapter,--
(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;
(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--
(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--
(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

Thus, in view of the above provision, Workman has to prove that he had worked with Respondent continuously for 240 days uninterruptedly in 12 months of a calendar year just preceding from data of his termination i.e., 31.3.1997. It is settled law that the initial burden of proof to prove the fact of 240 days of service in the 12 months of a calendar year just preceding from the date of termination, lies upon the Workman and he is duty bound to prove this factum by adducing oral as well as documentary evidence in support of his claim.

As regard burden of proof and calculation of 240 continuous working days, following decisions of Hon'ble Supreme Court are relevant as discussed here under:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"*It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."*

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

19. Thus, in view of the law laid down by Hon'ble Apex Court as discussed above in respect of calculating the 240 days continuous service by workman as per provision under Section 25-F read with Section 25-B of the I.D. Act, 1947, we have to examine whether Workman herein has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997 by his evidence.

20. In order to corroborate the averments made in claim statement, Petitioner has examined himself as WW1 and in his oral testimony WW1 has stated that he joined the service of Respondent at Branch, Hyderabad on 15.6.85 as a Messenger and worked continuously in various branches depending upon the availability of work and also as per the orders of bank officers till 31.3.1997. WW1 states that the Respondent has not given any advance notice to him before his termination and has not obtained prior permission from central government for his retrenchment and Respondent has not given him any order of termination. Further, WW1 states that he had worked Main branch of the Respondent and Ex.W1 is the Notification. Ex. W2 is the interview call letter. Ex. W3 is the Marks memo. Ex. W4 is the service certificate dt 26.03.1997. Ex. W5 is the panel list dated 3.9.1991. Ex. W6 is the individual service certificates for 1039 days.

21. Further WW1 states that he worked for more than 240 days continuously in three separate spells in one year period of time and he worked for 90 days from 15.6.85 to 31.10.95, for 89 days from 6.1.89 to 5.4.89 and worked for 59 days from 1.6.91 to 31.7.91 at Kaattedan branch. He worked for 181 days from 1.10.91 to 9.4.92, from 2.5.94 to 31.7.94 for 87 days and 198 days from 1.3.95 to 30.9.95 at Chandulal Biradari branch. He worked at Accounts department, Main branch, Hyderabad from 1.2.96 to 30.6.96 for 150 days. Lastly, he had worked for 185 days from September, 1996 to March, 1997. Further, WW1 states that there were no complaints against him from any customers or officers of the Respondent throughout the period of his service. This Witness was cross examined by the Respondent counsel and in his cross examination the WW1 states that he was given appointment as a temporary messenger from 15.6.85 for a period of 90 days. Further, witness states that he was not sponsored by any employment exchange. Further, witness states that he did not work continuously and he used to work depending upon availability of work in the bank. Further, in reply to the question put by the Respondent counsel in cross examination, WW1 states that it is true that he did not work for 240 days in any year in his service and he has not filed originals of Ex.W3 and Ex.W6(bunch of individual service certificates). Further, witness states that it is not true to say that he never worked for 240 days in any year in his service as stated by him.

Month	Working days
April,1996	30
May, 1996	31
June, 1996	30
September, 1996	24
October, 1996	31
November, 1996	30
December, 1996	31
January, 1997	31
February, 1997	28
March, 1997	10

Thus, sum of working days as shown in the above table is 276 days which is more than 240 working days as required under the provision of section 25F of the ID Act for continuous service.

22. However, Learned Counsel for Respondent bank has contended that the Petitioner has not worked continuously for 240 days in a calendar year with the Respondent and protection from termination is not available to Petitioner as per provision under section 25 F of I.D. Act, 1947. On going oral and documentary evidence available on record it manifest that Respondent had engaged the Petitioner as a temporary messenger in different spells as mentioned in his appointment letter during the total period of about 10 years. We may conclude from the documents filed in evidence on record, that the Respondent has created artificial breaks in the working days of the Petitioner in order to deprive him from completing 240 days of continuous service and in order to defeat social security provision under the I.D. Act, 1947. Moreover, Petitioner has been regularly engaged during the long period of 10 years by the Respondent as a temporary messenger and has created artificial breaks of few days or more in his engagement as employee. The conduct of Respondent in creating artificial breaks in engagement of workers is nothing but unfair labour practice adopted by Respondent in order to deprive the Petitioner from entitlement of any benefits of social security under the provision of I.D. Act, 1947. Thus, it can safely be concluded that Respondent with malafide intention has deliberately created artificial break in the employment of the Petitioner as a temporary messenger.

23. Thus, in view of the fore gone discussion and on going documentary and oral evidence on record I am of the view that the Workman had worked for 240 days continuously in 12 months of calendar year just preceding from the date of his termination i.e., 31.3.1997. Undisputedly, Respondent has not filed any document pertaining to the fact that 3 months notice was issued to the Petitioner as per provision contained under section 25N of the ID Act before termination of Petitioner for service by oral order w.e.f.1.4.1997. Further, there is no evidence on record to the fact that Respondent has paid any amount toward compensation. Therefore, oral termination order of the Petitioner from employment issued by Respondent with effect from 1.4.1997 is in contravention of provision contained under section 25N of the I.D. Act, 1947 and hence not sustainable in the eye of law.

In the case of **Shankar Bhimrao Kadam and others Vs. Tata Mototrs Limited, Bombay High Court in its**

decision dated 28.2.2022 in Writ Petition No.5588 of 2017 have held:-

"52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present Respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these Petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the Respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in Sunil Pralhad Khomane (supra), the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in Sunil (supra), I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).
58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in Mahindra & Mahindra Ltd., Nagpur (supra), inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years."

Similarly, in the present case Respondent has issued number of appointment letters to engage the Workman for the work in different spells for his employment in its branches. The practice of Respondent management of issuance of the appointment letters in different spells for this engagement of the Petitioner Workman during the whole period for more than ten years clearly manifest that Respondent management has adopted unfair labour practice in order to deprive the Workman from availing social security benefits accruing to him under the provision of Industrial Disputes Act, 1947.

24. Perused the record. Petitioner witness WW1 in his statement in chief has categorically stated that he had worked for more than 240 days continuously in 3 separate spells in a period of one year. He worked for 90 days from 15.6.85 to 31.10.95, for 89 days from 6.1.89 to 5.4.89 and worked for 59 days from 1.6.91 to 31.7.91 at Kaattedan branch. He worked for 181 days from 1.10.91 to 9.4.92, from 2.5.94 to 31.7.94 for 87 days and 198 days from 1.3.95 to 30.9.95 at Chandulal Biradari branch. He worked at Accounts department, Main branch, Hyderabad from 1.2.96 to 30.6.96 for 150 days. Lastly, he had worked for 185 days from September, 1996 to March, 1997. Whereas in the cross examination witness WW1 stood firm in respect of his statement given in chief examination. However, at one place in cross examination in reply to the question he had given the statement that it is true that he did not work for 240 days in any year. But in the suggestions given by Respondent counsel witness has stated that it is not true to say that he had never worked for 240 days in any year as stated by him. It is settled law that the statement of any witness cannot be read in isolation and the whole statement has to be taken into consideration while appreciating the evidence in the case. Whereas the claim of the Petitioner that he had worked for more than 240 days in a calendar year with the Respondent is fully corroborated by oral and documentary evidence produced by the Petitioner. Therefore, the contention of the Respondent in view of the above is not tenable. Further, documents filed by the Petitioner in evidence goes to reveal that during the period from 1987 upto the date of his termination i.e., 31.3.1997 workman had been engaged by Respondent for the work on number of times with the breaks, that goes to manifest that there was the work available in the Respondent bank and also need of engagement of the Workman. Therefore, the Workman was engaged by Respondent management on number of times during the long period of more than 10 years and artificial breaks in the employment of Petitioner has been created by the Respondent intentionally and deliberately in order to deprive the workman from the social security benefit provided under the ID Act. Therefore, in view of the above, the contention of the Respondent is not tenable.

Respondent has cited number of decisions of Hon'ble Apex Court and Hon'ble High Courts which are being discussed as hereunder:-

In the case of **Bholaram vs. PO, Labour Court Ambala & ors CWP No.4784/2010** dated 2.6.2011, of Hon'ble High Court of Punjab & Haryana, wherein Hon'ble High Court have held that Petitioner is directed to be reinstated in the service with 50% of back wages.

Further, in the case of **Kuldeep Singh vs. G.M., Instrument Design D & F., DOD, dated 3.12.2010,** the facts of the case are that the Petitioner Kuldeep, the workman was appointed as a Data Entry Operator on daily wages on 8.10.1990 and he worked as such till 28.11.1991 and thereafter on adhoc basis and worked upto 26.5.1992 without any break when his services were terminated by the employer. The Respondent management, according to Petitioner, no notice or compensation in lieu thereof, was given for terminating his services though he had worked for 240 days in the preceding 12 months. In that case Hon'ble Supreme Court have held that the management has terminated the services of the Petitioner workman without complying the provision of Sec.25F of the I.D.Act, 1947 and the said order is illegal, null and void deserves to be set aside, and ordered reinstatement of the Appellant workman with consequential service benefits without back wages within a period of eight weeks.

Further, in the case of **State of Karnataka vs. Uma Devi Civil Appeal No.3595-3612 of 1990 dated 10.4.2006,**

therein Constitutional Bench of Hon'ble Supreme Court have held,

"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

……..

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Thus, in the above cited decision Hon'ble Apex Court has laid down guidelines for deciding the question of regularization of the services of the employees. Further, as regard other decisions of Hon'ble Court filed by the Petitioner in support of his argument, therein, the Hon'ble Supreme Court has laid down the principle that the termination of the employee in contravention of the provision of Sec.25F of I.D. Act, 1947 is illegal and null and void and liable to be set aside.

Moreover, Hon'ble Supreme Court in the case of **Anoop Sharma vs. Exec. Engineer Public Health Division dated 9.4.2010, Civil Appeal No.3478 of 2010** have held**:-**

"15. In State Bank of India v. N. Sundara Money *(supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).*

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar *(supra) in the following words:*

"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment

compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.
17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act."

Thus, in view of the fore gone discussion and principle laid down by the Hon'ble Apex Court as discussed above, we arrive at conclusion that services of workman has been terminated by the Respondent in violation of provision of I.D. Act, 1947 and hence not sustainable in the eye of law.

Therefore, Issue No.I is answered in favour of the Workman and against the Respondent.

25. **Issue No.II:**- In view of the discussion and finding given at Issue No.I, it is established that the Workman had worked for more than 240 days in a calendar year just preceding from the date of termination. Respondent has not issued any notice under Sec.25 N of I.D.Act, 1947 before termination of workman and has not paid any compensation as per provision contained under Sec.25 F of the I.D.Act, 1947. Therefore, the termination of Petitioner from service vide oral order dated 31.3.1997 by the Respondent is in contravention of the provision contained under Section 25-F of the I.D. Act, 1947 and is illegal and not justified and liable to be set aside.

26. Now, let us see whether workman is entitled for reinstatement in the service or for any other relief.

In this context the reference of decision of Hon'ble Supreme Court is relevant. In **Ashok Kumar Sharma Vs. Oberoi flight Services AIR 2010 SCC page 502** Hon'ble Supreme Court have held:-

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute2 this Court considered the matter thus:
"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.
22. Keeping in view the period during which the services were rendered by the Respondent (sic appellants); the fact that the Respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.
23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.
24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn. v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353])
25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."
9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir JT 2008 (3)SC622 Singh V. Haryana State Agriculture Marketing Board3 albeit in the context of retrenchment of a daily wager in violation of section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:
"7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Further, in the case of **State of Himachal Pradesh vs. Suresh Kumar Verma & anr. 1996 AIR 1565, three Judge Bench of Hon'ble Apex Court** have held**:-**

"It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

It is seen that the project in which the Respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other

work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules.

Mr. Mahabir Singh, learned counsel for the Respondents contended that there was an admission in the counter affidavit filed in the High Court that there were vacancies and that, therefore, the Respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduct pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above in the matter at hand, the Workman has been terminated long back in the year 1997 from the service by the Respondent in contravention of the provision contained under Section 25-F. He was working as a temporary messenger and had not worked against a regular permanent or sanctioned post. Moreover, a period of 25 years has already been elapsed since termination of Petitioner from Respondent service. As per record, Petitioner had worked as temporary workman for a period of 10 years i.e., from 1987 to 1997 in the Respondent employment in different spells. Therefore, keeping in view the nature of appointment and period of his employment and in the facts and circumstances of the case the award of compensation instead of direction for reinstatement in the service would be appropriate relief and that will subserve the end of justice. Thus, in view of the above the Workman in this case is entitled for compensation instead of direction for reinstatement into service.

27. Now question arises how much compensation would meet ends of justice. In view of the circumstances of the case, Workman has served in the service of the Respondent management from 1985 to 1997 in different spells and has also gone under physical and mental agony during long period of litigation for more than 24 years at different levels. In the opinion of the court payment of a sum of Rs.2,00,000/- as lumpsum compensation to the Workman would meet the ends of justice. Therefore, the claim statement is partly allowed.

28. However, the learned counsel for petitioner has also argued that the petitioner Workman is entitled for regularization in the employment of the respondent management on the basis of his empanelment in the waiting list for regularization. Therefore, the petitioner is entitled for regularization in the service of the management.

29. Perused the record. Petitioner has filed the claim statement with the averment that Petitioner had worked in the respondent bank in different spells from 15.6.85 till 31st March 1997. But the respondent has terminated his services without assigning any valid reason. Further, it is alleged that respondent has retained his juniors in his services and respondent has failed to take prior permission from government for any retrenchment. In the claim statement there is no iota of the pleading regarding regularization of Petitioner in the service of the respondent management. Further, in the relief clause of claim statement Petitioner has not mentioned prayer for the regularization in the respondent employment. The relief clause of the claim statement reads out as here under:-

"To direct the management to reinstate and absorb the workman in the service of the bank and grant all incidental and consequential benefits of reinstatement, back wages, continuity of service etc.,."

Thus, in the absence of any pleading and evidence in support of Petitioner's claim of regularization in the employment of respondent, the plea in respect of regularization is not maintainable.

In this context I would like to make reference of the decision of Supreme Court in the case of **Ram Sarup Gupta(dead) by LRs v. Bishun Narain Inter College and others 1987 AIR 1242**. In this case Hon'ble Supreme Court have held:-

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise."

Hon'ble Supreme Court in several decisions have reiterated that evidence not supported by the pleadings is not generally admissible. Therefore, in view of law laid down by Hon'ble Apex Court the evidence presented by WW1 in respect of the claim of regularization in the employment is not admissible as there is no pleading in the claim statement of the Petitioner to this effect. Therefore, in view of the above, the plea regarding regularization is not tenable.

This issue is answered accordingly.

AWARD

The action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri Mohd. Ghouse, Temporary Messenger, with effect from 31.3.1997 is held not justified. Therefore, termination order dated 31.3.1997 is hereby set aside. Respondent is directed to pay compensation of Rs.2,00,000/- (Rupees two lakhs) to the workman within two months from the date of receipt of this award. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 26th day of March, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Mohd. Ghouse	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of notification
Ex.W2:	Photocopy of Marks memo
Ex.W3:	Photocopy of Service certificate dt 26.03.1997
Ex.W4:	Photocopy of panel list dated 3.9.1991
Ex.W5:	Photocopy of appointment letter
Ex.W6:	Photocopies of individual service certificates for 1039 days.

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 2 जून, 2026

का.आ. 1134.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुम्बई-1, के पंचाट (15/2014) प्रकाशित करती है।

[सं. एल-12011/02/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.15/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Mumbai -1* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. 12011/02/2014- IR (B-I]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE ARVIND KUMAR MISHRA

Presiding Officer

REFERENCE NO. CGIT - 15 of 2014

Parties: Employers in relation to the management of

State Bank of India

V/s.

Their Workmen(Sh. Sonu Gawas)

Appearances:

For the first party Management : Mr. S. V. Alva (Adv.)

For the second party workmen : Absent

Mumbai, dated the 24th day of February, 2026.

AWARD

The present reference has been made by the Central Government by its order No.L-12011/02/2014 dated 05.03.2014 passed in exercise of the powers conferred by clause(d) of sub-section(1) sub-section (2A) of Section 10 of the Industrial Dispute Act 1947. The terms of reference as per the schedule to the said order are as under:

> *"Whether the action of Management of State Bank of India-Zonal Office, Goa in terminating the service of Sh. Sonu Gawas Ex-Daily wage worker w.e.f. 10.12.2012 is legal, just and proper? If not, what relief the workman concerned is entitled to?"*

Notice of the reference was duly issued to the workman. The record reveals that despite service of notice and repeated opportunities, none has appeared on behalf of the workman. Further, the workman has failed to appear before the Tribunal for cross examination as mandated under Rule 10B of the Industrial Disputes (Central) Rules, 1957.

Findings

It is a settled position of law that the burden to prove illegal or unjustified termination lies upon the workman. Mere raising of an industrial dispute does not entitle a workman to relief unless the same is duly proved by leading cogent evidence.

The Hon'ble Supreme Court of India has consistently held that where a party fails to lead evidence or abstains from the proceedings, the court or tribunal is justified in drawing an adverse inference and deciding the matter on the basis of material available on record.

In *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* (2006) 1 SCC 479, the Hon'ble Supreme Court held that relief cannot be granted as a matter of course and that the workman must establish his case by evidence.

Similarly, in *Kendriya Vidyalaya Sangathan v. S.C. Sharma* (2005) 2 SCC 363, the Apex Court held that when a workman does not discharge the burden of proof, no relief can be granted merely on sympathetic considerations.

The Hon'ble Delhi High Court, in *Municipal Corporation of Delhi v. Praveen Kumar Jain*, has held that where the workman fails to appear and lead evidence despite opportunities, the Labour Court is justified in answering the reference against the workman.

Likewise, the Hon'ble Bombay High Court has consistently held that industrial adjudication cannot be kept pending indefinitely and a reference can be disposed of for non-prosecution when the workman shows complete lack of interest in pursuing the matter.

In the present case, the workman has neither appeared nor led any evidence in support of the claim, nor submitted himself for cross-examination as required under law. This conduct clearly demonstrates that the workman is not interested in prosecuting the reference.

Conclusion

In view of the above facts and the settled legal position, this Tribunal holds that the workman has failed to prove that the termination of his services w.e.f. 10.12.2012 was illegal, unjust or improper.

AWARD

Accordingly, the reference is answered against the workman.

The action of the Management of State Bank of India – Zonal Office, Goa in terminating the services of Sh. Sonu Gawas w.e.f. 10.12.2012 is held to be legal and justified.

The workman is not entitled to any relief.

The reference is disposed of accordingly.

JUSTICE ARVIND KUMAR MISHRA, Presiding Officer

नई दिल्ली, 2 जून, 2026

का.आ. 1135.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुम्बई-1, के पंचाट (2/2017) प्रकाशित करती है।

[सं. एल-41012/19/2016- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1135.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.2/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Mumbai -1* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. 41012/19/2016- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE ARVIND KUMAR MISHRA

Presiding Officer

REFERENCE NO.CGIT - 2 of 2017

Parties: Employers in relation to the management of

State Bank of India

V/s.

Their Workmen(Shri Kunthinath Ramgonda Patil)

Appearances:

For the first party Management : Mr. S.V. Alva(Adv.)

For the second party workmen : Absent

Mumbai, dated the 03rd day of February, 2026.

AWARD

The present reference has been made by the Central Government by its order No. L-41012/19/2016 (IR(B-I) dated 30/03/2017 passed in exercise of the powers conferred by clause (d) of section (1) read with sub-section (2A) of Section 10 of the Industrial Dispute Act 1947. The terms of reference as per the schedule to the said order are as under:

> *"Whether the action of the management of Regional Manager, SBI, Satara in terminating the services of Sh. Kuntinath Ramgonda Patil w.e.f. 27/09/2014 is legal and justified? If not, to what relief the workman is entitled to?"*

In view of the above said facts the claimant/workman has not filed evidence in support of his case on affidavit, in spite of several opportunities in spite of several opportunities given to him and taking into consideration the law as laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (1) and others 1981 (29) FLR 194*** as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

Since the claimant/workman has not filed evidence in support of his case on affidavit, in spite of several opportunities given to him, the claim is liable to be dismissed.

For the foregoing reasons, the case is dismissed and the union is not entitled for any relief.

Accordingly, the reference stands answered in terms aforesaid.

Award as above.

JUSTICE ARVIND KUMAR MISHRA, Presiding Officer

नई दिल्ली, 2 जून, 2026

का.आ. 1136.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुम्बई-1, के पंचाट (10/2011) प्रकाशित करती है।

[सं. एल-41011/64/2010- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1136.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.10/2011*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Mumbai -1* as shown in the Annexure, in the industrial dispute between the management of Konkan Railway and their workmen.

[No. L-41011/64/2010- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

PRESENT

JUSTICE ARVIND KUMAR MISHRA

PRESIDING OFFICER

REFERENCE CGIT-10 OF 2011

KONKAN RAILWAY : MANAGEMENT

V/S.

Their Workmen(Smt. S.M. Mainkar) : Second Party

APPEARANCE:-

FOR THE MANAGEMENT : Mr. G.S. Naik(Adv.)

FOR THE SECOND PARTY : Absent

Mumbai, dated 3/2/2026.

AWARD

This reference has been received for adjudication pursuant to Government of India, Ministry of Labour & Employment New Delhi letter No. L-41011/64/2010-IR(B-I) DATED 29/04/2011 in exercise of the powers conferred by clause(d) of sub-section91) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947).

> "Whether the action of the management of M/s. Konkan Railway Corporation Ltd, in denying the Grade of Rs. 5500-9000/- from 1/8/2006 to Smt. S.M. Mainkar, Personal Secretary, is legal and justified? To what relief the workman is entitled?"

The Second Party Union contended that Smt. S.K. Mainkar was appointed as Stenographer on 12.12.1990, regularised on 12.12.1991, and promoted as Senior Stenographer on 03.09.1993. She possessed requisite qualifications from the date of appointment and her service record is clean and unblemished.

It is further contended that in 1997, upon her transfer from Construction Phase to Open Line, the Management unjustifiably reverted her and placed her at a lower position in the seniority list, despite both units being part of the same organisation. This reversion resulted in loss of seniority and monetary benefits.

The Second Party further contended that KRCL failed to follow uniform promotion and seniority policies, acted arbitrarily, and created the post of Personal Secretary with identical qualifications only to deny legitimate promotional benefits to existing eligible employees. Though Smt. Mainkar performed duties equivalent to Personal Secretary and later passed the requisite training and examination, her seniority was wrongly fixed from a later date, depriving her of higher pay scale benefits granted to her juniors.

The Second Party therefore prayed that her seniority be reckoned from 1990 and her status as Senior Stenographer from 1993 be recognised, and that she be granted the pay scale of Rs. 5500–9000 w.e.f. 01.08.2006 with all consequential benefits.

The First Party Corporation opposed the claim and contended that the promotions and seniority were granted strictly in accordance with recruitment rules and promotion policies. It was submitted that the post of Personal Secretary was created as a distinct post and promotions thereto were subject to prescribed procedure including examination and training.

The Management denied allegations of discrimination and contended that Smt. Mainkar was promoted as Personal Secretary only after qualifying in 2003 and hence her seniority and pay scale were rightly fixed.

The following issues arise for adjudication:

1. Whether the reversion and fixation of seniority of Smt. S.K. Mainkar by the First Party is legal and justified?
2. Whether Smt. S.K. Mainkar is entitled to seniority by reckoning her service from 1990 and her promotion as Senior Stenographer from 1993?
3. Whether the denial of pay scale of Rs. 5500–9000 w.e.f. 01.08.2006 is illegal?
4. What relief, if any, is the Second Party entitled to?

The facts relating to appointment of Smt. S.K. Mainkar in 1990, her promotion as Senior Stenographer in 1993, and her continuous service without break are not in dispute.

It is also admitted that Construction Phase and Open Line are units of the same organisation, namely KRCL. The Management has failed to demonstrate any statutory rule or regulation under which transfer from one unit to another could result in reversion or loss of seniority.

The latest settled rulings of the Hon'ble Supreme Court and High Courts consistently hold that transfer within the same organisation, without break in service, cannot result in loss of seniority or accrued service benefits. Seniority once earned is a valuable right and cannot be taken away except by authority of law.

Further, **recent judicial pronouncements have clearly held that creation of a new designation or post with identical qualifications, duties, and cadre structure cannot be used to deprive existing employees of their legitimate promotional rights.** Evidence on record, including the admission of the Management witness, establishes that the posts of Stenographer and Personal Secretary belong to the same cadre and require identical qualifications.

The action of the Management in resorting to fresh recruitment, while ignoring experienced and eligible internal candidates, is arbitrary and violative of the principles of equality and fair play. **Courts have repeatedly held that financial burden or administrative convenience cannot be a defence to deny lawful seniority or promotion.**

The fixation of seniority of Smt. Mainkar from a later date, despite her long continuous service and earlier promotion, and the grant of higher pay scales to her juniors, amounts to discrimination and constitutes **unfair labour practice**, as recognised under the Industrial Disputes Act.

It is further well settled by **latest rulings** that once illegality in seniority fixation is established, the employee is entitled to correction of seniority with consequential benefits.

From the evidence on record, it is undisputed that Smt. S.K. Mainkar was appointed in 1990, promoted as Senior Stenographer in 1993, and continuously served the Corporation without any break or adverse record.

It is further evident that Construction Phase and Open Line are units of the same organisation, namely KRCL. The Management has failed to justify how transfer from one unit to another could lawfully result in reversion or loss of seniority, particularly when continuity of service is admitted.

The evidence of the Management witness clearly establishes that the posts of Stenographer and Personal Secretary belong to the same cadre and require identical qualifications. Creation of the post of Personal Secretary in 1997 and filling it through fresh recruitment, while ignoring eligible existing employees, amounts to arbitrary exercise of power and denial of equal opportunity.

The fixation of seniority of Smt. Mainkar from a later date, despite her earlier promotion and continuous service, is violative of principles of natural justice and fair play. The plea of the Management that she became eligible only in 2003 is not acceptable, as she possessed requisite qualification and experience much prior thereto and was in fact discharging similar duties.

The Tribunal finds substance in the contention that the Corporation altered its policies to avoid financial liability, thereby depriving eligible employees of their rightful promotional benefits. Such conduct amounts to unfair labour practice.

Accordingly, this Tribunal holds that Smt. S.K. Mainkar is entitled to restoration of her seniority by reckoning her service from 1990 and recognising her promotion as Senior Stenographer from 03.09.1993. Consequentially, she is also entitled to the pay scale of Rs. 5500–9000 w.e.f. 01.08.2006, on par with her juniors.

AWARD

The Reference is allowed.

It is hereby directed that:

1. The First Party Corporation shall reckon the seniority of Smt. S.K. Mainkar from the date of her initial appointment i.e. 12.12.1990 and recognise her status as Senior Stenographer w.e.f. 03.09.1993.
2. The First Party Corporation shall grant Smt. S.K. Mainkar the pay scale of Rs. 5500–9000 w.e.f. 01.08.2006, with all consequential benefits.
3. Arrears arising therefrom shall be calculated and paid within three months from the date of publication of this Award.
4. No order as to costs.

JUSTEICE ARVIND KUMAR MISHRA, Presiding Officer

नई दिल्ली, 2 जून, 2026

का.आ. 1137.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोंकण रेलवे निगम के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुम्बई-1, के पंचाट (06/2017) प्रकाशित करती है।

[सं. एल-41012/09/2017- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd June, 2026

S.O. 1137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.06/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Mumbai -1* as shown in the Annexure, in the industrial dispute between the management of M/s. Konkan Railway Corporation and their workmen.

[No. L-41012/09/2017- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE ARVIND KUMAR MISHRA

Presiding Officer

REFERENCE NO.CGIT - 06 of 2017

Parties: Employers in relation to the management of

M/s. Konkan Railway Corporation

V/s.

Their Workmen(Mr. Arif Latif Bijapuri)

Appearances:

For the first party Management : Mr. Gurunath Naik(Adv.)

For the second party workmen : Absent

Mumbai, dated the 03rd day of February, 2026.

AWARD

The present reference has been made by the Central Government by its order No. L-41012/09/2017 dated 5/05/2017 passed in exercise of the powers conferred by clause (d) of section (1) read with sub-section (2A) of Section 10 of the Industrial Dispute Act 1947. The terms of reference as per the schedule to the said order are as under:

"Whether the action of the management of Konkan Railway Corporation Ltd, in dismissiong the services of Mr. Arif Latif Bijapuri w.e.f. 17.07.2009 is fair and justified? If not, to what relief the workman is entitled to?"

In view of the above said facts the claimant/workman has not filed evidence in support of his case on affidavit, in spite of several opportunities in spite of several opportunities given to him and taking into consideration the law as laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (1) and others 1981 (29) FLR 194*** as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

Since the claimant/workman has not filed evidence in support of his case on affidavit, in spite of several opportunities given to him, the claim is liable to be dismissed.

For the foregoing reasons, the case is dismissed and the union is not entitled for any relief.

Accordingly, the reference stands answered in terms aforesaid.

Award as above.

JUSTICE ARVIND KUMAR MISHRA, Presiding Officer

नई दिल्ली, 4 जून, 2026

का.आ. 1138.—औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण-कम-श्रम न्यायालय, कानपुर, का पुरस्कार (संदर्भ सं. 72/2022) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, भारतीय खाद्य निगम के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में।

[सं. एल-22013/01/2026- आईआर (सीएम- II)]

जैदीप यादव, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1138.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 72/2022***)* of **the Central Government Industrial Tribunal-cum-Labour Court, Kanpur** as shown in the Annexure, in the industrial dispute between the Management of **Ms. Food Corporation of India** and **their workmen.**

[No. L-22013/01/2026-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

ID Case No. 72 of 2022

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

Shri Atul Singh S/o Virendra Pratap Singh,

Village Hetapattii, Post-Hetapatti ,

Thana Tharbai, Tehsil-Phoolpur,

Distt- Prayagraj-221507

…….Workman

Vs

1. General Manager, Food Corporation of India, Khadya Sadan, Regional Office, T.C.-03 V Vibhuti Khand, Gomti Nagar, Lucknow.
2. Regional Manager, Food Corporation of India, District Office, Banda

……. Management

(JUDGEMENT)

(Passed on this 6th day of February, 2026)

After notice has been issued to both parties, the applicant Atul Singh came and by filing of petition and he requested that:-

He worked in FCI department, department Banda continuously after notification of Ministry of Labour and Employment 23.04.2010 and removed on 24.04.2020 without any prior information. He was paid Rs 3600 per month. He worked under Shri Suresh Mishra, representative of contractor S.S Parihar and others who marked his attendance on daily basis. He, further state that he is not issued any Gate pass or any card by the contractor. He was paid in cash on 1st day of every month which he collected by signing and thumb impression on blank paper. Before his termination neither prior notice nor salary notice or retrenchment compensation was served to him. Petitioner in prayer requested before Hon'ble Tribunal to declare his termination illegal and pass an award directing O.P to pass the reemploy him with all back wages and other benefits/relief for which he is entitled for as per Hon'ble Tribunal.

The certificate of Conciliation Officer is summarized as follows:-

Shri Atul Singh, ex-employee of Food Corporation of India, Banda filed an Industrial dispute under Section 2A of the Industrial Disputes (Amendment) Act, 2010 in the office of Assistant Labour Commissioner (Central), Jhansi on 30.01.2020. Consequent upon his dismissal from the service by the employer i.e. Food Corporation of India, Banda on 23.04.2010, the Conciliation officer took up the matter in conciliation on 13.04.2020 and 25.11.2020 but no settlement has been reached. The applicant discontinued the conciliation process and took up the matter with the Central Government Industrial Tribunal-cum-Labour Court directly under sub-section(2) and (3) of Section 2A of the Industrial Disputes (Amendment) Act 2010. The mandatory 45 days of filing his dispute before the Conciliation Officer as provided under Section 2A of the Industrial disputes (Amendment) Act, 2010 has been completed 15.03.2020. The certificate is issued to him exclusively for the purpose of enabling him to approach the Central Government Industrial Tribunal-cum-Labour Court for adjudication.

Opposite party file his written statement and requested that:-

It is submitted by Opposite party the applicant is not an employee of Food Corporation of India and Divisional Manager, FCI, Divisional Office, Banda never appointed or engaged the applicant in any capacity for any type of work and the applicant has never worked in or under his office for a single day. Hence the relationship of employer and employee does not exist. Therefore there exists no Industrial Dispute. It is further submitted that neither under any notification nor under the provisions of Contract Labour (R&A) Act 1970 nor under the Industrial Dispute Act 1947, there is any provision or obligation upon the Opposite party to take any contract labour into his employment. As such the claim of the applicant is not maintainable in the eyes of land is liable to be rejected in limine. The management prayed to dismiss the claim as his claim is not maintainable and is liable to be rejected.

After that the case was fixed for rejoinder on 22.12.2022. Applicant was given many opportunities but failed to file rejoinder. Hence my predecessor closed the opportunity of rejoinder on 01.06.2023 and fixed for hearing but applicant never filed any evidence.

As per petition, petitioner is requested that he had worked and employed of above department but removed him without any information on 24.04.2020. He has given so many applications but never considered. He worked in supervision of contractor S.S Parihar and other person and Suresh Mishra worked long time and his attendance was also taken. He was paid 3600/- month in cash. His work was satisfactory. He worked without any objection.

Against that O.P said that applicant never worked for single day in his office and divisional manager, FCI, divisional office banda has never appointed or engaged the applicant has never worked in or under his office for single day hence Claim Statement is liable to be rejected.

After perusal of file, petitioner requested that he is an employee of opposite party but without any notice opposite party removed him on 24.04.2020 but he never filed any documentary/oral evidence in support petition to prove that he is employee of O.P as said by applicant in the petition, no any appointment letter or salary certificate etc.

After above discussion and averments, applicant fails to prove as alleged in petition.

In view of foregoing discussion and in given circumstance that the petition is dismissed.

No order as to cost.

Date: 06.03.2023 RAJENDRA PRASAD SRIVASTAVA, H.J.S (RETD.) Presiding Officer

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

नई दिल्ली, 4 जून, 2026

का.आ. 1139.— औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण-कम-श्रम न्यायालय, कानपुर, का पुरस्कार (संदर्भ सं. 12/2024) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, भारतीय खाद्य निगम के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में ।

[सं. एल-22013/01/2026- आईआर (सीएम- II)]

जैदीप यादव, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 12/2024*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, Kanpur** as shown in the Annexure, in the industrial dispute between the Management of **Ms. Food Corporation of India** and **their workmen.**

[No. L-22013/01/2026-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

ID Case No. 12 of 2024

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

Between:-

The President, Bhartiya Khadya Nigam & CWC Maxdoor Union, Vill & PO-Raghunathpur, Distt-Ballia

……Workman

AND

1. The Divisional Manager, FCI, Divisional Office, 14/79, Blue Star Building, Civil Lines, Kanpur (Kanpurup@FCI.gov.in)
2. The GM, FCI, Regional Office, TC/3V, Vibhuti Khand, Gomti Nagar, Lucknow.

……Management

AWARD

06.02.2026

Office of the Dy. chief labour commissioner (central), vide order no. K-10(83)/2024-IR dated 31.07.2024 has referred the Industrial Dispute to this Tribunal for adjudication.

This award arises in response to the reference made by the Office of the DY. Chief Labour Commissioner(Central) in exercise of the powers conferred by sub-section(5) of Section 12 read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) on the Central Government and Delegated to the undersigned in pursuance of the Notifications of the Government of India, in the Ministry of Labour & Employment published in the Gazette of India, Extraordinary Part II, Section 3, Sub-Section (ii) vide S.O 1262 (E) and 1263(E) both dated 17.03.2023 the Office of the Dy. Chief Labour Commissioner (Central) hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Kanpur. The Reference is stated as follows:-

"Whether the action of the management of Food Corporation of India, Kanpur is legal and justified in unauthorized deduction from the wages/salary of Smt. Sushila Devi & Smt. Geeta Dubey working at Chandari Depot? If not ,what relief is the workman entitled to?"

After receiving the reference the Tribunal issued notice on 09.09.2024 and fixed date for filling claim statement for 10.10.2024. On Perusal of the record it is found out the worker failed to file claim statement on fixed date. After that the workman was given several opportunities for filing claim statement by fixing dates such as 18.012024, 27.12.2024, 13.02.2025, 24.04.2025, 30.05.2025, 14.08.2025, 10.10.2025, 19.11.2025,12.01.2026. Even after all these opportunities the workman failed to file claim statement. A second notice was issued on 16.01.2026 for appearing on 06.02.2026 but again workman failed to register his presence before the Tribunal.

On behalf of O.P management Smt. Neeta Mathur filed authority letter on 10.10.2024 and on 12.01.2026 she moved an application praying for disposal of reference as claimant failed to file claim statement despite several opportunities being given to him. On 06.02.2026 the case was reserved for final award.

On perusal of record it is found that claimant failed to submit claim statement being provided several opportunities. Hence in given circumstances it is presumable that claimant workman is not interested in contesting the Industrial dispute.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Answered Accordingly.

Parties are left to bear their respective costs.

Date: 06.02.2026

RAJENDRA PRASAD SRIVASTAVA, H.J.S (RETD.), Presiding Officer

नई दिल्ली, 4 जून, 2026

का.आ. 1140.—औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण- कम-श्रम न्यायालय, कानपुर, का पुरस्कार (संदर्भ सं. 134/2019) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, भारतीय खाद्य निगम के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में।

[सं. एल-22012/2/2019- आईआर (सीएम- ।)]

जैदीप यादव, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 134/2019) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the Management of Ms. Food Corporation of India and their workmen.

[No. L-22012/2/2019-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

ID Case No. 134 of 2019

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

Between:-

The General Secretary,

Bhartiya Khadya Nigam Shramik Sanghthan,

4, Block-47, Shivkatra Krishna Nagar,

Near kesa House, GT Road,

Kanpur(U.P)-208007

……Workman

AND

1. The General Manager,
   Food Corporation of India,
   TC/3V, Vibhuti Khand, Gomti Nagar,
   Lucknow-226001

2. The Area Manager,
   Food Corporation of India,
   Civil Lines,
   Kanpur(U.P)-208001

……Management

AWARD

24.02.2026

Central Government, MOL, vide notification no. L-22011/2/2019-IR(CM-Il) dated 26/03/2019 has referred the Industrial Dispute to this Tribunal for adjudication. This award arises in response to the reference made by Government of India, Ministry of Labour department in exercise of the powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur. The Reference is stated as follows:-

> **"Whether the action of the management of Food Corporation of India, Kanpur is not releasing the dues payable to Shri Bhola paswan retired on 31.07. 2016 is just, fair and legal? If not, what relief, the applicant concerned, is entitled to?"**

The averments made by claimant workman may be summarized as follows:-

Claimant workman Bhola Paswan S/o Late Janki Paswan worked on the post of loader in Food Corporation of India at Chanderi depot. He superannuated on 31.07.2016. Claimant workman alleged that for the period 01.04.1998 to August 2012, workman was not paid incentive for loading as per the guidelines of the management for the mentioned period. It is further mentioned that all records of the mentioned period are under the possession of the management. The grains brought at establishment through trucks whose weight was near 5 man. Claimant workman along with his group did loading and unloading and for that there was prescribed incentive and workman was paid that incentive in the past. But for unknown reason in June 2016 an amount of Rs 62,000/- was deducted from his salary. And no written order was given in the mentioned matter. The workman was superannuated on 31.07.2016 and as per rule within month CPF amount should be paid to the worker. In this matter, the manager, CPF, wrote a letter to the SRM / AGM / Area Manager of the management. Workman's CPF amounts to Rs 11,94,014/- which was holded by the management for 3 years and paid only in 2019. The claimant workman is entitled to get 10% interest on the delayed payment of CPF. It is prayed by claimant workman in his claim that the management should be made payment of all above mentioned dues along with the interest for which claimant workman is entitled.

The averments made in written statement by O.P management may be summarized as follows:-

Applicant Shri Bhola Paswan has no locus standi under section 2(S) or Section 2(A) of the Industrial Disputes Act, 1947 and as such claim can not per take the character of Industrial Disputes Act, 1947.

1. That is it submitted that all **"MATERIAL FACTS"** must be pleaded by the party in support of the case setup by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead Evidence. Failure to state even a single material fact, hence, will entailed dismissed of the claim petition.

2. That it is well settled Law by the Honourable Supreme Court of India in the case of Mahadeorao Sukaji Shivankar V/s Ramaratan Babu and others (2004(7) Supreme Court Cases Page 181):- wherein it has been held as under:-

   "..... it is equally well settled that there is distinction between "**Material Facts"** and "**Particular"** Material facts are primary or basic facts which must be pleaded by the party in support of the case setup by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the Party.

   That it is settled Law by the Honourable Supreme Court of India in the case of Jagdish Singh V/s Punjab Engineering College (2009 Vol. 121 F.L.R Page 984): Wherein it has been held as under:-

   " The relief granted by the courts must be seen to be logical and tenable within the frame work of the Law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced Sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions.

3. That it is submitted that as per Rules the payments have already been made to all applicants including Applicant Shri Bhola Paswan.

4. That alleged Union has not submitted any documentary proofs/particulars in support of his claim as stated in para-2 of the Statement of claim before the Honourable Central Government Industrial Tribunal Kanpur.

   Wherein it has been held that the Burden therefore, was on the workman to prove and establish the aforesaid facts by leading Cogent and reliable Evidence. He was required to place documentary Evidences in support of the same.

5. That the claims of the alleged Union are also bad in law for not providing any documentary evidences with the claim statement. It is settled Law the responsibility to substantiate the claim with evidence is on the applicant and since no evidence has been supplied, the Claim Statement of the Union ought to be rejected on this ground alone.

6. That it is settled Law by the Honourable High Court of Calcutta in the case of Indian Petronas (PO Limited and Union of India and others (2016 Vol. 150 F.L.R Page 370): **Wherein it has been held that the ONUS entirely and exclusively lies on the applicant who seeks an affirmative in the form of a juridical order of its Contention.**

   The rule is best Expressed in the maxim " ei qui affirmat nonei qui negat incumbit Probation' , i.e. the Burden of Proving fact is on the party who asserts the affirmative of an issue and not upon him who denies it.

7. That it is also well settled Law by the Honourable High Court of Calcutta in the Calcutta Tramways Supervisor Association and State of West N Bengal (1990 Vol. 60 F.L.R Page 183): Wherein it has been held as under:-

   "Incentive on work above normal work, it is not an implied conditions of Service."

   If the applicant does not disclose full facts or suppresses relevant materials or is otherwise qulity of misleading the court, the court may dismiss the action without adjudicating the matter.

   There is a deliberate concealment or suppression of material facts on behalf of the petitioner or it transpires that the facts have been so twisted and placed before the court, so as to amount of Concealment, the writ court is entitled to refuse to entertain the Petition and dismiss it without entering into the merits of the matter."

   It is well settled that whenever allegations as to malafides have been leveled, sufficient particulars and cogent, materials making out prima facie case must be setout in the Pleadings."

8. That no such demand was raised by alleged applicant relating to the matter specified in the schedule annexed to the present reference order within any reasonable period of time and even if any such demand was made it was after inordinate delay and might have given rise to an individual dispute and did not amount to an "**Industrial Dispute"** within the meaning of section 2(K) of the Industrial Disputes Act, 1947.

   Because, the claims of the alleged Union in respect of "**Releasing of dues"** are neither entertainable nor maintainable under the provisions of the Industrial Disputes Act, 1947.

Because, the present dispute raised by the alleged Union before the Honourable Tribunal Kanpur are absolutely baseless, vague and false.

It is prayed on the behalf of management that the present reference order issued by the Central Government is without jurisdiction, incorrect, disputed, infractuous, bad in law and alleged application/ Union is not entitled to any relief / Compensation whatsoever on the basis of the Present reference order.

After filing of written statement, Tribunal has given so many opportunities to file rejoinder to applicant but when applicant not filed our rejoinder the tribunal closes the opportunity to file rejoinder on 18.02.2026.

As per claim statement and reference the main question in this reference the O.P is not releasing the dues of Shri Bhola paswan retired on 31.07.2026 is just , fair and legal? As requested by claimant in claim statement as above not releasing the incentive to him when incentive is fixed and he received prior but after June 2016 that amount was deducted without any written order. But claimant has not filed oral/documentary evidence that is due as incentive are requested in claim statement.

Despite multiple opportunity of filing rejoinder but applicant is failed to file our rejoinder and any evidence in support our claim statement.

Since the claimant failed to prove as alleged in our claim statement.

Accordingly the reference is answered in negative. Claimant is not entitled for any relief

RAJENDRA PRASAD SRIVASTAVA, H.J.S (RETD.), Presiding Officer

नई दिल्ली, 25 मई, 2026

का.आ. 1141.—औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण-कम-श्रम न्यायालय, चंडीगढ़-1, का पुरस्कार (संदर्भ सं. 48/2019) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, बीबीएमबी के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में।

[सं. एल-23012/37/2019-आईआर (सीएम- II)]

जैदीप यादव, उप निदेशक

New Delhi, the 25th May, 2026

S.O. 1141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 48/2019*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh-1** as shown in the Annexure, in the industrial dispute between the Management of **Ms. BBMB** and **their workmen.**

[No. L-23012/37/2019-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh

(Present:-Mr. Kamal Kant, Presiding-cum-Link Officer).

ID No.48/2019

Registered on:-21.06.2019

Smt. Bano Wd/o Late Jan Mohammed R/o Village Gochar, Post Office & Tehsil Daslehra, District Bilaspur, Himachal Pradesh-174001.

--------Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector-19-B, Chandigarh-160019.
2. The chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038.

----Respondent No.1 &2

Present:- Sh. SC Gupta, AR for Workman.

Sh. Sandeep Sharma, (Law Officer) for Respondent No.1 & 2.

AWARD : 20.04.2026

1. Central Government vide Notification No.L-23012/37/2019(IR(CM-II)) Dated 31.05.2019, Clause (d) of sub-section (1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of management of BBMB in not accepting the demands of Smt. Bano& Others, LH/LR of Late Jan Mohammad, for declaring his retrenchment/termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal and valid? If not, to what relief the legal heirs/legal representatives of late workman are entitled to and from which date?"

2. The case was listed for filing affidavit of workman since long i.e. 09.07.2024. However, the same has not been filed till date. Today, AR for workman vide separate statement stated that the workman is not contacting him and also not coming from last many dates despite information. The workman has been given sufficient opportunities for filing affidavit but inspite of the opportunities afforded to her, she is not filing affidavit, which shows that she is not interested in adjudication of the matter on merit.

3. Since the affidavit of workman has not been filed since long and in view of statement of AR for workman, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present industrial dispute.

4. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding-cum-Link Officer

नई दिल्ली, 25 मई, 2026

का.आ. 1142.—औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण-कम-श्रम न्यायालय, चंडीगढ़-1, का पुरस्कार (संदर्भ सं. 104/2018) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, बीबीएमबी के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में।

[सं. एल-23012/103/2018- आईआर (सीएम- II)]

जैदीप यादव, उप निदेशक

New Delhi, the 25th May, 2026

S.O. 1142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 104/2018*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh-1** as shown in the Annexure, in the industrial dispute between the Management of **Ms. BBMB** and **their workmen.**

[No. L-23012/103/2018-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh

(Present:-Mr. Kamal Kant, Presiding-cum-Link Officer).

ID No.104/2018

Registered on:-21.01.2019

Sh. Gurcharan Singh S/o Sh. Dhanu Ram, R/o Village Tenu Khas, PO Kothi, Tehsil Ghumarwin, Distt, Bilaspur, Himachal Pradesh-174001.

-------- Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector-19-B, Chandigarh-160019.
2. The chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038.

----Respondent No.1 &2

Present:- Sh. SC Gupta, AR for Workman.

Sh. Sandeep Sharma, (Law Officer) for Respondent No.1& 2.

AWARD : 20.04.2026

1. Central Government vide Notification No.L-23012/103/2018(IR(CM-II)) Dated 16.11.2018, Clause (d) of sub-section (1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of management of BBMB in not accepting the demands of Shri Gurcharan Singh S/o Shri Dhanu Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?"

2. The case was listed for filing affidavit of workman since long i.e. 09.07.2024. However, the same has not been filed till date. Today, AR for workman vide separate statement stated that the workman is not contacting him and also not coming from last many dates despite information. The workman has been given sufficient opportunities for filing affidavit but inspite of the opportunities afforded to him, he is not filing affidavit, which shows that he is not interested in adjudication of the matter on merit.

3. Since the affidavit of workman has not been filed since long and in view of statement of AR for workman, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present industrial dispute.

4. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding-cum-Link Officer

नई दिल्ली, 25 मई, 2026

का.आ. 1143.—औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण-कम-श्रम न्यायालय, चंडीगढ़-1, का पुरस्कार (संदर्भ सं. 12/2019) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, बीबीएमबी के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में।

[सं. एल-23012/63/2018- आईआर (सीएम- II)]
जैदीप यादव, उप निदेशक

New Delhi, the 25th May, 2026

S.O. 1143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 12/2019*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh-1** as shown in the Annexure, in the industrial dispute between the Management of **Ms. BBMB** and **their workmen.**

[No. L-23012/63/2018-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh

(Present:-Mr. Kamal Kant, Presiding-cum-Link Officer).

ID No.12/2019

Registered on:-08.05.2019

Sh. Hoshiyar Singh S/o Sohan Singh Vill. Junglu PO Geharwin, Tehsil Ghumarwin, Distt. Bilaspur (HP)-174001.

-------- Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector-19-B, Chandigarh-160019.

2. The chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038.

----Respondent No.1 &2

Present:- Sh. SC Gupta, AR for Workman.

Sh. Sandeep Sharma, (Law Officer) for Respondent No.1 & 2.

AWARD : 20.04.2026

1. Central Government vide Notification No.L-23012/63/2018(IR(CM-II)) Dated 23.04.2019, Clause (d) of sub-section (1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demands of Shri Hoshiyar S/o Shri Sohan Singh for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned are entitled to and from which date?"**

2. The case was listed for filing affidavit of workman since long i.e. 09.07.2024. However, the same has not been filed till date. Today, AR for workman vide separate statement stated that the workman is not contacting him and also not coming from last many dates despite information. The workman has been given sufficient opportunities for filing affidavit but inspite of the opportunities afforded to him, he is not filing affidavit, which shows that he is not interested in adjudication of the matter on merit.

3. Since the affidavit of workman has not been filed since long and in view of statement of AR for workman, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present industrial dispute.

4. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding-cum-Link Officer

नई दिल्ली, 25 मई, 2026

का.आ. 1144.—औद्योगिक विवाद अधिनियम, 1947 (14/1947) की धारा 17 के पालन में, केंद्र सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण-कम-श्रम न्यायालय, चंडीगढ़-1, का पुरस्कार (संदर्भ सं. 71/2019) इस प्रकार प्रकाशित किया जाता है, जैसा कि परिशिष्ट में दिखाया गया है, एफसीआई के प्रबंधन और उनके मजदूरों के बीच हुए औद्योगिक विवाद में।

[सं. एल-22013/01/2026- आईआर (सीएम- II)]

जैदीप यादव, उप निदेशक

New Delhi, the 25th May, 2026

S.O. 1144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 71/2019*)*** of **the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh-1** as shown in the Annexure, in the industrial dispute between the Management of **Ms. FCI** and **their workmen.**

[No. L-22013/01/2026-IR (CM-II)]

JAIDEEP YADAV, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh

(Present:- Mr. Kamal Kant, PO-cum-Link Officer).

ID No.71/2019

Registered on – 23.09.2019

Major Singh son of Harnek Singh, resident of Village Sukhna, Tehsil Gidderbaha, District Sri Muktsar Sahib (Punjab).

….. Workman

Versus

1. Regional Manager, Food Corporation of India, Regional Office, Bay No.34-38, Sector 31-A, Chandigarh.
2. The Assistant Manager, Food Corporation of India, Faridkot.

…...Respondents

Present:- None for Workman

Sh. Anil Shukla, AR for Respondent No.1 and 2.

AWARD : 11.03.2026

1. Workman has filed the present claim petition under Section 2A of the Industrial Disputes Act, 1947 (hereinafter called the Act) against his termination w.e.f. 04.10.2003 claiming reinstatement into service along with full back wages.

2. The case is fixed for filing of affidavit of workman since 30.01.2025. However, no affidavit on behalf of workman has been filed till date. No one is also turning up on behalf of workman since 30.09.2025. The workman has been given sufficient opportunities to file affidavit of evidence but in spite of the opportunities afforded, the affidavit has not been filed by workman, which shows that the workman is not interested in adjudication of the matter on merit.

3. Since the workman has not filed evidence by way of affidavit to prove his case against the respondents, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present Industrial Dispute.

4. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding-cum-Link Officer

नई दिल्ली, 3 जून, 2026

का.आ. 1145.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (202/2002) प्रकाशित करती है।

[सं. एल-12012/98/2000-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 3rd June, 2026

S.O. 1145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.202/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. 12012/98/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 6th day of May, 2026

INDUSTRIAL DISPUTE No. 202/2002

[Old ID No.94/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri D. Channa Kesavulu,

9-3-288/F,

9th Ward, Ambedkar Nagar,
Uravakonda, (Ananthpur),
Ananthpur Dist. A.P. …… Petitioner

And

The Dy. General Manager,
State Bank of India,
Zonal Office,
Renigunta Raod,
Tirupathi.

…..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/98/2000-IR(B.I) dated 19.07.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 94/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the State Bank of India, Uravakonda Branch in terminating Sri D. Channa Kesavulu, Messenger, from the services of the Bank by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 202/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing

for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the workman joined in the services of the Management Institution as Messenger on 1985 to 1997 and rendered unblemished service spreading over a period of about 10 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any

permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons

who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints

which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his

candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W2. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the Service Certificate dated 23.08.1988. Ex.W2 is the Call letter for interview.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Ananthpur branch in terminating the services of Workman Sri D. Channa Kesavulu, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has

been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other

advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained Under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I did not work for 240 days in any year in my entire service in the bank."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. Point No.III:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly

panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the notification issued by the bank and my name was included in the panel of temporary attenders…. Further, witness states, "*I do not know that the employees who were senior to me in jumber of days were given regular appointment in terms of settlement."* Further witness states, *I am not having any papers to show that any of my juniors are continuing in service."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is

binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri D. Channa Kesavulu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 6th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri D. Chenna Kesavulu	MW1: Sri Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of Service Certificate dated 23.08.1988
Ex.W2: Photocopy of Call letter for interview

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 3 जून, 2026

का.आ. 1146.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (203/2002) प्रकाशित करती है।

[सं. एल-12012/122/2000- आई आर (बी-I)]
सलोनी, उप निदेशक

New Delhi, the 3rd June, 2026

S.O. 1146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.203/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/122/2000- IR(B-I)]
SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 29th day of April, 2026

INDUSTRIAL DISPUTE No. 203/2002

[Old ID No. 82/2000 of Industrial Tribunal No.I, Hyderabad]

Between:
Sri T. Jayaramaiah,

S/o T. Penchalaiah,
R/o Malure Village,
Vallur (P.O.), Muthukur Mandalam,
Nellore. … Petitioner

And

The Asst. General Manager,
State Bank of India,
Zonal Office, Region-II,
Tirupathi - 517501. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate
For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/122/2000-IR(B.I) dated 20.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No.82/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, in terminating the services of Sri T. Jayaramaiah, Ex. Temporary Messenger, Nellore branch by way of oral orders with effect from 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 203/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings

and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1988 to 1997, and has rendered unblemished service spreading over a period of about 6 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal,

violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the

Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W4. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate. Ex.W2 is the interview call letter. Ex.W3 is the service certificate. Ex.W4 is the service certificate.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt.

27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Nellore main branch in terminating the services of Workman Sri T. Jayaramaiah, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial

category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange and I did not undergo the regular selection process before my appointment in the bank.."

"I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank

cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the notification /an advertisement issued by the bank as per the settlements between the bank and the union…. Further, witness states, *My name was included in the panel of temporary attenders and some of the temporary employees were given regular appointment. I am not having any document to show that any of my juniors are working in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on

31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their

seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary*

appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri T. Jayaramaiah, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 29th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri T. Jayaramaiah	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate
Ex.W2: Photocopy of interview call letter
Ex.W3: Photocopy of Service certificate
Ex.W4: Photocopy of Service certificate

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1147.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (208/2002) प्रकाशित करती है।

[सं. एल-12012/367/2001-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.208/2002) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/367/2001- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 29th day of April, 2026

INDUSTRIAL DISPUTE No. 208/2002

Between:
Sri A. Shankar Rao,
S/o A. Chandramouli,
H.No.13-6-861, Amedkar nagar,
Launger House,
Hyderabad -500 095. … Petitioner

And

The Asst. / Chief General Manager,
(Personnel & HRD))
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent
Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate
For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/367/2001-IR(B.I) dated 25.1.2002 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, branch in terminating the services of Sri A. Shankar Rao, Temporary/Non-Messenger, with effect from 31.3.1997 is justified? If not, what relief applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 208/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1987 to 1997, and has rendered unblemished service spreading over a period of about 10 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be

eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving

chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived

at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W6. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate. Further Ex.W2 is the notification. Ex.W3 is the panel list.

21. On the other hand, Respondent has examined witness MW1 Sri Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Langarhouse branch in terminating the services of Workman Sri A. Shankar Rao, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had

been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"*It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."*

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service

for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange, did not undergo the regular process of selection before my engagement as temporary non-messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. Point No.III:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as

mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as Non-Messenger, in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states*, The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states*, It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily

wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the*

two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri A. Shankar Rao, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 29th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri A. Shankar Rao	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate
Ex.W2: Photocopy of News paper advertisement/ notification
Ex.W3: Photocopy of Panel list

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1148.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (296/2002) प्रकाशित करती है।

[सं. एल-12012/154/2002-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.296/2002) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/154/2002- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 6th day of May, 2026

INDUSTRIAL DISPUTE No. 296/2002

Between:

Sri M. Maruthi,

C/o M. Laxman Rao,

RTC Conductor, Thummakuru Palem,

Kothapatnam(PO & M)

Prakasham Distt.

… Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office,

Region-II,

Tirupathi. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/154/2002-IR(B.I) dated 18.10.2002 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Management of State Bank of India, Tirupathi Zone in terminating the services of Sri M. Maruthi, Ex-Temporary Messenger is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 296/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the

proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;
(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;
(2) the further findings and directions issued through the impugned common order are vacated:
(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,
(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the workman joined in the services of the Management Institution as Messenger on 1984 to 1991 and rendered unblemished service spreading over a period of about 5 years, and by dint of hard work till his services were terminated by oral orders. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex

M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect

of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent

Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read

with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law.These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W3. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate. Further Ex.W2 is the Notification. Ex.W3 is the Panel list.

21. Though Respondent has filed counter, but the contention made in the counter is not substantiated by any evidence by the Respondent Management.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Karradu branch in terminating the services of Workman Sri M. Maruthi, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels

of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. Point No.II:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from

the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained Under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange and I did not undergo the regular process of selection before my engagement as temporary Messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the

disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. Point No.III:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of

its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as Messenger, in response to the advertisement issued by the bank and union in the year 1989,……Further, witness states, The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel…. Further witness states, "It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the

scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. Thus, in view of fore gone discussion and laws laid down by Hon'ble Apex Court as discussed above, the claim of workman of regularization in the employment of Respondent is not substantiated by the evidence of Petitioner, WW1 in his cross examination has admitted that he is not aware of any settlements and he is not having any document to show that any person who worked for less number of days than him was given appointment in the bank and he has no document to show that any of his juniors is continuing in service of the bank as of now. Therefore, the claim of the Petitioner for regularization in the employment of Respondent bank is not tenable. Further, Petitioner failed to produce any document in evidence to establish that any temporary employee junior to him is working in the Respondent bank. Therefore, Petitioner is not entitled for regularization in the service of the Respondent.

This point is answered against the Petitioner Workman and in favour of the Respondent.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri M. Maruthi, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the day of 6th May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Maruthi	MW1: NIL

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate
Ex.W2: Photocopy of Notification
Ex.W3: Photocopy of Panel listhn

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1149.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (162/2002) प्रकाशित करती है।

[सं. एल-12012/107/2000-आई आर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.162/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/107/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of May, 2026

INDUSTRIAL DISPUTE No. 162/2002

[Old ID No. 100/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri S. Bala Koteswara Rao,
S/o S. Kotaiah,
R/o. Chakicherla Post,
Ulavapadu (M),
Prakasham Dist.

… Petitioner

And

The Asstt General Manager,
State Bank of India,
Zonal Office,
Region- II,
Tirupathi 517501.

…..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/107/2000-IR(B.I) dated 31.8.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 100/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Chackicharla Branch in terminating the services of Sri S. Bala Koteswara Rao, Ex-Temporary Messenger, w.e.f. 31.3.1997 is justified? If not what relief workman is entitled?"

After receipt of the reference, it was numbered as ID No. 162/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Non Messenger on 1990 to 1996 and rendered unblemished service spreading over a period of about 7 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the

liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less

than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore

misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W8. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the Notification. Ex. W2 is the Call letter for interview. Ex. W3 is the Service Certificate. Ex. W4 is the Service Certificate. Ex. W5 is the Service Certificate. Ex. W6 is the Service Certificate. Ex. W7 is the letter to employment exchange by Respondent. Ex. W8 is the Audit report.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Chackicharla Branch in terminating the services of Workman Sri S. Bala Koteswara Rao, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed

between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the

Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and

absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows:*

"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously .."

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained Under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary attender in the branch.."

" I did not work for 240 days in any year in entire service in the bank."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective

seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from

both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees

and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as attender, in response to the advt. issued by the bank in terms of the settlements entered into between the bank and the union…….Further, witness states that the panel was prepared basing upon the number of days services. Put in by the temp. employees. Some of the temp. employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel……. I am not having any documents to show that my juniors are continuing in service in the bank."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not

filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of

understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri S. Bala Koteswara Rao, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation Sri. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S. Bala Koteswara Rao	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of Notification
Ex.W2: Photocopy of call letter for interview
Ex.W3: Photocopy of Service Certificate
Ex.W4: Photocopy of Service Certificate
Ex.W5: Photocopy of Service Certificate
Ex.W6: Photocopy of Service Certificate

Ex.W7: Photocopy of letter to employment exchange by Respondent

Ex.W8: Photocopy of Audit report

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87

Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88

Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988

Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991

Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995

Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non-messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1150.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (300/2002) प्रकाशित करती है।

[सं. एल-12012/158/2002-आई आर (बी-I)]
सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1150.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.300/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/158/2002- IR(B-I)]
SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 29th day of April, 2026

INDUSTRIAL DISPUTE No. 300/2002

Between:

Sri J. Sankara,

S/o Seetharamaiah,

D.No.1-663, Andhipuram,

Madanapalli,

Chittoor Distt – 517325. … Petitioner

And

The Dy. General Manager,

State Bank of India,

Zonal Office, Region-II

Tirupathi- 517501. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/158/2002-IR(B.I) dated 18.10.2002 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Tirupathi Zone in terminating the services of Sri J. Sankara, Ex. Temporary Messenger, is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 300/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the

management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1985 to 1986, and has rendered unblemished service spreading over a period of about 2 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted

to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary

workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the

Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his

candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W3. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate. Further Ex.W2 is the notification. Ex.W3 is the panel list.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Madanapalli branch in terminating the services of Workman Sri J. Sankara, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office

order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other

advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. Point No.II:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent

management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as Non-Messenger, in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states*, The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states*, It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel

list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the*

requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri J. Sankara, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 29th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri J. Sankara	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate
Ex.W2: Photocopy of News paper advertisement/ notification
Ex.W3: Photocopy of Panel list

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1151.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (158/2002) प्रकाशित करती है।

[सं. एल-12012/82/2000-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1151.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.208/2002) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/82/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 6th day of May, 2026

INDUSTRIAL DISPUTE No. 158/2002
[Old ID No.87/2000 of Industrial Tribunal No. I, Hyderabad]

Between:
Sri V. Ramesh Babu,
No.6/48, Kalyanadurg Road,
Ganeshnagar,
Dist. Anantapur. … Petitioner

And
The Dy. General Manager,
State Bank of India,
Zonal Office,
Renigunta Road,
Tirupathi. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/82/2000-IR(B.I) dated 19.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 87/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Tadipatri Main branch in terminating the services of Sri V. Ramesh Babu, Messenger, from the services of the Bank by way of oral orders with effect from 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 158/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High

Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1983 to 1997, and has rendered unblemished service spreading over a period of about 7 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the

panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by

entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is

not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the

Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Tadipatri branch in terminating the services of Workman Sri V. Ramesh Babu, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No. I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the

company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular selection process before my engagement as attender.."

"I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any

deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

""I applied in response to the notification issued by the bank in terms of the settlements entered between the bank and the union….

….. Further witness states, *" I am not having any papers to show that any of my juniors are continuing in the service."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular

appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is

contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in

the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri V. Ramesh Babu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 6th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri V. Ramesh Babu	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1152.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (159/2002) प्रकाशित करती है।

[सं. एल-12012/126/2000-आई आर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.159/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/126/2000-IR(B-I]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 159/2002

[Old ID No. 86/2000 of Industrial Tribunal No.I, Hyderabad]

Between:
Sri P. Prabhakar,
S/o P. Ramaiah,
R/o. 9/424,
Kapatipalem,
Nellore 524001.

… Petitioner

And

The Asst. General Manager,
State Bank of India,
Zonal Office,
Region-II
Tirupathi-517501. …..Respondent

Appearances :

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/126/2000-IR(B.I) dated 20.07.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 86/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, in terminating the services of Sri P. Prabhakar, Ex-Temporary Messenger, Nellore by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 159/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ

petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Non Messenger on 1990 to 1996 and rendered unblemished service spreading over a period of about 7 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no

temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was

extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned. It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W4. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the Service Certificate 21.07.1992. Ex. W2 is the Absorption letter. Ex. W3 is the Service Certificate 19.07.1996. Ex.W4 is the Service Certificate 19.07.1996.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Nellore Town branchin terminating the services of Workman Sri P. Prabhakar, as a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. <u>Point No.I</u>:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into

between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. Point No.II:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"*It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed.*"

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed*

that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained Under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange and I did not undergo the regular selection process before my temporary appointment as attender."

" I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate

cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the notification issued by the bank in terms of settlement entered between the Bank and the union. ……. I do not know that some of the employees who were in the panel were given regular appointment in the bank as per the seniority in number of days as per the settlements. I am not having papers to show that any of my juniors are continuing in service."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a

reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the

counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri P. Prabhakar, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Prabhakar	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1:	Photocopy of Service Certificate 21.07.1992
Ex.W2:	Photocopy of Absorption letter
Ex.W3:	Photocopy of Service Certificate 19.07.1996
Ex.W4:	Photocopy of Service Certificate 19.07.1996

Documents marked for the Respondent

Ex.M1:	Photocopy of settlemen between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlemen between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1153.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (87/2002) प्रकाशित करती है।

[सं. एल-12012/120/2000-आई आर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1153.— In pursuance of Section 7 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 87/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/120/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April , 2026

INDUSTRIAL DISPUTE No. 87/2002

[Old ID No. 80/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri P. Yellamanda,

S/o Chenchaiah,

C/o State Bank of India,

Pakala, Prakasham -523101. … Petitioner

And

The Asst. General Manager,

State Bank of India,

Zonal Office,

Region -II,

Tirupathi-517501.

…..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/120/2000-IR(B.I) dated 19.07.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 80/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Pakala Branch in terminating the services of Sri P. Yellamanda, Ex-Temporary Messenger, by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 87/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Messenger on 1984 to 1997 and rendered unblemished service spreading over a period of about 5 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid

upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein

as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after

referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said

settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W7. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the Notification. Ex.W2 is the Panel list. Ex. W3 is the Service Certificate. Ex. W4 is the Service Certificate. Ex. W5 is the letter to employment exchange by the Respondent. Ex. W6 is the Circular letter dated 14.07.1999. Ex. W7 is the Employment registration card.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State

Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, in terminating the services of Workman Sri P. Yellamanda, as a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year

preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"My name was not sponsored by any employment exchange. I did not undergo the selection process required for appointment as a temporary Messenger."

" It is true that I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days

continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued

are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied to the bank in response to the advertisement issued by the Bank as per the settlements between the union and the management…… Further, witness states*, It is true that the panel was prepared basing on the no. of days of service put in by the temporary employees. Some of the persons whose names were included in the panel were given appointment on regular basis in the bank ……. Further, witness states that I did not know any of my juniors were continuing in service."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1

states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non- messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri P. Yellamanda, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation Sri. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Yellamanda	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of Notification
Ex.W2: Photocopy of Panel list
Ex.W3: Photocopy of Service Certificate
Ex.W4: Photocopy of Service Certificate
Ex.W5: Photocopy of letter issued to employment exchange by the Respondent
Ex.W6: Photocopy of Circular letter dated 14.07.1999
Ex.W7: Photocopy of Employment registration card

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1154.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (152/2002) प्रकाशित करती है।

[सं. एल-12012/43/2000-आई आर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.152/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/43/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 6th day of May, 2026

INDUSTRIAL DISPUTE No. 152/2002

[Old ID No. 57/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri A. Sreeramulu,

Venkatapuram(V&P),

Bukkarayasamudram,

Distt. Anaatapur. … Petitioner

And

The Dy General Manager,

State Bank of India,

Zonal Office,

Renigunta Road,

Tirupathi. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/43/2000-IR(B.I) dated 13.07.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 57/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the State Bank of India, Ananatapur Main Branch in terminating Sri A. Sreeramulu, Messenger, from the services of the Bank by way of oral orders w.e.f. 31.3.1997 is justified? If not what relief he is entitled to?"

After receipt of the reference, it was numbered as ID No. 57/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

"7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body,

which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that the workman joined in the services of the Management Institution as Non-Messenger on 1987 to 1988 and rendered unblemished service spreading over a period of about 2 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under

the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary

employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the

Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these

vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W4. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the Notification. Ex. W2 is the Service Certificate. Ex. W3 is the Absorption letter. Ex. W4 is the Panel list.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Ananatapur main branch in terminating the services of Workman Sri A. Sreeramulu, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union,

which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"*It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed.*"

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service.*"

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment

for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained Under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my appointment as temporary attender in the Branch"

" I did not work for 240 days in any year in my entire service in the bank."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for

engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of

India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to an advertisement issued by the Bank for appointment as Messenger. …….Further, witness states that, "It is true that the panels were prepared depending upon the number of the days of services put in by the temporary employees in the Bank… Some of the employees whose names were included in the panel were given appointment on regular basis in order of their seniority. I am not having any documents to show that any person who had worked for less number of days than me was given regular appointment in the Bank."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary

employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the*

case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri A. Sreeramulu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 6th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri A. Sreeramulu	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of Notification
Ex.W2: Photocopy of Service Certificate
Ex.W3: Photocopy of Absorption letter
Ex.W4: Photocopy of Panel list

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1155.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (156/2002) प्रकाशित करती है।

[सं. एल-12012/89/2000-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.156/2002) of the *Cent. Govt.I ndus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/89/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 6th day of May, 2026

INDUSTRIAL DISPUTE No. 156/2002

[Old ID No. 67/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri S. Narayana Swamy,

Sanjeevapurma (Vill & Post),

Bathlapalli Mandal

Dist. Anantapur. … Petitioner

And

The Dy. General Manager,

State Bank of India,

Zonal Office,

Renigunta Road,

Tirupathi. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/89/2000-IR(B.I) dated 17.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 67 /2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Dharmavaram branch in terminating Sri S. Narayana Swamy, Messenger, from the services of the Bank by way of oral orders with effect from 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 156/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High

Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1991 to 1997, and has rendered unblemished service spreading over a period of about 6 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary

employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without

jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were

prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements

cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W3. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate. Ex.W2 is the caste certificate. Ex.W3 is service certificate.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Dharmavaram branch in terminating the services of Workman Sri S. Narayana Swamy, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for ?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not

in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular selection process required for appointment in the bank. I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank

that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the notification issued by the bank as per the settlements .... Further, witness states, *I do not know that the Bank has filled up all the vacancies of attenders as per the settlements with the persons from the panels as per their seniority in number of day. I am not having any document to show that any of my juniors are working in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself

admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no

occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for

absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri S. Narayana Swamy, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 6th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S. Narayana Swamy	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1:	Photocopy of Service certificate
Ex.W2:	Photocopy of absorption letter reg. temporary employees dt. 27.10.93
Ex.W3:	Photocopy of service certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1156.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (117/2002) प्रकाशित करती है।

[सं. एल-12012/36/2000-आईआर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.117/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/36/2000-IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 29th day of April, 2026

INDUSTRIAL DISPUTE No. 117/2002

[Old ID No. 28/2000 of Industrial Tribunal No. I, Hyderabad]

Between:

Sri V. Raghu,
10-1-37, 10th Ward,
Nr. Kandarramma Temple,
Uravakonda Mandal,
Dist. Anantpur (A.P.) … Petitioner

And

The Dy. General Manager,
State Bank of India,
Zonal Office,
Renigunta Road,
Tirupathi. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/36/2000-IR(B.I) dated 11.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 28/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Uravakonda branch in terminating Sri V. Raghu, Messenger, from the services of the Bank by way of oral orders with effect from 31.3.1997 is justified? If not, what relief he is entitled to?"

After receipt of the reference, it was numbered as ID No. 117/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble

High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

"7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1985 to 1993, and has rendered unblemished service spreading over a period of about 9 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no

temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to

their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final,

settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights

have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W4. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the notification. Further Ex.W2 is the interview call letter. Ex.W3 is the panel list. Ex.W4 is the service certificate.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Uravakonda branch in terminating the services of Workman Sri V. Raghu, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for ?

Findings:-

25. Point No. I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12*

calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"The BM of Uravakonda Branch was known to us and I approached him for employment as temporary attender."

"I did not work for 240 days."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of

the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names

from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the advertisement issued by the bank as per the settlements and my name was included in 1989 panel and the temporary employees from the panel were were given regular appointment as per settlement in order of their seniority in the panel…. Further witness states, *No junior to me is continuing in service in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its

instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross

examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri V. Raghu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 29th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri V. Raghu	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1:	Photocopy of notification
Ex.W2:	Photocopy of interview call letter
Ex.W3:	Photocopy of Panel list
Ex.W4:	Photocopy of service certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय-सह- अतिरिक्त। जिला. एवं सत्र न्यायालय, गोदावरीखानी के पंचाट (पहचान संख्या. 63/2025) को प्रकाशित करती है,

[सं. एल-22013/01/2026-आईआर(सी एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 63/2025)** of the **INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI** as shown in the Annexure, in the industrial dispute between the Management of **S. C. C. L.** and their workmen,

[No. L-22013/01/2026 – IR(CM-II)]

Jaideep Yadav, Deputy Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI.

PRESENT:- **SRI Dr.T.SRINIVASA RAO,**

CHAIRMAN-CUM-PRESIDING OFFICER.

THURSDAY, ON THIS THE 26th DAY OF MARCH, 2026.

I.D. No. 63 of 2025

Between:-

Shaik Jaffer, Ex-Badli Filler, EC.No.02385367, KK.5-incline, S/o.Later Taramiya, Age:56 years, C/o Balmuri Amarender Rao, Advocate, Raghupathirao Nagar, Ganga Nagar, Godavarikhani - 505209, District: Peddapalli, (Telangana State).

…Petitioner/Workman

AND

1. The Supdt. of Mines, Singareni Collieries Company Ltd., KK-5 Incline, Mandamarri Area, Mandamarri, District: Mancherial (T.S).

2. The General Manager, Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, District: Mancherial (T.S).

3. The Chairman & Managing Director, Singareni Collieries Company Ltd., P.O: Kothagudem, District: Badradri Kothagudem (T.S).

...Respondents/Management

This case coming before me for final hearing in the presence of Sri Balmuri Amarender Rao & P.Ramu, Advocates for the Petitioner and of Sri P. Rajani Krishna, Law Officer for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:

AWARD

This is a petition filed U/Sec.2-A (2) of I.D. Act, 1947 praying to set aside the dismissal order dt.12.01.2022 issued by Respondent No.2 and to direct the respondents'-company to reinstate the petitioner into service with continuity of service, all other consequential attendant benefits and full back wages.

2. The alpha and omega of the case of the petitioner is as follows:-

2(a). The petitioner was appointed was initially appointed as Badli Filler during the year 1995 and was reinstated in the year 2014. Ever since his appointment, he was discharging his duties to the utmost satisfaction of his superiors

without any adverse remarks. Wife of the petitioner suffered from severe ill-health, for which he was compelled to look after her and got imparted prolonged treatment to her in the Hospitals. Further, due to strenuous work in the underground mine and frequent staying in the Hospitals, his health badly deteriorated from 2018-19 onwards and he took treatment in the SCCL dispensary, SCCL Area hospitals & other hospitals. As he continued to work in the underground on one hand and undergoing treatment frequently on the other hand, his health deteriorated from the year 2020. But, without considering above facts, the Respondent No.2 issued charge sheet dt.05.02.2021 to the petitioner alleging absenteeism during the year 2020:-

> *"25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave".*

2(b). There is no there is no deliberate absenteeism on his part; and there is reasonable and sufficient cause for his not attending to duties regularly during the charge sheet period of 2020. The respondents' company imparted treatment to the petitioner in the SCCL Area Hospital and other Hospitals. He participated in the domestic enquiry on 24.06.2021 and deposed the true facts of his ill-health, ill-health and prolonged treatment of his wife, before the Enquiry Officer. The respondents have concealed the above facts and medical treatment imparted to petitioner and his wife before the enquiry officer. The findings of Enquiry Officer are very cryptic and he gave his vague findings, which are quite biased and perverse. The Respondent No.2 required the petitioner to make representation on findings report of Enquiry Officer by letter dt.15.07.2021, which was sent by RPAD to his house. But, the respondents are aware that his house was locked as he was undergoing prolonged treatment in the Hospitals. He could not receive the same and not submitted representation on the findings report of Enquiry Officer. But, without considering the true facts, the Respondent No.2 dismissed the petitioner from service vide Ref. dt.12.01.2022 straight away, without issuing any prior Show Cause Notice proposing the said capital punishment of dismissal from service. The petitioner suffered from serious ill-health; there is sufficient and reasonable cause for not attending to his duties during charge sheet period and it cannot be termed as misconduct.

2(c). Further, imposing the capital punishment of dismissal from service on the petitioner without any prior show cause notice proposing the said capital punishment is against the settled Law and contrary to the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to his economic death. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job in spite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prays to set aside the dismissal order issued by the Respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all consequential attendant benefits and full back wages.

3. On the other side the Respondents/Management filed counter by admitting the employment of the Petitioner/Workman with the Respondents'-Company, however, inter-alia contended that since the coal mining industry is a central subject the Appropriate Government for Respondent/Management is Central Government, which established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29.12.2000 for adjudication of industrial disputes and the Petitioner ought to have approached the said tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and hence it is not maintainable under law and the same may be dismissed on this ground alone.

3(a). The Respondent Company without prejudice to its rights in respect of the objection raised as above submits that the petitioner was appointed into the services of the Respondent Company on 01.02.1995 and worked as Coal Filler at Chennur 2-Incline. He was dismissed from service on the ground of absenteeism with effect from 01.08.2005. He being underground employee, he is expected to put minimum of (190) Musters in a calendar year. But, he did not put-in (190) musters from the date of his appointing year to till his dismissal from the service. The following are the musters of the petitioner and action taken for his chronic absenteeism:-

Sl No.	Year	No. of Musters	Penalty/Punishment details
1.	2015	41	Not applicable
2.	2016	64	Suspension for 10 days
3.	2017	102	--
4.	2018	24	Stoppage of one increment without cumulative effect
5.	2019	27	Stoppage of one increment with cumulative effect
6.	2020	4	Dismissal from service.

3(b). In the year 2015, the petitioner has put-in only (41) musters against 190 musters which is less than 50% of attendance. He continued the same in 2016 and as such, he was issued charge sheet dt.27.02.2017, enquiry was conducted on 09.03.2017, he participated in the enquiry proceedings and charges were proved against the petitioner. However, a lenient view was taken and he was suspended for 10 days vide letter dt.26.12.2017. Further, during 2018,

he has put-in 24-musters for which charge sheet dt.06.02.2019 and enquiry was conducted on 04.05.2019 and he was imposed with a penalty of "Stoppage of one increment without cumulative effect" was imposed. Again during the year 2019, he has put-in '27' musters for which charge sheet dt.31.01.2020 and enquiry was conducted on 05.06.2020 and however, a lenient view was taken and he was imposed with a penalty of "Stoppage of one increment with cumulative effect" was imposed. Again during 2020, he has put-in only 04 musters. Charge sheet dt.05.02.2021 was issued and enquiry was conducted on 24.06.2021 and show cause notice was issued. But, the petitioner failed to submit any explanation to the show cause notice and as the charges were proved against the petitioner, the respondents' company was constrained to dismiss the petitioner from service vide Ref. dt.12.01.2022.

3(c). The Respondent Company is providing Medical facilities to its employees and their dependants through its Hospitals and if required the patients will be referred to higher centers for further treatment/diagnosis. In the same manner, the petitioner was also extended medical facilities by this Respondent Company for the ailments which he was suffering for. The petitioner has not reported sick in Company's Hospitals during the entire absenteeism period. The petitioner being a habitual and chronic absentee, the Respondents' Company was constrained to dismiss the Petitioner due to his misconduct. The petitioner was not kept in sick list and was examined by the main hospital and found fit for duty. The averments made by the petitioner in his petition are false and baseless. He was given full and fair opportunity and natural justice principles were followed during the enquiry proceedings. He accepted the charges leveled against him and pleaded guilty during enquiry proceedings. He did not submit any documentary evidence and not produced any witness and the charges were proved.

3(d). Further, the Petitioner admitted in the enquiry Proceedings that he has not reported sick in any company's Hospital during the absenteeism Period. The averments made in the annexure to the Petition that the respondent No.2 unjustly dismissed him from Service straight away without issuing any prior show cause Notice are totally false hence denied. The petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties such as 10 days suspension and stoppage of one increment. But, he failed to improve his attendance and resorted to unauthorizedly absent for duty during the calendar year 2020, and as there was no change in his attendance, the Respondent Company was constrained to dismiss the Petitioner. The dismissal of petitioner/Shaik Jaffer was justified and final disciplinary action following a long history of habitual and unauthorized absenteeism.

3(e). The company has adhered to all procedural norms, including conducting a fair inquiry. As the petitioner did not improve his attendance in spite of giving many opportunities, the Respondent Company was constrained to dismiss the petitioner for his chronic absenteeism. As per Article 311 of the Constitution of India, issuing show cause notice proposing the punishment is not a requirement of the Principles of natural justice. The respondent company's standing orders do not speak about of issue of Show cause notice proposing the punishment to be imposed on the delinquent employee. There is no victimization and the punishment of dismissal is not harsh and the petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties. But, he has failed to improve his attendance and resorted to unauthorizedly absent for duty. The petitioner's misconduct compelled the Respondent/Management to impose the penalty of dismissal which cannot be termed as unjust.

3(f). Further, the Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remains absent without prior sanction of leave or without any justified cause, the work to be performed get effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on other employees. The Respondent/Management cannot be held responsible for the alleged debts and unemployment and the other allegations of the petition are denied and hence the Respondents prayed to dismiss the petition, without granting any relief to the petitioner.

4. In support of the claim of the Petitioner/Workman Ex.W-1 to Ex.W-24 and on the other side for the Respondents'-Company Ex.M-1 to Ex.M-14 were marked, with consent.

5. Arguments of the learned counsel for Petitioner/workman as well as the learned standing counsel for the Respondents/ Management heard. Perused the record produced before this Tribunal, their rival arguments and citations.

6. ***Now the points for consideration are:-***

1. ***Whether this Tribunal has jurisdiction to entertain this I.D; and whether the domestic enquiry conducted by the respondents is held valid or not?***

2. ***Whether the charges leveled against the petitioner are proved basing on evidence or not?***

3. ***Whether the dismissal order dt.12.01.2022 is liable to be set aside, if so, the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?***

   If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents' Company, these are the admitted facts that the petitioner/ workman worked as Badli Worker on 01.02.1995 and worked as Coal Filler at Chennur 2-Incline of the Respondents'-Company. He was dismissed from service on 01.08.2005 and he was reinstated into service as Badli Coal Filler (UG) afresh vide office order dt.10.10.2014. Now coming to the documentary evidence on both sides, on behalf of Respondents'/Company, Ex.M-1 to Ex.M-14 were marked, wherein, Ex.M-1 is attested copy of reinstatement of petitioner vide Order No.CRP/PER/IRPM/I/301/3568. Ex.M-2 is attested copy of charge sheet issued to petitioner vide Lr.No.MMR/ KK-5/R-07/17/691. Ex.M-3 is of Enquiry Notice to the petitioner vide Lr.No.MMR/KK5/R/010/17/761 and Ex.M-4 is attested copy of Enquiry proceedings. Ex.M-5 is attested copy of Stoppage of one increment without cumulative effect vide Lr.No.MMR/PER/D/072/ 20/6289. Ex.M-6 is attested copy of charge sheet issued to the petitioner vide Lr.No.MMR/KK-5/R/ 007/20/531. Ex.M-7 is attested copy of Enquiry Notice to the petitioner vide Lr.No.MMR/KK5/R/ 010/2020/2071. Ex.M-8 is attested copy of Enquiry proceedings. Ex.M-9 is attested copy of charge sheet issued to petitioner vide Lr.No.MMR/KK-5/R/007/ 21/543. Ex.M-10 is attested copy of Enquiry Notice to the petitioner vide Lr.No.MMR/KK5/R/010/2021/ 2402 and Ex.M-11 is attested copy of the Enquiry proceedings. Ex.M-12 is attested copy of Notice served to the petitioner for charge sheet dt.05.02.2021 and Ex.M-13 is attested copy of show cause notice published in Telugu Daily News paper. Ex.M-14 is attested copy of Dismissal Order of the Petitioner vide Lr.No. MMR/PER/D/072/22/198.

7(a). On the other side, the petitioner got marked Ex.W-1 to W-24 on his behalf, wherein, Ex.W-1 is dismissal order issued by the Respondent No.2 and Ex.W-2 is name removal memo issued by the Respondent No.1. Ex.W-3 is SCCL Hospital medical prescription of petitioner from 20.12.2019 to 30.12.2019; and Ex.W-4 is SCCL Hospital medical prescription of petitioner from 03.01.2020 to 11.01.2020. Ex.W-5 is SCCL Hospital medical prescription of petitioner from 21.01.2020 to 08.02.2020; and Ex.W-6 is SCCL Hospital medical prescription of petitioner from 20.02.2020 to 22.02.2020. Ex.W-7 is SCCL Hospital medical prescription of petitioner from 24.02.2020 to 11.03.2020; and Ex.W-8 is SCCL Hospital medical prescription of petitioner from 19.03.2020 to 16.04.2020. Ex.W-9 is SCCL Hospital medical prescription of petitioner dt.16.04.2020 and Ex.W-10 is SCCL Hospital medical prescription of petitioner from 18.04.2020 to 10.09.2020. Ex.W-11 is SCCL Hospital medical prescription COVID-19 Test Negative result referred to SCCL Area Hospital and Ex.W-12 is SCCL Hospital referred to SCCL Area Hospital for medical examination and Fitness. Ex.W-13 is SCCL Area Hospital medical prescription from 16.12.2020 to 05.01.2021; and Ex.W-14 is SCCL dispensary medical prescription of petitioner from 21.12.2020 to 08.01.2021. Ex.W-15 is SCCL dispensary medical prescription of petitioner from 02.02.2021 to 10.04.2021 and Ex.W-16 is SCCL dispensary medical prescription of petitioner. Ex.W-17 is SCCL dispensary medical prescription of petitioner and reference to Area Hospital and Ex.W-18 is SCCL Area Hospital medical prescription from 14.09.2021 to 29.12.2021. Ex.W-19 is SCCL dispensary medical prescription of petitioner and Ex.W-20 is SCCL Area Hospital medical prescription of petitioner and X-ray chest advice. Ex.W-21 is SCCL Area Hospital medical prescription of the petitioner and Ex.W-22 is SCCL Area Hospital medical prescription of petitioner from 10.01.2022 to 17.03.2022. Ex.W-23 is SCCL dispensary medical prescription of petitioner and Ex.W-24 is O/c Demand Letter with R.P receipt. The above documents of both sides are not in much dispute by either side.

8. Here, the learned standing counsel for the respondents'-company has strenuously argued and raised a Preliminary Objection in the Counter that since the coal mining industry is a central subject the Appropriate Government for Respondent/ Management is Central Government, which established Central Govt. Industrial Tribunal, at Hyderabad for adjudication of Industrial Disputes and the petitioner ought to have approached the said Tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and approached this Tribunal; hence it is not maintainable under law and the same may be dismissed on this ground alone.

8(a). The learned standing counsel for the respondents'-company without prejudice to the above preliminary objection; has put forth and set forth that the petitioner was appointed as Fitter on 18.12.2015 and he being an underground employee is expected to put minimum (190) Musters in a calendar year. But, he was not regular to his duties and did not-in (190) musters from the date of his appointing year to till his dismissal from the services. During the year 2022 the petitioner has put-in only (02) musters for which he was issued with charge sheet dt.18.01.2023. If he was really suffering from ill health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything. The Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remain absent without prior sanction of leave or without any justified cause, the work to be performed get effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on the other employees.

8(b). The learned standing counsel for the respondents'-company further argued that during the year 2020 the petitioner has put in 04 musters against (190) musters, as such the Respondent Company was constrained to take action on him by issuing charge sheet for an unauthorized absenteeism under Company Standing Order. During the

years 2018 and 2019, the Petitioner has put in (24) and (27) musters and he was charge-sheeted vide Charge sheets dt.06.02.2019 and 31.01.2020. Enquiry into the charges leveled against the petitioner was conducted by the Enquiry Officer on 24.06.2021 in which the Petitioner has fully participated in the enquiry proceedings. He was given full and fair opportunity to defend his case. In his deposition before the Enquiry Officer, the petitioner admitted charges mentioned in the charge sheet. He accepted his mistake that he remained absent during the dates mentioned in the charge sheet due to his health problems. However, he did not submit any other documentary evidence about the alleged ill-health which prevented him from remaining absent from duties during entire absenteeism period. As the charges were proved against the petitioner, show cause notice was issued to submit his explanation within 7-days on the findings of the E.O. But, he has not submitted any explanation against enquiry findings. Hence, the respondents' company was constrained to impose the punishment of dismissal from service vide office order dt.12.01.2022.

8(c). The learned standing counsel for the respondents'-company further put forth and set forth that the petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties for 2016 to 2019. But, the Petitioner has failed to improve his attendance and resorted to unauthorizedly absent for duty during the calendar year 2020 also. He failed improve his attendance and even after giving opportunities to improve his attendance, the petitioner continued his absenteeism continuously and there is no improvement in the attendance. The petitioner's misconduct has compelled the Respondent/Management to impose penalty of dismissal which cannot be termed as unjust. The petitioner not utilized the opportunities given by the company and not improved his attendance. Hence, the Respondent Company dismissed him from service vide order dt.12.01.2022, which is justified. Hence, he prayed to dismiss the petition, without granting any relief to the petitioner/workman.

9. Per contra, on the point of jurisdiction and preliminary objection, the learned counsel for the Petitioner/workman has strenuously put forth and set forth that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997(III) LLJ (Supp.)11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has jurisdiction over Singareni Collieries Company Ltd., to entertain the Industrial Dispute raised by the petitioner/workman though the appropriate Govt. is Central Govt., The petitioner need not raise the Industrial Dispute compulsorily before the Central Govt. Industrial Tribunal, Hyderabad alone, as contended by the respondents' company. Hence, this I.D petition filed by petitioner/ workman is well maintainable before this Tribunal for adjudication of the dispute on merits.

9(a). The learned counsel for the Petitioner/workman further strenuously put forth and set forth that the Petitioner/Workman was initially appointed on 01.02.1995, after 10 years service he was dismissed from service on 01.08.2005 and was reinstated into service on 10.10.2014. He suffered from severe ill-health and his wife also underwent treatment frequently. They were imparted medical treatment in the respondents' Company Hospitals and other referral hospitals and due to underground work, his health was not cured. But, alleging absenteeism to duties during year 2020, the petitioner was dismissed from service ante-date vide Ref. dt.12.01.2022. There is sufficient and reasonable cause for the petitioner for not attending to duties during the above charge sheet period. But without considering the true facts, the respondent No.2 dismissed the petitioner from service, illegally.

9(b). The learned counsel for the Petitioner/workman further strenuously put forth and set forth that the petitioner participated in the enquiry, deposed the true facts of his ill-health. But, the enquiry officer did not properly appreciate the facts and he gave his vague findings, which are quite biased and perverse. But, 2nd respondent straight away dismissed him from service vide Ref. dt.12.01.2022. No prior Show Cause Notice was issued to the petitioner proposing the capital punishment of dismissal from service and he was not afforded an opportunity explain as to why the extreme punishment of dismissal shall not be imposed on him. The petitioner's health condition was badly deteriorated and he suffered from serious ill health, during the charge sheeted period and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period.

9(c). The learned counsel for the Petitioner/workman further put forth and set forth that imposing the capital punishment of dismissal from service without any prior show cause notice is against the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job in spite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prayed to set aside the dismissal order and to direct the Respondents'-Company to reinstate the petitioner/workman into service with continuity of service, all consequential attendant benefits and full back wages.

POINT No.1:

10. Here, on the point of territorial jurisdiction of this Tribunal, it is settled Law that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997(III) LLJ(Supp.)11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has got every jurisdiction to entertain the Industrial Dispute raised by the petitioner/workman who was an employee of Singareni Collieries Company Ltd., Even though, the Central Govt. is appropriate Govt., for the respondents'-Company, the petitioner need not compulsorily raise the Industrial Dispute before the Central Govt. Industrial Tribunal, Hyderabad, as contended by the respondents' company; and he can file

this I.D. case before this Tribunal as well. Hence, the contentions of the respondents'-company on the point of jurisdiction of this Tribunal are not sustainable under Law. Accordingly, it is answered in favour of the petitioner and against the respondents' Singareni Collieries Company Limited.

11. Further in this matter, initially the petitioner/workman denied the validity and legality of the enquiry report. But on 17.03.2026, the learned counsel for petitioner filed Memo U/Sec.11-A of I.D Act by accepting the procedure of domestic enquiry to be fair and valid. Hence, it can be said the Enquiry Officer has followed the principles of natural justice. Now the next question is, whether the misconduct is proved in the facts of the case and the findings are not perverse. So, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not based on evidence. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3 :

12. In view of the pleadings of the Petitioner/Workman as well as Respondents/corporation as well as in view of the rival arguments of their respective counsel now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by Proc. dt.12.01.2022 wherein it is alleged that the petitioner was absent from duty without sanctioned leave or sufficient cause during the year 2020. From a perusal of the record, it shows that Charge Sheet dt.05.02.2021 was issued to the petitioner, which is marked as Ex.M-9. It is evident from the charge sheet that the petitioner absented to duties for 360-days and put-in only 04 actual musters during the year 2020. The petitioner submitted his explanation dt.21.05.2021 which is also part of Ex.M-9, wherein he stated that as his wife suffered from ill-health, he was given treatment in the Main Hospital. As there was no body to look after her, he stayed with her and imparted treatment to her. But, his health condition deteriorated and he could not attend his duties during 2020 and requested to pardon him.

13. Further, it is evident that domestic enquiry was conducted and the enquiry proceedings are marked as Ex.M-11. Further, a perusal of Ex.M-11 proceedings of enquiry and enquiry report would goes to show that the Petitioner participated in the domestic enquiry and deposed that he remained absent on the dates as mentioned in the charge sheet and it was his mistake. He admitted that charges and pleaded guilty and deposed that due to his own his wife health problems; he did not attend to his duty. He accepted his mistake for remaining absent for 360 days during the charge sheet year of 2020 and requested to take a lenient view and excuse him. He assured that he will be more careful and will not remain absent without sanction of leave. He further admitted that he was not having any medical treatment slips/reports to produce in the enquiry.

13(a). From the Enquiry Report which is also under Ex.M-11, it is evident that the petitioner absented to duty without sanctioned leave and he accepted the charge made under Company's standing order 25.25 (*Habitual late attendance or habitual absence from duty without sufficient cause*) mentioned in the charge sheet was held proved. The petitioner has not submitted any documents regarding his own health problems and of his wife during enquiry to substantiate his claim. Further, 7-days show cause notice was published in the news paper, which is marked as Ex.M-13. But, he failed submit any explanation/representation to the respondents. The dismissal order dt.12.01.2022 is marked as Ex.M-14 wherein it shows that a show cause notice together with a copy of enquiry report and proceedings was issued to petitioner, so as to make representation against the findings of enquiry. He acknowledged the same and not submitted any representation to it. As the charges leveled and proved being grave and serious, the petitioner was dismissed from service vide Ref dt.12.01.2022.

14. Apart from the above, the petitioner/workman got marked as many as 24 documents as Ex.W-1 to Ex.W-24, which includes 21 medical prescriptions, medical reports and treatment imparted to him and his wife. All the 21 medical documents submitted by the petitioner/workman were issued by the SCCL Hospitals, which prima-facie show that the petitioner/workman and his wife both have suffered from ill-health from 2020 to 2022. The petitioner explained that due to his ill-health problems and of his wife, he absented to duties during the charge sheeted year of 2020 and prayed to consider his case sympathetically. However, it is evident from the enquiry proceedings and enquiry report under Ex.M-11 as well as the material on record that the petitioner had not put in minimum required musters of 190 during the year 2020. For which, he submitted that due to his ill-health and of his wife, he was unable to perform duty regularly during the charge sheet period and submitted medical prescriptions and reports of SCCL hospitals, which are marked as Ex.W-3 to Ex.W-23. Further, the above medical documents of the petitioner lend support to his enquiry statement under Ex.M-11 showing the ill-health suffered by him and his wife. These documents clearly show that the petitioner/workman and his wife were imparted treatment during the charge sheet period. Hence, the defense put-forth by the petitioner is plausible and amount to mitigating circumstances.

14(a). However, it is clear that the petitioner has not attended to duties during the charge sheet period and the charges were amply proved against him. Therefore, it can be said that the respondents/ company has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charges leveled against the petitioner/workman are proved and misconduct of the workman is established basing on the evidence and the findings of enquiry officer are not perverse. But, at the same time much gravity cannot be attributed to the petitioner since his ill-health and treatment imparted by SCCL and other referral hospitals is supported by the medical documents, which show reasonable cause for the petitioner's absence during the charge sheet period.

15. Now the question is whether the punishment of removal from service is disproportionate or not ?.

15(a). It is settled law that the object of I.D.Act is to give succor to weaker sections of the society and it is a social welfare legislation. Here, there is no ***"Plumbline Precision"*** for deciding the proportionality of punishment, which depends upon the facts and circumstances of each case. The Industrial Tribunal/Labour Court is empowered to exercise discretionary powers U/Sec.11-A of Industrial Disputes Act for judicious adjudication of the industrial disputes. Several factors like nature of duty, past service past conduct, previous penalties if any and the discipline required to maintain in the department, victimization and plea of the petitioner/workman and the punishment must be commensurate with the gravity of charges against the petitioner/workman etc., by considering the relevant factors and mitigating circumstances of each case are to be taken into consideration so as to mould the relief appropriately and reduce the punishment imposed on the petitioner/workman.

16. Here, the learned counsel for the petitioner/workman submitted that the Petitioner was appointed in the year 1995 and served the company for quite long years. Further, he has got very few years left over service for superannuation age and that the petitioner submitted medical documents showing that respondents SCCL Hospital imparted treatment to him and his wife. Further, the petitioner hails from a very poor family, he has got no other livelihood and facing untold financial problems, and prayed to consider the case U/Sec.11-A of I.D. Act. Here, the learned counsel for the petitioner relied upon the following citations:-

1. **HON'BLE SUPREME COURT JUDGMENT REPORTED IN AIR 1988 SC 303 – Between: Scooter India Ltd, Labour Court, Lucknow & ors:**

   In this case, the Labour Court while holding that enquiry had conformed to statutory prescriptions and principles of natural justice, yet held that order of termination was not justified and ordered for reinstating employee with 75% back wages. Wide powers are vested in Labour Court or Tribunal. Labour Court can temper justice with mercy and give an opportunity to an erring workman to reform himself. Order of Labour Court granting relief of reinstatement with 75% back wages was upheld by Hon'ble Supreme Court.

2. **HON'BLE HIGH COURT JUDGMENT IN W.A. No.1101/2008 and W.P.No.7671 of 2000, dt.07.04.2009 D.B. Judgment:**

   In this case, the Labour Court granted reinstatement with continuity of service and half-of back wages. The Hon'ble High Court held that since the petitioner remained unemployed from the date of removal, modified the award of Labour Court by granting full back wages.

3. **Judgment of Hon'ble Supreme Court, dt.24.08.2009 in Civil Appeal No.5762 of 2009, Between: Coal India Ltd. & Anr Vs. Mukul Kumar Choudari and others.**

4. **Judgment of Hon'ble Supreme Court dt.14.05.2009 Between: Jagadish Singh Vs. Punjab Engineering College and others.**

In the above Judgments of the Hon'ble Supreme Court at Sl.No.3 and 4 reveals that the punishment should be in commensurate with the gravity of the charges and it should not be shockingly disproportionate. Further, this Tribunal is adhering to the ratio laid down by their Lordships as applicable to the facts of the present case on hand, to the extent of reinstatement only.

17. Here, this Tribunal relied on a Division Bench Judgment of the Hon'ble Supreme Court rendered in Civil Appeal No.2157/1999, dt.08.04.1999 between Ajaib Singh vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd., & another, wherein their lordships held that:-

"The object of Industrial Disputes Act was to give succor to weaker sections of the society. The emergence of the concept of Welfare State implies an end to exploitation of workman and as a corollary to that collective bargaining came into it own. The Legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of Industrial Disputes in a peaceful manner.

"The object of the Act, therefore, is to give succor to weaker sections of the society which is a pre-requisite for Welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life-blood of a developing society. The Act provides a machinery for investigation and settlement of industrial dispute ignoring the legal technicalities with a view to avoid delays, by specially authorized Courts which are not supposed to deny the relief on account of the procedural wrangles".

17(a). Further, in a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:-

"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. The Labour Court/Industrial Tribunal is conferred with very wide discretion U/Sec.11-A of the Act for granting appropriate relief".

18. Here, their Lordships of the Hon'ble Gujarat High Court in a case rendered on 04.05.1994, Between: Management of Glaxo India Ltd., Vs. State of Assam and 3 others categorically observed that ***"a Labour Court is required to settle a dispute according to the principles of natural justice, equity and good conscience and law without attaching undue importance to legal technicalities"***.

19. Further, it is well settled law that if the Industrial Tribunal/ Labour Court is satisfied that the punishment imposed on the petitioner/workman is not justified, the Industrial Tribunal/Labour Court ***is clothed with the power to re-appreciate the evidence*** *in the domestic enquiry and satisfy itself whether the said evidence relied on by the Enquiry Officer or Respondents/Management established the misconduct alleged against the workman. Further, Sec.11-A comes into effect only at the time when the Industrial Tribunal/Labour Court consider about the punishment to be imposed. While previously the Industrial Tribunal/Labour Court had no* ***power to interfere with the punishment****, it is* ***now clothed with such a power****. Apart from the above, Industrial Tribunal/Labour Court should temper justice with mercy and not flog the petitioner/workman to asset our might. The power of ocean does not lie in its tumultuous tides but in its meditative vastness".* My above view is fortified with the observation of their Lordships of Hon'ble Madras High Court in a case Between: ***High Court of Madras Vs. R.D.Santhana Krishnan dt.21st December, 2021.***

20. Here, it is to be noted that the concept of Industrial Dispute is quite broad and with the passage of time its horizon is being expanded. Further, the disputes are required to be resolved for the purpose of establishing peaceful and cordial atmosphere in an industry. Peace and harmony are the quintessential aspects which are to be kept in view while dealing with the *"lis"* or *"controversy"* relating to any industry. Apart from the above, whether the impugned punishment is so disproportionate as to shock the conscience of the Court, has to be decided on the facts of each case, having due regard to the gravity of misconduct & nature of duties discharged by the delinquent employee.

21. Here, it is pertinent to note that the term "misconduct" is the intentional doing of something which the doer knows to be wrong, or which he does recklessly, not caring what the result may be. It includes negligence or want of proper care which an employee is to take. But, it is a fact that ***"to err is human"*** and ***"to forgive is divine".*** Keeping the said spirit into consideration and in the interest of cause of justice, every errant conduct of an employee of an organization could not be treated as grave misconduct. Further, it is settled law that promoting empathy and understanding by encouraging forgiveness, which is a divine quality transcending human limitation, should be preferred to anything else in the given circumstances. My above view is fortified by observation of their Lordships of the Hon'ble Supreme Court in a judgment rendered Between: ***Ratilal Jhaverbhai Parmar Vs State Of Gujarat dt.21st October, 2024.***

22. Further, the Hon'ble Madras High Court observed in a case rendered in *Management of Hyudai Motor India Ltd Vs. T.Sudhakar ... on 31st January, 2022:*

*"**When scales of justice stands balanced in a given case, the tilt to be exercised should be in favour of the poor workmen rather than the mighty Managements**."*

23. Here, I am of the opinion that for promoting ethical behavior and integrity for Public Servants, the Latin Maxim *(Memento Mori: remember that you must die")* acts as a check against selfish to selfless service. It serves as a reminder that: "*when office is gone, only the legacy of their character remains".* So, the old Adam or old Man or old-self of him or her must die. Otherwise, it will kill them. In summary, Memento *Mori* serves as a Sobering, yet empowering reminder that allows Public Servants to focus on leaving a positive, lasting impact rather than chasing, selfish and temporary goals.

24. Therefore, by taking a holistic view of the matter, I am of the considered view that the extreme punishment of removal imposed by the respondents/corporation against the petitioner/workman is harsh, disproportionate and shocks to conscience of this Tribunal, hence, deserves to be modified since the disciplinary authority cannot be permitted to act arbitrarily and work like a Roman Knight and it cannot be allowed a fight between David and Goliath as in the present case on hand. Moreover, facts of this case attracts the proverbial saying *"Every saint has a past and every sinner has a future"* and Biblical proverbs *"Speak up for those who cannot speak for themselves, for the rights of all who are destitute*" and *"Speak up and judge fairly; defend the rights of the poor and needy."* Further, *"Heavens would not have fallen if one more opportunity is given for the petitioner".*

25. This Tribunal has perused, analyzed and meditated upon the case at hand, the case laws and principles of law referred above. In view of the above facts and circumstances and keeping in view of the principle *"temper justice with*

mercy" and to meet the ends of justice, this Tribunal is of the opinion that the punishment of removal from service imposed on the petitioner is disproportionate and shocks the conscience of this Tribunal and hence, it deserves to be modified appropriately. It appears from the record that the petitioner rendered service of 8-years only in the respondents' company and he is out of employment ever since his dismissal from service. Hence, this Tribunal is of the considered view that denial of entire back wages, continuity of service and all other attendant benefits during the intervening period from the date of his dismissal to till date and further ***"Deferment of Annual Increments for a period of TWO YEARS with cumulative effect"*** would be a deterrent punishment to the petitioner. However, the past service rendered by the petitioner shall be protected and counted for all purposes. Further, the petitioner shall be kept under observation for a period six (6) months and in case he commits any misconduct, the respondents' company is at liberty to take stern disciplinary action against him. Hence, the punishment of dismissal from service imposed by the Respondents' Company is hereby modified. Accordingly, the Points 2 & 3 are answered.

26. **IN THE RESULT**, the petition is partly allowed. The dismissal order dt.12.01.2022 under Ex.M-14/Ex.W-1 issued by the Respondent No.2 is hereby modified. The respondents' company is directed to reinstate the petitioner into service, but without any back wages, without any continuity of service and without any attendant benefits during the intervening period from removal till date and it shall be treated as "not on duty" for all purposes. However, the past service rendered by the petitioner shall be protected and counted for all purposes. ***Further, his Annual Increments shall he deferred for a period of TWO YEARS with cumulative effect".*** Further, the petitioner shall be kept under observation for a period six (6) months and in case he commits any misconduct, the respondents' company is at liberty to take stern disciplinary action against him. The petitioner is entitled to the salary only from the date of publication of the Award. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open Court, on this the 26th day of March, 2026.

Dr. T. SRINIVASA RAO**,** Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-	FOR MANAGEMENT:-
-Nil-	-Nil-

EXHIBITS MARKED

FOR WORKMAN:-

Ex.W-1	Dt.	12.01.2022	Dismissal order issued by the Respondent No.2.
Ex.W-2	Dt.	14.01.2022	Name removal memo issued by the Respondent No.1.
Ex.W-3	Dt.	20.12.2019	SCCL Hospital medical prescription of petitioner from 20.12.2019 to 30.12.2019.
Ex.W-4	Dt.	03.01.2020	SCCL Hospital medical prescription of petitioner from 03.01.2020 to 11.01.2020.
Ex.W-5	Dt.	21.01.2020	SCCL Hospital medical prescription of petitioner from 21.01.2020 to 08.02.2020.
Ex.W-6	Dt.	20.02.2020	SCCL Hospital medical prescription of petitioner from 20.02.2020 to 22.02.2020.
Ex.W-7	Dt.	24.02.2020	SCCL Hospital medical prescription of petitioner from 24.02.2020 to 11.03.2020.
Ex.W-8	Dt.	19.03.2020	SCCL Hospital medical prescription of petitioner from 19.03.2020 to 16.04.2020.
Ex.W-9	Dt.	16.04.2020	SCCL Hospital medical prescription of petitioner dt.16.04.2020.
Ex.W-10	Dt.	18.04.2020	SCCL Hospital medical prescription of petitioner from 18.04.2020 to 10.09.2020.
Ex.W-11	Dt.	16.12.2020	SCCL Hospital medical prescription COVID-19 Test Negative result referred to SCCL Area Hospital.
Ex.W-12	Dt.	16.12.2020	SCCL Hospital referred to SCCL Area Hospital for medical examination and Fitness.
Ex.W-13	Dt.	16.12.2020	SCCL Area Hospital medical prescription from 16.12.2020 to 05.01.2021.
Ex.W-14	Dt.	21.12.2020	SCCL dispensary medical prescription of petitioner from 21.12.2020 to 08.01.2021.
Ex.W-15	Dt.	02.02.2021	SCCL dispensary medical prescription of petitioner from 02.02.2021 to 10.04.2021.
Ex.W-16	Dt.	01.06.2021	SCCL dispensary medical prescription of petitioner

Ex.W-17	Dt.	14.09.2021	SCCL dispensary medical prescription of petitioner and reference to Area Hospital.
Ex.W-18	Dt.	14.09.2021	SCCL Area Hospital medical prescription from 14.09.2021 to 29.12.2021.
Ex.W-19	Dt.	12.10.2021	SCCL dispensary medical prescription of petitioner
Ex.W-20	Dt.	14.10.2021	SCCL Area Hospital medical prescription of petitioner and X-ray chest advice.
Ex.W-21	Dt.	29.12.2021	SCCL Area Hospital medical prescription of petitioner.
Ex.W-22	Dt.	10.01.2022	SCCL Area Hospital medical prescription of petitioner from 10.01.2022 to 17.03.2022.
Ex.W-23	Dt.	17.08.2022	SCCL dispensary medical prescription of petitioner
Ex.W-24	Dt.	16.06.2025	O/c Demand Letter with R.P receipt.

FOR MANAGEMENT :-

Ex.M-1	Dt.	10.10.2014	Attested copy of reinstatement of petitioner vide Order No. CRP/PER/IRPM/I/301/3568
Ex.M-2	Dt.	27.02.2017	Attested Copy of charge sheet issued to petitioner vide Lr.No.MMR/KK-5/ R-07/17/691.
Ex.M-3	Dt.	04.03.2017	Attested Copy of Enquiry Notice to the petitioner vide Lr.No.MMR/KK5/R/ 010/17/761
Ex.M-4	Dt.	09.03.2017	Attested Copy of Enquiry proceedings
Ex.M-5	Dt.	23/ 28.10.2020	Attested Copy of Stoppage of one increment without cumulative effect by Lr. No.MMR/PER/D/072/ 20/ 6289 .
Ex.M-6	Dt.	31.01.2020	Attested Copy of charge sheet issued to petitioner vide Lr.No. MMR/KK-5/R/ 007/20/531.
Ex.M-7	Dt.	01.06.2020	Attested Copy of Enquiry Notice to the petitioner vide Lr.No.MMR/KK5/R/010/ 2020/2071.
Ex.M-8	Dt.	05.06.2020	Attested Copy of Enquiry proceedings.
Ex.M-9	Dt.	05.02.2021	Attested Copy of charge sheet issued to petitioner vide Lr.No.MMR/KK-5/R/007/21/543.
Ex.M-10	Dt.	15.06.2021	Attested Copy of Enquiry Notice to the petitioner vide Lr.No. MMR/KK5/R/ 010/2021/2402.
Ex.M-11	Dt.	24.06.2021	Attested Copy of Enquiry proceedings
Ex.M-12	Dt.	-	Attested copy of Notice served to the petitioner for charge sheet dt:05.02.2021.
Ex.M-13	Dt.	26.11.2021	Attested copy of show cause notice published in Telugu Daily News paper.
Ex.M-14	Dt.	12.01.2022	Attested Copy of Dismissal Order of the Petitioner vide Lr.No.MMR/PER/ D/072/22/198.

नई दिल्ली, 4 जून, 2026

का.आ. 1158. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14)की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय-सह- अतिरिक्त। जिला. एवं सत्र न्यायालय, गोदावरीखानी के पंचाट (**पहचान संख्या. 55/2025**) को प्रकाशित करती है,

[सं. एल-22013/01/2026-आईआर(सी एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 55/2025*)*** of the **INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI** as shown in the Annexure, in the industrial dispute between the Management of **S. C. C. L.** and their workmen,

[No. L-22013/01/2026–IR(CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI.

PRESENT:- **SRI Dr.T.SRINIVASA RAO,**

CHAIRMAN-CUM-PRESIDING OFFICER.

FRIDAY, ON THIS THE 06th DAY OF MARCH, 2026.

I.D.No. 55 of 2025

Between:-

Menugu Sammaiah, S/o.Rayamallu, Age: 51 years, E.C.No. 1208724, Ex-General Mazdoor, H.No.2-1-98/11, Near Bus Stand Colony, Godavarikhani, District:Peddapalli – 505 209.

… Petitioner/Workman.

AND

1. The Superintendent of Mines, GDK.No.9-Incline, SCCL, Ramagundam Area-II, District: Peddapalli.
2. The General Manager, Singareni Collieries Company Ltd. Ramagundam Area-II, 8-Incline Colony, District: Peddapalli.
3. The Chairman & Managing Director, Singareni Collieries Company Ltd., Kothagudem, Dist:Bhadradri Kothagudem.

...Respondents/Management.

This case coming before me for final hearing in the presence of Sri Meda Chakarapani, Advocate for the Petitioner/Workman and of Sri T. Ravinder Singh, Standing Counsel for the Respondents/Management; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

This petition is filed U/Sec.2-A (2) of I.D. Act praying to set aside the dismissal order dt.24.12.1998 passed by the Respondent No.2 and direct the Respondents' Company to reinstate the petitioner into service with continuity of service, together with all attendant benefits and full back wages.

2. The alpha and omega of the case of the petitioner is as follows:-

2(a). The petitioner was appointed as Badli Filler by the respondents' company during the year 1988, he was promoted as General Mazdoor and he discharged his duties to the utmost satisfaction of his superiors for more than (10) years without any kind of adverse remarks. While he was working under the control of the Respondent No.1, he suffered from severe severe ill-health and unable to attend to his duties regularly. He was compelled to take treatment in the respondents' SCCL Hospital, but the Respondent No.1 issued charge sheet dt.03.04.1998 alleging that the petitioner absented to duties in 1997:-

> *"25.25: Habitual late attendance or habitual absence from duty without sufficient cause during the year 1997".*

2(b). The petitioner gave his satisfactory explanation to the charge sheet, participated in the domestic enquiry and requested to take a lenient view. There is reasonable and sufficient cause for the alleged absence of the petitioner and putting (33) musters during year 1997 and from 1988 till 1994 he put-in more than (200) musters per year. From the year 1995, he was not keeping good health and was suffering from frequent ill-health. Due to ill-health, he could put in (57) musters during the year 1995 and (83) musters during the year 1996. But, the Respondent No.2 unjustly dismissed him from service by Ref. dt.24.12.1998 with effect from 25.12.1998.

2(c). Further, there is sufficient and reasonable cause for the alleged absence of the petitioner. He suffered from serious ailment and ill-health and he submitted Medical Certificates of SCCL and other hospitals to the respondents. As such, it cannot be termed as serious misconduct warranting the extreme punishment of dismissal from service. Imposing the capital punishment of dismissal from service without any prior show cause notice is against the mandatory provisions and contrary to the principles of natural justice. Further, extremely harsh punishment of dismissal from service is highly excessive and shockingly disproportionate and it amounts to economic death of the petitioner, which is not at all warranted.

2(d). Ever since his unjust dismissal from service, the petitioner could not secure any other alternative job & remained unemployed. He lost lively hood and incurred huge debts for his medical and domestic expenses. He is facing lot of hard ship and misery to eke out lively hood for all his family members. He approached respondents several times, submitted representations to the Director (PA&W) requesting to reinstate him into service, but all his efforts went invain. Further, as per letter dt.01.11.2000 of the Respondent No.1, the petitioner appeared before the Head Office, Kothagudem on 08.11.2000, but he was not reinstated into service; he lost hopes on the respondents and approaching this court. The limitation of 3 years was brought into force as per the Amendment Act 2010 and the petitioner was dismissed from service prior to the said Amendment Act. As such, the limitation period is not applicable to this case of 1998. Due to domestic and financial problems, the petitioner could not approach this Hon'ble Court earlier; and the delay if any in filing this case may please be condoned by this Hon'ble Court. This Court has got every jurisdiction to try the case U/Sec.2-(A) (2) of I.D. Act, as per the settled law declared by the Hon'ble High Court. Therefore, he prays to set aside the dismissal order issued by the Respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all consequential attendant benefits and full back wages.

3. On the other side the Respondents/Management filed counter by admitting the employment of the Petitioner/Workman with the Respondents'-Company, however, inter-alia contended that the at the outset the Respondent No.1 to 3 denies all the material averments of the Petition, except those which are specifically admitted herein. It is to further submit that in view of the settled Legal Position the present I.D is hopelessly barred by Limitation. The petitioner was dismissed w.e.f., 25.12.1998 vide Lr.No. P.RG.II/CF/MS/3140, dt.24.12.1998 and he ought to have filed the Industrial Dispute long back. But, he filed this I.D in the month of July, 2025 after a lapse of (27) years from the date of dismissal Order U/Sec.2-(A)(2)(A.P.Amendment Act No.32 of 1987) of Industrial Dispute Act, 1947 trying to bring the I.D within the period of Limitation which otherwise is barred by Limitation.

3(a). The Respondent Company is a Government Company incorporated under the provisions of Companies Act, 1956 for carrying out the business of winning and selling the coal. Since the coal mining industry is a central subject, Appropriate Government for this Respondent management is Central Government. As per Sec.7A (I) of Industrial Disputes Act 1947, Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29.12.2000 for adjudication of industrial disputes and the Petitioner ought to have approached the said tribunal for the redressal of grievance, if any. But, he conveniently avoided filing his petition before the Tribunal established by the Central Govt., for the reasons best known to him. The petition is not maintainable under law and the same may be dismissed on this ground alone. The maintainability of the dispute raised by the petitioner before this Court may be decided as preliminary issue before proceeding with the trial. The repealing and Amending Act No.23 of 2016 is not helpful to the petitioner as the same was incorporated in to the parents Act. Hence this petition filed by the Petitioner is not maintainable and liable to be dismissed.

3(b). Without prejudice to the preliminary objection raised as above, an underground employee is required to put in minimum musters of (190) and surface employees is to put in (240) musters. The petitioner was initially appointed into the services of the Respondent Company Badli Worker on 10.02.1998 and he worked as General Mazdoor at GDK-9 Incline of RG-II Area. He was dismissed from service on the ground of absenteeism with effect from 25.12.1998 vide letter dt.24.12.1998. He did not put in minimum (190) Musters of attendance from the date of his appointing year to till his dismissal from service. In the year 1997, he has put in only 33-musters against 190 musters which is less than 20% of attendance. As such, the Respondent Company was constrained to issue charge sheet dt.03.04.1998, for unauthorized absenteeism under Company Standing Order. The relevant clause of Standing orders reads as under:

25.25: Habitual Late attendance or habitual absence from duty without sufficient cause.

A written enquiry was conducted, in which he fully participated in the enquiry proceedings dt.18.11.1998. He was given full and fair opportunity to defend his case. The charges leveled against the petitioner were proved and he was issued a show cause notice to submit his explanation within (07) days and he was dismissed from service w.e.f., 25.12.1998, vide letter dt.24.12.1998.

3(c). Further, the petitioner's failure to keep atleast 100 musters in the years 1993, 1995, 1996 and relying on the Standing Orders the petitioner was dismissed from the services of the Company. The petitioner being a habitual and chronic absentee, the respondent company was constrained to dismiss him from service due to his misconduct. It is the petitioner's misconduct which has compelled the respondents/management to impose penalty of dismissal from service. The Enquiry Officer has conducted enquiry proceeding duly following the principles of natural justice and by affording full and fair opportunity to the petitioner to defend his case. Further, as per Article-311 (1) of Constitution

of India, issue of show cause notice proposing punishment is not a requirement of principles of natural justice. Moreover, the respondent company's standing orders which were approved as per the provisions of Industrial Employment (Standing Orders) Act, 1946, do not speak about issue of show cause notice proposing the punishment to be imposed on the delinquent employee. Hence, there is no victimization nor the punishment of dismissal is harsh. The Respondent Company was very much correct in imposing the punishment of dismissal because of the misconduct and the reckless attitude of the Petitioner.

3(d). Further, the Respondents'-Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remains absent without prior sanction of leave or without any justified cause, the work to be performed gets effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on other employees. The Respondent/ Management cannot be held responsible for the alleged debts and unemployment and the other allegations of the petition are denied. Hence, the Respondents prayed to dismiss the petition, without granting any relief to the petitioner.

4. No documents were marked on behalf of the Petitioner/ Workman and on the other side for the Respondents'-Company Ex.M-1 and Ex.M-2 were marked, with consent.

5. Arguments of the learned counsel for Petitioner/workman as well as the learned standing counsel for the Respondents/ Management heard. Perused the record produced before this Tribunal, their rival arguments and citations.

6. ***Now the points for consideration are:-***

1. ***Whether this Tribunal has jurisdiction to entertain this I.D; and whether the domestic enquiry conducted by the respondents is held valid or not?***
2. ***Whether the charge leveled against the petitioner is proved basing on evidence or not?***
3. ***Whether the dismissal order dt.24.12.1998 is liable to be set aside, if so, the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?***

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents' Company, these are the admitted facts that the petitioner/ workman worked as General Mazdoor in the Respondents'-Company and he was dismissed from service. Now coming to the documentary evidence on both sides, on behalf of Respondents'/ Company, Ex.M-1 and Ex.M-2 were marked, wherein, Ex.M-1 is attested copy of Dismissal Order of the Petitioner vide Lr.No. P.RG.II/CF/MS/3140 and Ex.M-2 is attested copy of Name Removal order of the petitioner vide Lr.No.9/98/B-3/4794. The above documents are not in dispute by the petitioner/workman.

8. Here, the learned standing counsel for the respondents'-company has strenuously argued and raised a Preliminary Objection in the Counter that since the coal mining industry is a central subject the Appropriate Government for Respondent/ Management is Central Government, which established Central Govt. Industrial Tribunal, at Hyderabad for adjudication of Industrial Disputes and the petitioner ought to have approached the said Tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and approached this Tribunal; hence it is not maintainable under law and the same may be dismissed on this ground alone.

8(a). Further, the learned counsel for the respondents-company strenuously contended that the petitioner raised the dispute after long lapse of more than 27-years. The Industrial Disputes (Amendment) Act 2010 was incorporated into parents Act i.e., in Industrial Disputes Act 1947 by inserting Sec.2 (A) (2) and (3). Hence, the repealing and Amending Act No.23 of 2016 is not helpful to the petitioner hence the petition filed by the Petitioner is not maintainable and liable to be dismissed. Therefore, he prayed to dismiss the petition on the ground of maintainability itself and not to grant any relief to the petitioner.

8(b). The learned standing counsel for the respondents'-company without prejudice to the above preliminary objection; has put forth and set forth that the petitioner was appointed as Badli Worker on 10.02.1998 and he being an underground employee is expected to put minimum (190) Musters in a calendar year. But, he was not regular to his duties and did not put-in (190) musters from the date of his appointing year to till his dismissal from the services. During the year 1997 the petitioner has put-in only (33) musters for which he was issued with charge sheet. If he was really suffering from ill-health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything. The Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remains absent without prior sanction of leave or without any justified cause, the work to be performed gets effected. Such

unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on the other employees.

8(c). The learned standing counsel for the respondents'-company further argued that enquiry into the charge leveled against the petitioner was conducted by the Enquiry Officer in which the Petitioner has fully participated in the enquiry proceedings on 18.11.1998. He was given full and fair opportunity to defend his case. As the charges were proved against the petitioner, show cause notice was issued to submit his explanation within 7-days on the findings of the E.O.

8(d). The learned standing counsel for the respondents'-company further put forth and set forth that the petitioner was given number of opportunities to correct himself. But, even after giving opportunities to improve his attendance, the petitioner continued his absenteeism and there is no improvement in the attendance. The petitioner's misconduct has compelled the Respondent/ Management to impose penalty of dismissal which cannot be termed as unjust. The petitioner not utilized the opportunities given by the company and not improved his attendance. Hence, the Respondent Company dismissed him from service vide order dt.24.12.1998, which is justified. Further, the petitioner's age was 29 years as on 04.01.1988 which shows that he was born on 04.01.1959. As such, he attained superannuation age of 61 years by 31.01.2020 itself and he is not entitled to the relief of reinstatement at all. Hence, he prayed to dismiss the petition, without granting any relief to the petitioner/workman.

9. Per contra, on the point of jurisdiction and preliminary objection, the learned counsel for the Petitioner/workman has strenuously put forth and set forth that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997(III) LLJ (Supp.)11, Between: U.Chinnappa Vs. Cotton Corporation of India, this Tribunal has jurisdiction over Singareni Collieries Company Ltd., to entertain the Industrial Dispute raised by the petitioner/workman though the appropriate Govt. is Central Govt., The petitioner need not raise the Industrial Dispute compulsorily before the Central Govt. Industrial Tribunal, Hyderabad alone, as contended by the respondents' company. Hence, this I.D petition filed by petitioner/ workman is well maintainable before this Tribunal for adjudication of the dispute on merits.

9(a). Further, regarding the above contention of learned counsel for the respondents'/company that this I.D. is not maintainable as barred by Limitation, the learned counsel for the petitioner/ workman strenuously contended that though the petitioner was dismissed from service by order dt.24.12.1998 and he moved before the respondents through union leaders and as per the call letter dt.01.11.2000, he appeared before the Head Office on 08.11.2000. After moving from pillar to post before respondents' company authorities, the petitioner lost all his hopes approached this Tribunal and filed the I.D. petition on 06.11.2015. But, it was returned on the Bench by docket order dt.01.08.2019 and after its re-submission, this Tribunal registered the same on 14.07.2025. Hence, there is continuation of cause of action, the delay cannot be attributed to the petitioner and the dispute is alive. Apart from the above, he contended that I.D. (Amendment) Act, 2010 as whole was repealed by the Central Government long back in the year 2016 itself vide the Gazette of India dated 09th May, 2016; and hence limitation period is not applicable to the provisions of Industrial Disputes Act. Therefore, this petition is not barred by limitation and deserved to be adjudicated by this Tribunal on merits of the case.

9(b). The learned counsel for the Petitioner/workman further strenuously put forth and set forth that the Petitioner/Workman was appointed during the year 1988 as Badli Worker and further he was promoted as General Mazdoor. He suffered from chronic ill-health, and was imparted prolonged medical treatment. But, alleging absenteeism to duties during year 1997, the petitioner was dismissed from service vide Ref. dt.24.12.1998. There is sufficient and reasonable cause for the petitioner for not attending to duties during the above charge sheet period. But without considering the true facts, Respondent No.2 dismissed the petitioner from service, illegally.

9(c). The learned counsel for the Petitioner/workman further strenuously put forth and set forth that the petitioner participated in the enquiry and deposed the true facts of suffering from ill-health. The enquiry officer did not properly appreciate the facts and he gave his vague findings, which are quite biased and perverse. But, respondent No.2 straight away dismissed him from service vide Ref. dt.24.12.1998. No prior Show Cause Notice was issued to the petitioner proposing the capital punishment of dismissal from service and he was not afforded an opportunity explain as to why the extreme punishment of dismissal shall not be imposed on him. The petitioner's health condition was badly deteriorated and he suffered from serious ill-health, during the charge sheeted period and there is sufficient and reasonable cause for not attending to duties during charge sheet period.

9(d). The learned counsel for the Petitioner/workman further put forth and set forth that imposing the capital punishment of dismissal from service without any prior show cause notice is against the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job in spite of his best efforts. He hails from a very poor family and has no other source of livelihood. Further as the petitioner attained superannuation age of 61 years in January 2020, he prayed to

set aside the dismissal order and to direct the Respondents'-Company to treat the petitioner/workman was deemed to be retired from service with continuity of service and all consequential attendant benefits, granting all service benefits, pension and full back wages.

POINT No. 1:

10. Here, on the point of territorial jurisdiction of this Tribunal, it is settled Law that as per Division Bench Judgment of Hon'ble High Court reported in 1997(III)LLJ(Supp)11,Between: U.Chinnappa Vs. Cotton Corporation of India, this Tribunal has got every jurisdiction to entertain the Industrial Dispute raised by the petitioner/ workman who was an employee of Singareni Collieries Company Ltd., Even though, the Central Govt. is appropriate Govt., for the respondents'-Company, the petitioner need not compulsorily raise the Industrial Dispute before the Central Govt. Industrial Tribunal, Hyderabad, as contended by the respondents' company; and he can file this I.D. case before this Tribunal as well. Hence, the contentions of the respondents'-company on the point of jurisdiction of this Tribunal are not sustainable under Law.

10(a). Further, with regard to the contention of delay and barred by limitation, this Tribunal relied on a D.B. Judgment of the Hon'ble Supreme Court in Civil Appeal No.2157/1999, dt.08.04.1999 between Ajaib singh vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd., & another, wherein their lordships held that:-

"Article 137 of schedule of Limitation Act not applicable to the proceedings under I.D. Act. The object of Industrial Disputes Act was to give succor to weaker sections of the society. The emergence of the concept of Welfare State implies an end to exploitation of workman and as a corollary to that collective bargaining came into it own. The Legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of Industrial Disputes in a peaceful manner.

The object of the Act, therefore, is to give succor to weaker sections of the society which is a pre-requisite for Welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life-blood of a developing society.

The Act provides a machinery for investigation and settlement of industrial dispute ignoring the legal technicalities with a view to avoid delays, by specially authorized Courts which are not supposed to deny the relief on account of the procedural wrangles".

10(b). Further, relied on a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships held that:-

"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. Merely because workman approached to Labour Court with delay, relief cannot be denied. No indication in the Act that delay extinguishes right conferred on the workmen under Industrial Law. The Labour Court is conferred with very wide discretion U/Sec.11-A from considering the delay on part of workmen in granting relief.

Section 2-A (2) or Section 10(1) of the Act do not prescribe any period of limitation for raising industrial dispute. Articles 137 of the Limitation Act, 1963 has no application (Ajaib Singh's case supra). Merely because the workmen approached the Industrial Court with delay, the relief cannot be denied. The Act nowhere gives an indication that the delay extinguishes the right conferred on workmen under the Industrial Law. The Industrial Court conferred with very wide discretion U/Sec.11-A of the Act, is not precluded from considering the delay on the part of workman in granting relief".

10(c). Further, the Hon'ble Gujarath High Court following the Hon'ble Supreme Court, in a judgment dt.15.02.2020 Between: Dharampur Nagarpalika Vs. Mahendrasinh Narsinh Padhiyar their Lordship have observed that:-

(a) Law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.

(b) The words 'at any time' used in Section 10 would support that there is no period of limitation in making an order of reference.

(c) At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.

(d) Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard and fast rule regarding the time for making the order of reference.

> Their Lordships have further held that: *This Court shall need to regard, of course, the later decision which speaks of grant of back wages as if he was not illegally terminated. However, the period for which there is no initiative taken by him from the year 1995 to 2001, the same will have to be treated as dias-non. It is also not possible for a driver not to be working for all these years with his skill as a Driver and therefore, according to this Court, C/SCA/2404/2017 JUDGMENT the back wages shall have to be reduced to 80% from the date of filing of the reference as dias-non.*

10(d). Apart from the above, their Lordships of the Division Bench of Hon'ble Rajasthan High Court in a recent decision Between: ***Heera Ram Vs. Assistant Engineer, Irrigation and others, dt.08.02.2023***, wherein their lordships held that:-

> *...Law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference, dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence, the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. ... we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government."*

10(e). It is not in dispute that in the present case on hand, the petitioner was dismissed from service by the Respondent No.2/ General Manager vide Ref. dt.24.12.1998. The learned counsel for the petitioner strenuously contended that the petitioner moved before the respondents through union leaders. As per the call letter dt.01.11.2000, he appeared before the Head Office on 08.11.2000. Further, after moving from pillar to post, he lost all his hopes approached this Tribunal and filed the I.D. petition on 06.11.2015. But, it was returned on the Bench by docket order dt.01.08.2019 and later on re-submission on 02.07.2025, this Tribunal registered the same on 14.07.2025. Thus, there is continuation of cause of action and the dispute is alive. Hence, there is no abnormal delay on the part of the petitioner, the dispute cannot be said to be stale or non-existent and the dispute is alive and deserves to be adjudicated by this Tribunal judiciously.

11. Therefore, in view of the above cited decisions and facts and circumstances of the present case on hand, I am of the considered view that there is no force in the contention of the learned counsel for Respondents/Company with regard to delay. Further, it is a fact the whole I.D. (Amendment) Act, 2010 was repealed by the Central Government vide the Gazette of India dated 09th May 2016 and limitation period is not applicable to the provisions of Industrial Disputes Act. But, this Tribunal has to mould the relief by considering the facts and circumstances of each case. **Hence, the doubts raised by the learned counsel for the respondents are like that of a *"Doubting Thomas"*, which are not real and tangible doubts.** Accordingly, it is answered in favour of the petitioner and against the respondents' Singareni Collieries Company Limited.

12. Further in this matter, initially the petitioner/workman denied the validity and legality of the enquiry report. But on 18.02.2026, the learned counsel for petitioner filed Memo U/Sec.11-A of I.D Act by accepting the procedure of domestic enquiry to be fair and valid. Hence, it can be said the Enquiry Officer has followed the principles of natural justice. Now the next question is, whether the misconduct is proved in the facts of the case and the findings are not perverse. So, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not based on evidence. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3 :

13. In view of the pleadings of the Petitioner/Workman as well as Respondents/corporation as well as in view of the rival arguments of their respective counsel now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by Ref. dt.24.12.1998 wherein it is alleged that the petitioner was absent from duty without sanctioned leave or sufficient cause and he has put-in (37) musters only during the year 1997. From a perusal of the dismissal order under Ex.M-1, it shows that Charge Sheet dt.03.04.1998 was issued to the petitioner. It is also evident that domestic enquiry was conducted wherein the petitioner/ workman participated in the enquiry. Further, report dt.18.11.1998 was submitted by the enquiry officer and the charge was held proved against the petitioner. The petitioner was given opportunity to submit his representation on the enquiry findings report within 7-days, but he did not choose to submit any representation. From the above dismissal order dt.24.12.1998 under Ex.M-1 wherein the Respondent No.2 considered that the charge leveled and proved against the petitioner being grave and serious, he was dismissed from services of Company w.e.f., 25.12.1998.

13(b). Here, it is not in dispute by both parties that the petitioner has put-in (37) musters only during the year 1997, for which charge sheet was issued and after regular domestic enquiry, the Respondent No.2 issued dismissal order dt.24.12.1998. It is also not in dispute that the petitioner has not attended to duties during the charge sheet period, though he contends that due to ill-health he took treatment during that period. Further, it is conceded by the petitioner that the charge was amply proved against him during enquiry. Therefore, it can be said that the respondents/company has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charge leveled against the petitioner/ workman is proved and misconduct of the workman is established basing on the evidence and the findings of enquiry officer are not perverse.

14. Now the question is whether the punishment of removal from service is disproportionate or not?

14(a). It is settled law that the object of I.D.Act is to give succor to weaker sections of the society and it is a social welfare legislation. Here, there is no ***"Plumbline Precision"*** for deciding the proportionality of punishment, which depends upon the facts and circumstances of each case. The Industrial Tribunal/Labour Court is empowered to exercise discretionary powers U/Sec.11-A of Industrial Disputes Act for judicious adjudication of the industrial disputes. Several factors like nature of duty, past service past conduct, previous penalties if any and the discipline required to maintain in the department, victimization and plea of the petitioner/workman and the punishment must be commensurate with the gravity of charge against the petitioner/workman etc., by considering the relevant factors and mitigating circumstances of each case are to be taken into consideration so as to mould the relief appropriately and reduce the punishment imposed on the petitioner/workman.

15. Here, the learned counsel for petitioner/workman submitted that the Petitioner was appointed in the year 1988 and rendered service of about 10-years. Apart from the above, the petitioner/ workman filed Memo U/Sec.11-A of I.D.Act wherein he clearly submitted that he attained superannuation age and conceded that he was born in 1959. Further, wide powers are vested in Labour Court or Tribunal and it can temper justice with mercy. The petitioner remained unemployed from the date of dismissal, he hails from a very poor family, he has got no other livelihood and facing untold financial problems, and prayed to consider the case U/Sec.11-A of I.D. Act., by granting full back wages, all attendant benefits, retirement benefits and pension benefits, along with continuity of service to the petitioner.

16. Here, this Tribunal relied on a Division Bench Judgment of the Hon'ble Supreme Court rendered in Civil Appeal No.2157/1999, dt.08.04.1999 between Ajaib Singh vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd., & another, wherein their lordships held that:-

"The object of Industrial Disputes Act was to give succor to weaker sections of the society. The emergence of the concept of Welfare State implies an end to exploitation of workman and as a corollary to that collective bargaining came into it own. The Legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of Industrial Disputes in a peaceful manner.

"The object of the Act, therefore, is to give succor to weaker sections of the society which is a pre-requisite for Welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life-blood of a developing society. The Act provides a machinery for investigation and settlement of industrial dispute ignoring the legal technicalities with a view to avoid delays, by specially authorized Courts which are not supposed to deny the relief on account of the procedural wrangles".

16(a). Further, in a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:-

> *"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. The Labour Court/Industrial Tribunal is conferred with very wide discretion U/Sec.11-A of the Act for granting appropriate relief".*

17. Here, their Lordships of the Hon'ble Gujarat High Court in a case rendered on 04.05.1994, Between: Management of Glaxo India Ltd., Vs. State of Assam and 3 others categorically observed that ***"a Labour Court is required to settle a dispute according to the principles of natural justice, equity and good conscience and law without attaching undue importance to legal technicalities"***.

18. Further, it is well settled law that if the Industrial Tribunal/ Labour Court is satisfied that the punishment imposed on the petitioner/workman is not justified, the Industrial Tribunal/ Labour Court ***is clothed with the power to reappraise the evidence*** *in the domestic enquiry and satisfy itself whether the said evidence relied on by the Enquiry Officer or Respondents/ Management established the misconduct alleged against the workman. Further, Sec.11-A comes into effect only at the time when the Industrial Tribunal/Labour Court considers about the punishment to be imposed. While previously the Industrial Tribunal/Labour Court had no* ***power to interfere with the punishment****,* ***it is now clothed with such a power****. Apart from the above, Industrial Tribunal/Labour Court should temper justice with mercy and not flog the petitioner/ workman to asset our might. The power of ocean does not lie in its tumultuous tides*

but in its meditative vastness". My above view is fortified with the observation of their Lordships of Hon'ble Madras High Court in a case Between: ***High Court of Madras Vs. R.D.Santhana Krishnan dt.21st December, 2021.***

19. Here, it is to be noted that the concept of Industrial Dispute is quite broad and with the passage of time its horizon is being expanded. Further, the disputes are required to be resolved for the purpose of establishing peaceful and cordial atmosphere in an industry. Peace and harmony are the quintessential aspects which are to be kept in view while dealing with the *"lis"* or *"controversy"* relating to any industry. Apart from the above, whether the impugned punishment is so disproportionate as to shock the conscience of the Court, has to be decided on the facts of each case, having due regard to the gravity of misconduct & nature of duties discharged by the delinquent employee.

20. Here, it is pertinent to note that the term "misconduct" is the intentional doing of something which the doer knows to be wrong, or which he does recklessly, not caring what the result may be. It includes negligence or want of proper care which an employee is to take. But, it is a fact that ***"to err is human"*** and ***"to forgive is divine".*** Keeping the said spirit into consideration and in the interest of cause of justice, every errant conduct of an employee of an organization could not be treated as grave misconduct. Further, it is settled law that promoting empathy and understanding by encouraging forgiveness, which is a divine quality transcending human limitation, should be preferred to anything else in the given circumstances. My above view is fortified by observation of their Lordships of the Hon'ble Supreme Court in a judgment rendered Between: ***Ratilal Jhaverbhai Parmar Vs State Of Gujarat dt.21st October, 2024.***

21. Further, the Hon'ble Madras High Court observed in a case rendered in *Management of Hyudai Motor India Ltd Vs. T.Sudhakar ... on 31st January, 2022:*

> *"**When scales of justice stands balanced in a given case, the tilt to be exercised should be in favour of the poor workmen rather than the mighty Managements**."*

22. Here, I am of the opinion that for promoting ethical behavior and integrity for Public Servants, the Latin Maxim *(Memento Mori: remember that you must die")* acts as a check against selfish to selfless service. It serves as a reminder that: "*when office is gone, only the legacy of their character remains".* So, the old Adam or old Man or old-self of him or her must die. Otherwise, it will kill them. In summary, Memento *Mori* serves as a sobering, yet empowering reminder that allows Public Servants to focus on leaving a positive, lasting impact rather than chasing, selfish and temporary goals.

23. Therefore, by taking a holistic view of the matter, I am of the considered view that the extreme punishment of dismissal from service imposed by the respondents/company against the petitioner/workman is harsh, disproportionate and shocks to conscience of this Tribunal, hence, deserves to be modified since the disciplinary authority cannot be permitted to act arbitrarily and work like a Roman Knight and it cannot be allowed a fight between David and Goliath as in the present case on hand. Moreover, facts of this case attracts the proverbial saying *"Every saint has a past and every sinner has a future"* and Biblical proverbs *"Speak up for those who cannot speak for themselves, for the rights of all who are destitute*" and *"Speak up and judge fairly; defend the rights of the poor and needy."* Further, *"Heavens would not have fallen if one more opportunity is given for the petitioner"*.

24. This Tribunal has perused, analyzed and meditated upon the case at hand, the case laws and principles of law referred above. In view of the above facts and circumstances and keeping in view of the principle *"temper justice with mercy"* and to meet the ends of justice, this Tribunal is of the opinion that the punishment of dismissal imposed on the petitioner is disproportionate and shocks the conscience of this Tribunal and hence, it deserves to be modified appropriately. If we come to quantum of punishment it is settled law that the discretion of which can be exercised U/Sec.11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to shock the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the punishment, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In this case, the petitioner rendered 10-years service in the respondent's company. Here, it is conceded by both parties that petitioner was 29 years age as on 04.01.1988, which shows that he was born on 04.01.1959. Thus, he attained 61 years superannuation age by 31.01.2020 and itself. Further, the relief of reinstatement into service being infructuous, it was conceded by the learned counsel for the petitioner and he prayed to grant full back wages, retirement and pension benefits to the petitioner.

25. In view of the above facts and circumstances, this Tribunal is of the considered opinion that the extreme punishment of dismissal from service imposed on the petitioner vide Proc.dt.24.12.1998 is not commensurate and shockingly disproportionate, and hence deserves to be modified appropriately to that of retirement from service with effect from 25.12.1998. Consequently, the petitioner is entitled to receive the retirement benefits and pension benefits from the respondents' company, as per eligibility after deducting already paid amounts if any which would meet the ends of justice. However, the petitioner is not entitled to any continuity of service, any back wages and any attendant benefits. Accordingly, the Point No.3 & 4 are answered.

26. **IN THE RESULT,** the petition is partly allowed. The dismissal order vide Proc. dt.24.12.1998 dismissing the petitioner w.e.f., 25.12.1998 under Ex.M-1 is modified to that of retirement from service with effect from 25.12.1998. Accordingly, the respondent's company is directed to pay consequential retirement benefits and pension benefits to the petitioner, as per eligibility. However, the petitioner is not entitled to any continuity of service, any

back wages and any attendant benefits. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 06th day of March, 2026.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-	FOR MANAGEMENT:-
-Nil-	-Nil-

EXHIBITS MARKED

FOR WORKMAN:-

-Nil-

FOR MANAGEMENT:-

Ex.M-1	Dt.	24.12.1998	Attested copy of dismissal order.
Ex.M-2	Dt.	29.12.1998 31.12.1998	Attested copy of name removal order.

नई दिल्ली, 4 जून, 2026

का.आ. 1159.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (30/2002) प्रकाशित करती है।

[सं. एल-12012/327/2001- आईआर(बी-I)]
सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 30/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. 12012/327/2001- IR(B-I)]
SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 30/2002

Between:

Sri E. Narasing Rao,
S/o E. Pochaiah,
H.No. 1-55, Pahdisharier,
Saroor Nagar, R.R. Distt.
Hyderabad-500095(A.P).

… Petitioner

And

The Assistant General Manager,
(Personnel & HRD Deptt),
State Bank of India,
Local Head Office,
Bank street, Koti,
Hyderabad-500095(A.P).

…..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/327/2001-IR(B.I) dated 19.12.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri E. Narasing Rao, Temporary/Non-Messenger, SBI with effect from 31.03.1997 is justified? If not, what relief the applicant is entitled?"

After receipt of the reference, it was numbered as ID No. 30/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

"7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body,

which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Non-Messenger on 1986 to 1997 and rendered unblemished service spreading over a period of about 11 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under

the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary

employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies

till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these

vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W13. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the service certificate dated 29.08.1988. Further Ex.W2 is the Notification. Ex.W3 is the call letter for interview Ex. W4 is the Panel list. Ex. W5 is the Service Certificate dated 5.5.1993. Ex. W6 is the Service Certificate dated 05.0.1993. Ex. W7 is the Service Certificate dated 30.0.1993. Ex. W8 is the Service Certificate dated 15.09.1995. Ex. W9 is the Service Certificate dated 15.09.1995. Ex. W10 is the Service Certificate dated 28.08.1996.

Ex. W11 is the Service Certificate dated 04.04.1996. Ex.W12 is the Service Certificate dated 04.05.1996. Ex. W13 is the Service Certificate dated 31.10.1997.

21. On the other hand, Respondent has examined witness MW1 Sri. Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Adhibhatla branch in terminating the services of Workman Sri E. Narasing Rao, Non-Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for ?

Findings:-

25. Point No. I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the

company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. Point No. II:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange did not undergo the regular process of selection before my engagement as temporary Messenger in the branch.."

"It is true that I did not work for 240 days in any year, in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any

deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. Point No. III:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

" I applied for appointment as Messenger, in response to the advertisement issued by the bank and the union in the year 1989. ……..The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. ……..I am not having any documents to show that any person, who worked for less number of days than me was given appointments in the bank."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any

person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the

workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for

absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No. IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri E. Narasing Rao, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri E. Narasinga Rao	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate dated 29.08.1988
Ex.W2:	Photocopy of Notification
Ex.W3:	Photocopy of call letter for interview
Ex.W4:	Photocopy of panel list
Ex.W5:	Photocopy of Service Certificate dated 5.5.1993
Ex.W6:	Photocopy of Service Certificate dated 15.09.1995
Ex.W7:	Photocopy of Service Certificate dated 30.0.1993
Ex.W8:	Photocopy of Service Certificate dated 15.09.1995
Ex.W9:	Photocopy of Service Certificate dated 15.09.1995
Ex.W10:	Photocopy of Service Certificate dated 28.08.1996
Ex.W11:	Photocopy of Service Certificate dated 04.04.1996
Ex.W12:	Photocopy of Service Certificate dated 04.05.1996
Ex.W13:	Photocopy of Service Certificate dated 31.10.1997

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1160.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (53/2002) प्रकाशित करती है।

[सं. एल-12012/257/2000-आई आर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 53/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/257/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 53/2002

[Old ID No.145/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri G. Veerachary,
S/o Veerachandram,
H.No. 2-2-11/25/91,
Narasimha Road,
New Nallakunta, Hyderabad. … Petitioner

And

The Asst. General Manager,
(Personnel & HRD))
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/257/2000-IR(B.I) dated 16.10.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 145/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri G. Veerachary, Temporary Messenger, by way of oral orders with effect from 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 53/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

"7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondent s, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at Local Head Office as a messenger on 15.12.1980. Thereby he worked for about years. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide

impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondent s 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondent s have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondent s have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is

submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized

would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against

the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W16. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the transfer Certificate. notification. Ex.W2 is the service certificate . Ex.W3 is the interview call letter. panel list. Ex.W4 is the appointment letter for temporary service. Ex.W5 to Ex.W8 are service certificates. Ex.W9 to Ex.W15 are memorandums issued to Petitioner reg. his appointment. Ex.W16 is the minutes of conciliation.

21. Though Respondent has filed counter, but the contention made in the counter is not substantiated by any evidence by the Respondent Management.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for Petitioner following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Vardhnnapet branch in terminating the services of Workman Sri G. Veerachary, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for ?

Findings :-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority

in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent .

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere

non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

" I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary Messenger in the branch. ...

It is true that I did not work for 240 days in any year, in my entire service in a single branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman

had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent , I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent .

35. Point No. III:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondent s were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondent s that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondent s did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondent s, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the

I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as Messenger, in response to the advertisement issued by the bank and the union in the year 1989....

The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. ....

It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd Respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd Respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. Thus, in view of fore gone discussion and laws laid down by Hon'ble Apex Court as discussed above, the claim of workman of regularization in the employment of Respondent is not substantiated by the evidence of Petitioner, WW1 in his cross examination has admitted that he is not aware of any settlements and he is not having any document to show that any person who worked for less number of days than him was given appointment in the bank and he has no document to show that any of his juniors is continuing in service of the bank as of now. Therefore, the claim of the Petitioner for regularization in the employment of Respondent bank is not tenable. Further, Petitioner failed to produce any document in evidence to establish that any temporary employee junior to him is working in the Respondent bank. Therefore, Petitioner is not entitled for regularization in the service of the Respondent.

This point is answered against the Petitioner Workman and in favour of the Respondent.

48. Point No. IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri G. Veerachary, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri G. Veera Chari	NIL

Documents marked for the Petitioner

Ex.W1:	Photocopy of transfer certificate
Ex.W2:	Photocopy of service certificate
Ex.W3:	Photocopy of interview call letter
Ex.W4:	Photocopy of absorption letter
Ex.W5 to Ex.W8:	Photocopies of Service certificates
Ex.W9 to Ex.W15:	Photocopies of memorandum of appointment letters
Ex.W16:	Photocopy of minutes of conciliation proceeding

Documents marked for the Respondent

NIL

नई दिल्ली, 4 जून, 2026

का.आ. 1161.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (116/2002) प्रकाशित करती है।

[सं. एल-12012/40/2000-आई आर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.116/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/40/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 29th day of April, 2026

INDUSTRIAL DISPUTE No. 116/2002

[Old ID No. 30/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri Chinuri Gangadri,
1-558-58-4,
Rajeev Gandhi Nagar,
Kadiri,
Distt. Anantapur. … Petitioner

And

The Dy. General Manager,
State Bank of India,
Zonal Office,
Renigunta Road,
Tirupathi. …..Respondent

Appearances :

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent : Sri A. Rathang Phani Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/40/2000-IR(B.I) dated 11.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No.30/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Kadiri Main branch in terminating the services of Sri Chinuri Gangadri, Messenger, from the services of the Bank by way of oral orders with effect from 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 116/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy

arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1992 to 1996, and has rendered unblemished service spreading over a period of about 7 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is

mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The

Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice

and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra

Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP

No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W3. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 to Ex.W3 are the service certificates.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Kadiri main branch in terminating the services of Workman Sri Chinuri Gangadri, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for ?

Findings :-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not

in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular selection process required for regular appointment in the bank.."

"It is not true to say that I do not work for 240 days …."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any

deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the notification issued by the bank as per the settlements…. Further, witness states, *"I do not know that the temporary employees whose names were included in the panel above me were given regular appointment in the bank in order of their seniority in number of days….* Further witness states, *I am not having any document to show that any person who had worked less no. of days than me was given regular appointment in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any

person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the

workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No. IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri Chinuri Gangadri, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 29th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Chinuri Gangadri	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate
Ex.W2:	Photocopy of service certificate
Ex.W3:	Photocopy of service certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1162.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (54/2002) प्रकाशित करती है।

[सं. एल-12012/258/2000-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1162.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 54/2002*)* of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. 12012/258/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 54/2002

[Old ID No. 146/2000 of Industrial Tribunal No.I, Hyderabad]

Between:
Sri G.P. Narsing Rao,
Sri G. Pentaiah,
H.No.9-45, Shamshabad,
R.R. Dist. – 509218. … Petitioner

And

The Asst. General Manager,
(Personnel & HRD))
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent

Appearances :
For the Petitioner : Sri Macherla Rangaiah, Advocate
For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/258/2000-IR(B.I) dated 16.10.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 146/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri G.P. Narsing Rao, Temporary Messenger, by way of oral orders with effect from 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 54/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to

their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1978 to 1997, and has rendered unblemished service spreading over a period of about 9 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for

responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair

labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed

Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W13. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 and Ex.W1A are the service certificates. Further Ex.W2 is the notification. Ex.W3 is the interview call letter. Ex.W4 to Ex.W11 are the service certificates. Ex.W12 is the lr. to employment exchange. Ex.W13 is the audit report.

21. On the other hand, Respondent has examined witness MW1 Sri Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Charminar branch in terminating the services of Workman Sri G.P. Narsing Rao, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement ?

IV. To what relief if any the Workman is entitled for ?

Findings :-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on

the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. Point No. II:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra

Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. Point No. III:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank

that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as Messenger, in response to the advertisement issued by the bank and the union in the year 1989....

The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. ....

It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of

arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

"49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in

the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. Point No.IV:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri G.P. Narsing Rao, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri G.P. Narsing Rao	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of Service certificate
Ex.W1A:	Photocopy of Service certificate
Ex.W2:	Photocopy of notification
Ex.W3:	Photocopy of interview call letter
Ex.W4:	Photocopy of Service certificate
Ex.W5:	Photocopy of Service certificate
Ex.W6:	Photocopy of service certificate
Ex.W7:	Photocopy of Service certificate
Ex.W8:	Photocopy of service certificate
Ex.W9:	Photocopy of Service certificate
Ex.W10:	Photocopy of service certificate
Ex.W11:	Photocopy of Service certificate
Ex.W12:	Photocopy of lr. to employment exchange
Ex.W13:	Photocopy of audit report

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1163.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (58/2002) प्रकाशित करती है।

[सं. एल - 12012/262/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 58/2002*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/262/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 4th day of May, 2026

INDUSTRIAL DISPUTE No. 58/2002
[Old ID No. 150/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Smt. A. Renuka,
W/o Sri A. Sathaiah,
H.No.735, Sevaknagar,
Nampally,
Hyderabad. … Petitioner

And

The Asst. General Manager,
(Personnel & HRD))
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

A W A R D

The Government of India, Ministry of Labour by its order No. L-12012/262/2000-IR(B.I) dated 16.10.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No.150/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Smt. A. Renuka, Temporary Messenger, by way of oral orders with effect from 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 58/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in her claim statement are that, the Workman joined in the service of the management institution as Messenger from 1991 to 1997, and has rendered unblemished service spreading over a period of about 6 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner her services will be regularized with the bank. He is thereby closed all her options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide

impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon’ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is

submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies

which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider her candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got her case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be

absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that her services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify her claim Workman has examined herself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W17. Further, the Workman has filed photocopies of documents in support of her claim which are discussed as under:-

Ex.W1 is the affidavit reg. date of birth of Petitioner. Further Ex.W2 is the service certificate. Ex.W3 is the interview call letter. Ex.W4 is the lr. reg. absorption of temporary employees dt. 12.1.93. Ex.W5 to Ex.W7 are memorandum issued to Petitioner appointing her as temporary worker. Ex.W8 is the service certificate. Ex.W9 is the service certificate. Ex.W10 is the lr. to employment exchange. Ex.W11 & Ex.W12 are memorandum issued to Petitioner appointing her as temporary worker. Ex.W13 & Ex.W14 are service certificates. Ex.W15 is notice for conciliation meeting. Ex.W16 is the minutes of conciliation meeting. Ex.W17 is the failure report.

21. On the other hand, Respondent has examined witness MW1 Sri Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between

State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, SBI Main branch in terminating the services of Workman Smt. A. Renuka, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then she can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification she had applied for inclusion of her name in the panel and she was selected for inclusion her name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated her services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined herself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing her oral as well as documentary evidence in support of her claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that she has completed 240 days of the service with the Respondent just preceding from the date of her termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged her initial burden of proof in respect of her claim of 240 days continuous service in a calendar year just preceding from the date of her termination i.e., 31.3.1997.

In this context, WW1 in her cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary Non-messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of her termination in the Respondent bank. Therefore, Workman failed to establish her plea by her oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of her termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of her claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of her claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather she was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove her claim that she was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as she failed to establish her plea by any oral or documentary evidence that she had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that she has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that she had worked as a daily wager for which she has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days she had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly

panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as temporary Non-Messenger, in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states*, The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states*, It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

"I applied for appointment as Non-Messenger, in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states*, The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states*, It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman herself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and she is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to

provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for her absorption to the permanent post it is settled law that the Workman can not claim her regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove her claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of her seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in her cross examination has herself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has she would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and her turn did not come she could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange she did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in her entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlements and absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that she was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Smt. A. Renuka, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. A. Renuka	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of affidavit reg. date of birth of Petitioner
Ex.W2:	Photocopy of service certificate
Ex.W3:	Photocopy of interview call letter
Ex.W4:	Photocopy of lr. reg. absorption of temporary employees dt. 12.1.93
Ex.W5 to Ex.W7:	Photocopy of memorandum issued to Petitioner appointing her as temporary worker
Ex.W8:	Photocopy of service certificate
Ex.W9:	Photocopy of Service certificate
Ex.W10:	Photocopy of lr. to employment exchange
Ex.W11 to Ex.W12:	Photocopies of memorandum issued to Petitioner appointing her as temporary worker.
Ex.W13 & Ex.W14:	Photocopies of service certificates
Ex.W15:	Photocopy of is notice for conciliation meeting
Ex.W16:	Photocopy of is the minutes of conciliation meeting
Ex.W17:	Photocopy of the failure report

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1164.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (61/2002) प्रकाशित करती है।

[सं. एल-12012/269/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.61/2002*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/269/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of April, 2026

INDUSTRIAL DISPUTE No. 61/2002

[Old ID No. 153/2000 of Industrial Tribunal No.I, Hyderabad]

Between:

Sri D. Srihari,
S/o Sri D. Narasimha,
H.No.5-9-54/26/1,
Vanaparthy Phool Bagh,
Basheerbagh
Hyderabad – 500 029. … Petitioner

And

The Asst. Chief General Manager,
(Personnel & HRD))
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate
For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

A W A R D

The Government of India, Ministry of Labour by its order No. L-12012/269/2000-IR(B.I) dated 16.10.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 153/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Sri D. Srihari, Temporary Messenger, by way of oral orders with effect from 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 61/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1988 to 1997, and has rendered unblemished service spreading over a period of about 10years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms

of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in

12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time

basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W20. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the notification. Further Ex.W2 is the service certificate. Ex.W3 is the interview call letter. Ex.W4 is the call letter for recruitment. Ex.W5 is the panel list. Ex.W6 to Ex.W18 are the service certificates. Ex.W19 is the lr. to employment exchange. Ex.W20 is the audit report.

21. On the other hand, Respondent has examined witness MW1 Sri Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, SBI main branch, Secunderabad in terminating the services of Workman Sri D. Srihari, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff

Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was

arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as messenger in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states*, The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states*, It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997.

Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri D. Srihari, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri D. Srihari	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of News paper advertisement/ notification
Ex.W2:	Photocopy of interview call letter
Ex.W3:	Photocopy of Panel list
Ex.W4:	Photocopy of absorption letter
Ex.W5:	Photocopy of Service certificate
Ex.W6:	Photocopy of service certificate
Ex.W7:	Photocopy of Service certificate
Ex.W8:	Photocopy of service certificate
Ex.W9:	Photocopy of Service certificate

Ex.W10: Photocopy of lr. to employment exchange
Ex.W11: Photocopy of audit report

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1165.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (69/2002) प्रकाशित करती है।

[सं. एल-12012/70/2001- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 69/2002*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/70/2001- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of May, 2026

INDUSTRIAL DISPUTE No. 69/2002

Between:
Sri Y.V.V.S.V. Prasad,
S/oGanapathi, C/o Y. raju (Postal)
7th ward, Ex. Military Colony,
Tadepalligudem.
West Godavari. … Petitioner

And

The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate
For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

A W A R D

The Government of India, Ministry of Labour by its order No. L-12012/70/2001-IR(B.I) dated 14.1.2002 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the demand made by Sri Y.V.V.S.V. Prasad, Ex.Messenger, that he has been illegally terminated from service with effect from 1.3.1995 by the Management of State Bank of India, Tadepalligudem branch is justified? If so, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 69/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondent s, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribuna!;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at Tadepalligudem branch as a messenger from 1990 and he worked upto February, 1995 for 132 days. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait-listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the

directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondent s 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondent s have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondent s have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement

in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made

clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W5. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the notification. Ex.W2 is the application of Petitioner. Ex.W3 is petition. Ex.W4 is the service certificate. Ex.W5 is the service certificate.

21. Though Respondent has filed counter, but the contention made in the counter is not substantiated by any evidence by the Respondent Management.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for Petitioner following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Tadepalligudem branch in terminating the services of Workman Sri Y.V.V.S.V. Prasad, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement*

was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated

with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent .

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be

regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

" I was not sponsored by any employment exchange and did not undergo the regular process of selection before my engagement as Messenger in the Respondent bank....

It is true that I did not work for 240 days in any year, in entire service in the bank."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the

Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent , I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent .

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled

candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondent s were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondent s that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondent s did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondent s, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order in the seniority in the panel. ...."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble

Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in

absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd Respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd Respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. Thus, in view of fore gone discussion and laws laid down by Hon'ble Apex Court as discussed above, the claim of workman of regularization in the employment of Respondent is not substantiated by the evidence of Petitioner, WW1 in his cross examination has admitted that he is not aware of any settlements and he is not having any document to show that any person who worked for less number of days than him was given appointment in the bank and he has no document to show that any of his juniors is continuing in service of the bank as of now. Therefore, the claim of the Petitioner for regularization in the employment of Respondent bank is not tenable. Further, Petitioner failed to produce any document in evidence to establish that any temporary employee junior to

him is working in the Respondent bank. Therefore, Petitioner is not entitled for regularization in the service of the Respondent.

This point is answered against the Petitioner Workman and in favour of the Respondent.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri Y.V.V.S.V. Prasad, Ex. Messenger by way of oral orders w.e.f. 1.3.1995 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 4th day of May, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Y.V.V. S.R. Prasad	NIL

Documents marked for the Petitioner

Ex.W1: Photocopy of notification

Ex.W2: Photocopy of application of Petitioner

Ex.W3: Photocopy of petition dt. 19.9.91

Ex.W4: Photocopy of service certificate

Ex.W5: Photocopy of Service certificate

Documents marked for the Respondent

NIL

नई दिल्ली, 4 जून, 2026

का.आ. 1166.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (81/2002) प्रकाशित करती है।

[सं. एल-12012/129/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.81/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/129/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 81/2002

[Old ID No.106/2000 of Industrial Tribunal No.I, Hyderabad]

Between:
Sri S. Yesubhakthu,
S/o Devadanam(Late),
Jayanthipet,
Chirala-155,
Prakasham Dist.

… Petitioner

And
The Asst. General Manager,
State Bank of India,
Zonal Office,
Renigunta-II,
Tirupathi-517501.

…..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/129/2000-IR(B.I) dated 31.08.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 106/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, in terminating the services of Sri S. Yesubhakthu, Ex-Temporary Messenger, Nellore Branch w.e.f. 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 81/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy

arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. AIl these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the he joined the service of the Respondent Bank at the workman joined in the services of the Management Institution as Messenger on 1981 to 1997 and rendered unblemished service spreading over a period of about 15 years, and by dint of hard work till his services where terminated by oral orders with till his services where terminated by oral orders with effect from 1.04.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was

held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to

implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97

who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra

Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP

No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W6. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the Service Certificate. Ex.W2 is the service certificate. Ex. W3 is the notification. Ex. W4 is the interview call letter. Ex. W5 is the Service Certificate. Ex. W6 is the Service Certificate.

21. On the other hand, Respondent has examined witness MW1 Sri K. Bala Kotaiah and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, in terminating the services of Workman Sri S. Yesubhakthu, as a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been

issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed*

that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service provision contained under Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular selection process before my appointment in the Bank."

" I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily

wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the

Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied in response to the notification issued by the Bank as per the settlements entered between the Bank and the union…. Further, witness states*, Some of the employees whose were included in the panel above me were given*

regular appointment in the Bank as per settlements in order of their seniority in number of days. I am not having any papers to show that any of my juniors are continuing in service."

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its

instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross

examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri S. Yesubhakthu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S. Yesubhakthu	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1:	Photocopy of Service Certificate
Ex.W2:	Photocopy of Service Certificate
Ex.W3:	Photocopy of Interview call letter
Ex.W4:	Photocopy of Panel list
Ex.W5:	Photocopy of Service Certificate
Ex.W6:	Photocopy of Service Certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ. 1167.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (77/2002) प्रकाशित करती है।

[सं. एल-12012/45/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.77/2002*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/45/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 77/2002

[Old ID No. 58/2000 of Industrial Tribunal No.I, Hyderabad]

Between:
Sri V. Maddileti,
40-588, Dharmapeta,
Nr Peta (P.O.), Kasibugga
Kurnool – 518 004. … Petitioner

And

The General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad-500 095. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/45/2000-IR(B.I) dated 13.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 58/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Amberpet branch in terminating Sri V. Maddileti, Messenger, from the services of the Bank by way of oral orders with effect from 31.3.1997 is justified? If not, what relief he is entitled?"

After receipt of the reference, it was numbered as ID No. 77/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in his claim statement are that, the Workman joined in the service of the management institution as Messenger from 1987 to 1997, and has rendered unblemished service spreading over a period of about 10 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner his services will be regularized with the bank. He is thereby closed all his options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who

are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management

should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement.

A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider his candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got his case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of

the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify his claim Workman has examined himself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W22. Further, the Workman has filed photocopies of documents in support of his claim which are discussed as under:-

Ex.W1 is the notification. Further Ex.W2 is the interview call letter. Ex.W3 is the panel list. Ex.W4 to Ex.W20 are the service certificates. Ex.W21 is the lr. to employment exchange. Ex.W22 is the audit report.

21. On the other hand, Respondent has examined witness MW1 Sri Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon’ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon’ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon’ble Supreme Court as well as Hon’ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, Amberpet branch in terminating the services of Workman Sri V. Maddileti, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by him in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. **Point No.I**:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of his name in the panel and he was selected for inclusion his name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff

Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated his services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined himself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing his oral as well as documentary evidence in support of his claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged his initial burden of proof in respect of his claim of 240 days continuous service in a calendar year just preceding from the date of his termination i.e., 31.3.1997.

In this context, WW1 in his cross examination has stated that,

"My name was not sponsored by any employment exchange. I did not undergo any selection process required for appointment as a messenger.."

"It is true that I did not work for 240 days in any year in my entire service."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of his termination in the Respondent bank. Therefore, Workman failed to establish his plea by his oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of his termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of his claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any

document of appointment letter or salary slips in support of his claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove his claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish his plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate him into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the

I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied to the bank in response to the advertisement issued by the bank as per the settlements between the union and the Management..... Further, witness states*, The panel was prepared basing on the number of days of service put in by the temporary employees. Some of the persons whose names were included in the panel were given appointment on regular basis in the bank ....* Further witness states*, It is true that I am not having any document to show that any of my juniors are continuing in the service."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman himself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim his regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove his claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of his seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in his cross examination has himself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so

prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and his turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in his cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Sri V. Maddileti, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri V. Maddileti	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of News paper advertisement/ notification
Ex.W2:	Photocopy of interview call letter
Ex.W3:	Photocopy of Panel list
Ex.W4to	

Ex.W20: Photocopies of Service certificates

Ex.W21: Photocopy of lr. to employment exchange

Ex.W22: Photocopy of audit report

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87

Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88

Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988

Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991

Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995

Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non-messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 4 जून, 2026

का.आ.1168.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतोय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (55/2002) प्रकाशित करती है।

[सं. एल-12012/259/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th June, 2026

S.O. 1168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.55/2002*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/259/2000- IR(B-I)]

SALONI, Deputy Director

ANNEXURE

In The Central Government Industrial Tribunal Cum Labour Court At Hyderabad

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2026

INDUSTRIAL DISPUTE No. 55/2002

[Old ID No. 147/2000 of Industrial Tribunal No.I, Hyderabad]

Between:
Smt. B. Shakuntala,
W/o B. Suryanarayana,
R/o H.No. 4-8-307/4, Gowliguda,
Hyderabad – 500 018. … Petitioner

And

The Asst. General Manager,
(Personnel & HRD))
State Bank of India,
Local Head Office, Bank Street, Koti,
Hyderabad-500 095. …..Respondent

Appearances:

For the Petitioner : Sri Macherla Rangaiah, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/259/2000-IR(B.I) dated 16.10.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 to Industrial Tribunal No.I, Hyderabad for adjudication and later the same has been transferred to this Tribunal bearing ID No. 147/2000, as per orders of Central Government vide Lr.No.H-11026/1/2001-IR(C.II) dated 18.10.2001, requiring this forum to decide the question:

SCHEDULE

> "Whether the action of the management of State Bank of India, Local Head Office, Hyderabad in terminating the services of Smt. B. Shakuntala, Temporary/Non-Messenger, by way of oral orders with effect from 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 55/2002 and notices were issued to both the Workman and the management.

2. Before unfolding the factual matrix of the instant industrial dispute it would be apposite to have a bird eye view of a chequered history of the instant industrial dispute. Earlier instant industrial dispute along with the batch cases was decided by this Tribunal vide common award dated 17.5.2005 and the reference was answered in favour of the Respondent and against the Workman. That said common award dated 17.5.2005 was challenged by the aggrieved Workmen in various Writ petition No.6470/2014 along with batch of writ petitions before the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court vide its' judgement dated 23.6.2014 allowed all batch of writ petitions and set aside the common award dated 17.5.2005 passed in ID No.222 of 2001 and other batch of ID cases by Central Government Industrial Tribunal cum Labour Court, Hyderabad and the Respondent management of State Bank of India was directed to reengage the Writ Petitioners in position, which they have been occupying prior to their termination and further directed to consider their cases for regularization as and when the substantive vacancy arises. This judgement dated 23.6.2014 of Hon'ble High Court of AP, passed in WP No.6470/2014 and batch petitions was challenged by Respondent management before the Hon'ble High Court in Writ Appeal No. 1268 of 2014. The aforesaid Writ Appeals No.1268/2014 and other Writ Appeals were decided by Division Bench of High Court of Andhra Pradesh by a common judgement dated 20.3.2019. Hon'ble High Court in aforesaid Writ Appeal was pleased to pass the order which is extracted as below:-

" 7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial Respondents, we see that while the learned single Judge was justified in setting aside the award af the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the

length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

9. In the result, these writ appeals are ordered;

(1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;

(2) the further findings and directions issued through the impugned common order are vacated:

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Thus, in view of the above direction of Hon'ble High Court of Andhra Pradesh in W.A.No.1268 of 2014 and batch cases. This Tribunal has taken up the matter of industrial dispute for hearing and deciding it afresh in view of the aforesaid guidelines laid down by the Hon'ble High Court in Writ Appeal No.1268/2014 vide judgement dated 20.3.019.

3. The factual matrix of instant industrial dispute as narrated by the Workman in her claim statement are that, the Workman joined in the service of the management institution as Messenger from 1990 to 1997, and has rendered unblemished service spreading over a period of about 8 years. The Respondent has terminated services of Workman by oral orders with effect from 1.4.1997. Further, it is submitted that the management of Respondent bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait- listing them by offering permanent appointment or waitlisting till such opportunity arises.

4. That on 17.11.1987 a settlement was reached between All India State Bank of India Staff Federation and the Management of State Bank of India - settlement one, under this settlement three categories of employees were listed. That is, A) those who have completed 240 days in 12 months or less after 1.7.1975. B) those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975. C) (i) those who have completed minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or (ii) 70 days aggregate temporary service in continuous block of 36 months after 1.7.1975.

5. The persons who satisfied in all the above 4 categories were to be interviewed by a selection committee and the said selection committee would determine the suitability of the said candidate for permanent appointment. Therefore, the bank prescribed certain qualifications and from among the candidates satisfying the qualifications the suitable candidates were enlisted by a selection committee. The Clause 7 of the said agreement provided with the selected candidate would be wait listed in order of their respective categorization and the selected panel would be valid upto December, 1991. Clause 10 of the settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the bank". The Workman further submits that consequent upon the said agreement and the draft, a notification was issued in the newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May, 1989 was held. A selected panel was prepared, as per Clause 7 of the agreement, ie. Settlement No.1, the selected panel was to be valid upto December, 1991, the Workman submits that circular was issued on 26.4.91 by the said letter it is mentioned that the terms of the agreement dated 17.11.87 was modified vide second agreement dated 16.7.88 was entered into between the parties. In terms of the said agreement a chance was to be given, "to all eligible temporary employees for permanent appointments. The appointments were against the vacancies likely to arise during the years 1995-96, circular made it clear that in view of the enormity of the problem an extension of the currency of the panel, eligible temporary employees who have been empanelled could not appear in the earlier interviews and have been pursuing their cases thereafter, "will be given another chance to appear for interview".

6. Workman submits that there were total five settlements. The settlement dated 17.11.87 is the 1st settlement (Ex M1), settlement dated 16.7.88 is 2nd settlement (Ex M2), settlement dated 27.10.88 is the 3rd

settlement (Ex M3), then settlement dated 9.1.91 is 4th settlement and settlement dated 30.7.96 is 5th settlement (Ex M6). In between there is minutes of conciliation proceedings dated 9.6.95 marked as Ex M5. That due to all these settlements which were extended by subsequent settlements thereby created reasonable expectations in the list of the selected candidates arose with that it's a question of time their appointments or services would be regularized in the services of the bank. The Workman was working with the bank on temporary basis was under the bonafide hope that sooner her services will be regularized with the bank. He is thereby closed all her options elsewhere. It is needless to point out that employing person to whom hope of employment in substantial terms was made is a facet of Article 21 of the Constitution of India.

7. Further Workman submits that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. Under said circular the chief Executives of all public sector banks including the Management herein were specifically instructed that until the problem of existing temporary employees is fully resolved, no bank is permitted to make any permanent appointments. That some of the persons similarly situated like this Workman aggrieved by the inaction on the part of the management of the bank is not regularizing their services from out of the selected panel and not clearly focusing the vacancy position, filed W.P. No. 4194/97 before Hon'ble High court of A.P.. It is specifically averred in the said writ petition that the Management of the bank had failed to implement the settlement and that it violates the various fundamental rights guaranteed under the constitution of India. The Hon'ble High court of A.P .. by order dated 5.3.97 directed the bank to implement the settlement as amended from time to time. It also directed the bank to carry out the terms of settlement before the expiry of March, 1997. The Hon'ble High Court also recorded finding that the Bank cannot escape its liability of enforcement of the Settlement. In view of the directions given by the High Court all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.87 under which the panel was valid upto December, 1991, and on the basis of a settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the settlement dated 27.10.1998 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the aforesaid directions given by the High Court and contrary to the settlements entered into between the parties, the bank issued proceedings dated 25.3.1997, dated 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the bank from 1.4.97. The said order was followed by the Management. Aggrieved by the said action the Workman herein and similarly situated candidates have filed a writ petition before the Hon'ble High Court and by way of Writ Petition No.9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (Respondents 3,4 and 5 therein) on 25.3.97, 27.3.97 and 31.3.97 as illegal and also non-continuance of the Workmen therein in service by absorbing them in the services of the bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the bank to absorb them in service.

8. Further, Workman submits that in the counter affidavit filed in Writ Petition No.9206/97, the bank has submitted that it has about 805 branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent or need or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the bank either on the ground of urgent need or of temporary employees is a façade to perpetuate unfair labour practice. It is designed to on the one hand, keep the employed in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the bank. A reading of the counter affidavit would show that the bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice.

9. The Workman submits that the bank had referred in its counter affidavit to three settlements dated 17.11.87, 16.7.88 and 27.10.88. The bank in the guise of extending the benefits of the circular of Government dated 16.8.90 stated in its counter affidavit that as follows:

"Government of India, vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive Months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired, they could enter into a conciliation settlement with the representative union. Para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1 1982 would be

eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the bank by way of further concession entered into settlements Even in respect of those who had put in less than 90 days. As such, it could be Seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6(c) that the banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The Respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the Respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para 6(k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement. This would mean that the Government of India guidelines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the Respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

10. The Workman submits that the bank also referred a subsequent settlement dated 9.1.1991 wherein there is a clause to the effect- that the panel of temporary employees and the panel of daily wage employees will be operated to a particular period. Therefore, their cases will not be considered. The Management herein relying upon this settlement in their impugned action. It is submitted that even the settlement dated 9.1.1991 will not empower the management to terminate the services of the temporary employees who are working in the bank services like the Workman herein as it does not specify the termination of the employees. In fact there are so many vacancies wherein the Management has engaged several new persons as temporary messengers/ attendars/ sweepers etc., even after the judgment of Hon'ble High Court without considering the cases of the similarly situated candidates like the Workman herein. It is submitted inspite of engaging fresh candidates as is now being done by the Management they would have continued the similarly situated candidates like the Workman herein in the services of the bank and consider their cases for absorption in view of the circulars issued by Central Government as well as the directions of this Hon'ble Court in Writ Petition No.4194/97, dated 5.3.97. In view of the circulars issued by the Central Government, the Management should not have relied upon the settlement dated 9.1.1991. Hence, the impugned action of the Management is illegal, unjust, violative of fundamental rights such as Articles 14,16 and 21 of the Constitution of India.

11. The Workman submits that in W.P. No.4194/97 filed by the union of temporary employees where in they have complained about the non- implementation of the settlements arrived between the parties and sought for absorption. Such employees in the bank services on permanent basis before the date fixed for carrying out the terms of settlement, the Court held that the members of the union had been empanelled in the list, they were not regularized and the time was going to run out to the near future and the Respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17.11.87 as amended from time to time before the expiry of 31.3.97.

12. Further, it is submitted that in the clause of Settlement it is specifically mentioned that the workmen to be absorbed/appointed in the bank prohibiting any temporary appointments subsequent to the date of settlement even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the Workman and that should be continued till they are absorbed. The management committed unfair labour practices and terminated the services of the candidates with effect from 1.4.1997 which is arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India.

13. The Workman submits that it is strange as to how the panels were allowed to lapse by a so-called Memorandum of Understanding dated 25.2.1997, that the action of terminating such employees like the Workman by virtue of an impugned oral proceedings without implementing the settlement would be illegal and unfair labour practice which cannot be allowed to be perpetuated. That the discontinuance of the Workman after 31.3.97 who had served in the bank in any capacity amounts to retrenchment. It could not have been done without any notice and it violates Sec.25FF of the Industrial Disputes Act, 1947 and the said action is violative of principles of natural justice guaranteed under Chapter III of the Constitution of India. This amounts to retrenchment without one month's notice and taken in view of such notice. Thus, the main proceedings issued by the Respondent is without jurisdiction and is arbitrary, illegal and therefore liable to be quashed. That the alleged Memorandum of Understanding dated 27.2.97, Ex.M5 does not own any legal entity, as the said Memorandum of Understanding is not published anywhere to brought to the notice of the Workman whose rights are being affected. It is submitted that Management did not adhere to the procedure envisaged by the Central Government in its' instructions dated 16.8.90 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment exchange instead of giving

chance to the empanelled candidates like the Workman here. It is pertinent to mention here that the Respondent Management sent letters to the all similarly situated candidates like the Workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the facts that the candidates are litigating, the Management refused to engage these candidates. It is once again reiterated that the panels are meant for absorption but not for termination. It was the duty of the Management to engage the empanelled candidates like the Workman even in temporary vacancies till they are absorbed permanently in regular vacancies. Hence, the action of the Respondent Management terminating the services of the Workman by oral order dated 31.3.97 is unjust, illegal, violative of principles of natural justice and hence, the Management be directed to reinstate and absorb the Workman and to grant all incidental and consequential benefits.

14. Per contra, Respondent had filed counter and made a contentions that the reference is not tenable and contrary to the provisions of I.D. Act, 1947. Respondent submitted that to tide over severe sub-ordinate staff constraints which arose out of leave vacancies, exigencies, etc., and also owning to the restrictions imposed by the Government of India/Reserve Bank of India on intake of staff, the Respondent bank used to engage sub-ordinate staff like messengers, sweepers, sweeper cum water boys, etc., depending on the availability of work on purely temporary basis for the smooth and uninterrupted functioning of the branches. It is submitted that the All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India comprising about 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary service in 12 calendar months in the bank and who were ineligible for any protection under Industrial Disputes Act, 1947 to give a chance for being considered for absorption and permanent appointments.

15. Discussions were held and on 17.11.1987 an agreement was signed between the federation and the Management bank under Sec. 2(p) read with Sec 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules 1957. A copy of the said settlement dated 17.11.87 which may be herein after referred as first settlement is filed and 4 categories were made as it has already been mentioned in the claim statement above, it need not be repeated here. In the first settlement, it was agreed that the temporary employees as categorized would be given a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise during the period 1987 to 1991. On 16.7.88 second settlement was arrived between the Federation and the Bank whereby it was agreed to substitute the period of consideration of vacancies as 1987 to 1992 in place of 1987 to 1991 as contemplated under the first settlement dated 17.11.1987. This is the second settlement. A 3rd settlement was entered into on 27.10.88 and it was agreed that the bank's service against the vacancies likely to arise from 1988 to 1992 was to be considered. Government of India vide its letter dated 16.8.90 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of approach paper on the issue provided by a committee constituted in this regard. Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary service in 12 consecutive months and who are entitled to benefit of Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the Management so desired they could enter into a conciliation settlement with the representative union. In para. 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 days or more days, the bank by way of a further concession entered into settlements. Even in respect of those who had put in less than 90 days and also the bank went a step further and said those persons who are working after 1975 were also considered. Hence, there was a genuine effort on the part of the Respondent bank to provide as many as possible jobs subject to the availability of the vacancies. However, para 6 (k) of the approach paper made it clear that it is a one time, exercise in full and final, settlement of all the claims and disputes for the past period, in respect of temporary workmen covered by the settlement. Another settlement was entered on 9.1.91 herein after referred as 4th settlement and the time limit was extended upto 1994 and separate panel was prepared for temporary employees, casual/daily wagers. It was agreed that while vacancies arising between 1988 to 1994 in respect of temporary employees and in respect of casual/daily wagers, they can be considered for the vacancies arising between 1995-96 only.

16. It is submitted that the administrative set up of the Hyderabad Local Head Office comprises of four Zonal Offices (Zones) at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the Districts of Andhra Pradesh. In terms of the settlement the Management after following the procedure laid down therein prepared the panels of qualified candidates of temporary employees denoted as 1989 panel and also panel of casual/daily wagers denoted as 1992 panel for giving a chance for being considered for permanent absorption. These panels were prepared zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1.7.1975 to 31.7.1988. That the Federation approached the Regional Labour Commissioner(C) for implementation of bi-partite settlement in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived between the Federation and the bank. It was agreed that it would be kept alive upto March, 1997. A copy of the conciliation proceedings dated 9.2.1995 signed by the parties is filed as material paper. A settlement was arrived

at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Sec.2 (p) read with Sec.18(1) of the Industrial Disputes (Central) Rules, 1957, which is hereinafter called as 5th settlement. That on 27.2.1997 a Memorandum of understanding was also signed by the federation's affiliate and the bank Management recording the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned . It was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the Management bank that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers/casual employees would lapse on 31.3.1997. That as agreed upon vacancies were filled from the panels. The Workman who has put in an aggregate temporary service of less than 240 days in a continuous block of 12 months period during 1.7.1975 to 31.7.1988 has no right to seek a direction to consider her candidature for absorption in the Management bank under any rule/law except under the settlement entered into thereon.

17. Respondent contended that, in fact, the case of the Workman can be considered under all the five settlements having got her case considered under provisions of these settlements. All the other provisions and terms of the settlements are also binding on him/her. The Management bank has not violated any of the provisions of the terms of the said settlement. That the very preparation and maintenance of panel is in compliance of the terms agreed under these settlements. These settlements were time bound and they ceased to exist on 31.3.1997. That the bank has never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that candidates will be considered for absorption in the vacancies that may arise upto 1992. Keeping alive the panels after 31.3.1997 is contrary to the settlements arrived between the State Bank of India Staff Federation and the Management bank. That the settlements are binding on the parties. The Workman is also bound under the terms of the said settlement. The settlement does not suffer from any ambiguity as their language is very clear. The right under the settlements is to give them a chance to be considered for future appointment in the bank's services against the vacancies likely to arise. The settlements were effected to balance the expectations of the temporary employees to be absorbed in permanent service as against the constitutional rights for all eligible persons to be considered for employment every time a vacancy arises. That the alleged dispute including the demand for reinstatement has to be decided in this context. It is submitted that the period of panel list got expired on 31.3.97 and it is an integral term of the settlement and cannot be modified in any proceedings under the law. These temporary employees who unfortunately could not be accommodated for want of vacancies have no further rights to be considered for regularization. That the Hon'ble High Court in WP No.12964/94, held as follows, "It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which, is the majority union and the bank Management is binding on the Workmen also. It is not at all the case of the Workman that any of the terms of the settlement has been violated by the bank's Management. If the Workman had worked in the bank on part-time basis before 31.5.94, that itself would not vest in her a right to claim that her services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Workman in the present petition is therefore misconceived and not tenable. However, it is open to the Workman to claim any right which flows from the settlement between the union and the bank Management. As already pointed out that it is not the grievance of the Workman that some right which has flown from the settlement in favour of the Workman has been denied by the bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Workman. Writ Petition fails and is accordingly dismissed. No costs."

18. Further, it is contended that if the panels were not lapsed at the end of designated period and allowed to be continued it would result in making the contracts of temporary employment indirectly permanent through back door entry, which would not only be contrary to the settlements but also to Articles 14 and 16 of Constitution of India and deprive the chances of original claimants who would Come through proper recruitment procedure. As their rights have been crystallized by operation of the settlements. Hence, there is no question of any Legitimate expectation being violated.

19. Similarly placed ex-employees filed WP No.9206/1995 and the batch before the Hon'ble High Court of A.P. and the learned Single Judge allowed the Writ Petitions. Aggrieved by the same WA No.86/98 and the batch was filed and the Division Bench set aside the order of the Single Judge. Thereafter the ex-temporary employees filed Special Leave Petition No.11886-11888 of 1998 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India also dismissed the SLP. Therefore, reference to the Judgement of the Learned Single Judge in WP No.9206/97 is of no consequences as the same has already been set aside. The observations made in the Judgements cannot be relied upon for any purpose what so ever. The question of operation of Sec.25F would not come into play. Further the issue is covered by various Judgements of Hon'ble Supreme Court of India and various Hon'ble High Courts. Hence, the reference may be ordered that the Workman is not entitled for any relief.

20. In order to fortify her claim Workman has examined herself as WW1 and also filed documents in evidence which has been exhibited as Ex.W1 to W15. Further, the Workman has filed photocopies of documents in support of her claim which are discussed as under:-

Ex.W1 is the service certificate. Further Ex.W2 is the service certificate. Ex.W3 is the service certificate. Ex.W4 is the notification. Ex.W5 is the interview call letter. Ex.W6 to Ex.W13 are the service certificates. Ex.W14 is the lr. to employment exchange. Ex.W11 is the audit report.

21. On the other hand, Respondent has examined witness MW1 Sri Aluru Rama Rao and this witness has exhibited 12 documents, marked as Ex.M1 to M12. The details of these documents are as follows:-

Ex.M.1 is the Settlement dated 17.11.1987. Ex.M2 is the Settlement dated 16.7.1988. Ex.M3 is the Settlement dated 27.10.1988. Ex.M4 is the Settlement dated 9.1.1991. Ex.M5 is the Minutes of the conciliation proceedings dated 9.6.1995. Ex.M6 is the Settlement dated 30.7.1996. Ex.M7 is the Memorandum of Understanding dt. 27.2.1997. Ex.M8 is the Particulars of 1989 Messengerial Panel. Ex.M9 is the Particulars of 1989 Non-Messengerial Panel. Ex.M10 is the Particulars of 1992 General Attendant Panel. Ex.M11 is the Judgment of Hon'ble High Court of A.P. in Writ Appeal No.86/98 dt.1.5.1998. Ex.M12 is the Judgment of Hon'ble Supreme Court of India in SLP No. 11886-11888 of 1998 dt.10.8.1998.

22. Apart from afore mentioned documents, Learned Counsel for Workman has also filed a long list of various judgements of Hon'ble Supreme Court as well as Hon'ble High Court, which we will discuss at appropriate place in this Award.

23. Heard the argument of Learned Counsel for Workman as well as for Respondent.

24. On the basis of rival pleadings of both the parties and submissions made by the Learned Counsel for both the parties, following points arise for determination in the industrial dispute :-

I. Whether the 1st settlement dated 17.11.1987, 2nd settlement dated 16.7.1988, 3rd settlement dated 27.10.1988, 4th settlement dated 9.1.1991 and 5th settlement dated 30.7.1996 entered into between State Bank of India and All India State Bank of India Staff Federation and also Memorandum of Understanding are binding upon both the parties?

II. Whether the action of State Bank of India, branch in terminating the services of Workman Smt. B. Shakuntala, a Messenger with effect from 31.3.1997 is justified?

III. Whether the Workman is entitled for absorption on permanent post in the Branch of Respondent management as per averments made by her in the claim statement?

IV. To what relief if any the Workman is entitled for?

Findings:-

25. Point No.I:- Undisputedly settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 and 30.7.1996, minutes of conciliation proceedings and memorandum of understanding dated 27.2.1997 were executed between the State Bank of India and All India State Bank of India Staff Federation under section 2(p) and 18 (1) of I.D. Act, 1947 read with Rule 58 of Industrial Disputes (Central Rules), 1957.

Section 2(p) of the Industrial Disputes Act, 1947 as follows:-

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

Section 18(1) provides as follows:-

18. Persons on whom settlements and awards are binding.

- [(1) A settlement arrived at by agreement between the employer and Workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Therefore, in view of the provision contained u/s.18 (1) I.D. Act, 1947, terms and conditions enumerated in the aforesaid settlements are binding on the parties to the agreement. The Learned Counsel for Workman has argued that the Workman after going through the selection procedure has successfully been listed in the panel for appointment on the permanent basis in the Respondent management and the empanelled list has to be valid till last person in the empanelled list is appointed on permanent basis. But the impugned order dated 25.3.97, 27.3.97 and 31.3.97, has been issued by Respondent management thereby the services of the Workman has been terminated and the said order is not in consonance of the terms of the agreement entered into between the parties. Further, Workman submits that the Respondent in the 5th settlement has mentioned the date i.e., 31.3.1997 for lapse of empanel list which is illegal and that is not binding upon the Workman. The condition of lapse of empanelment list on 31.3.97 incorporated in the aforesaid 5th settlement, is arbitrary and illegal.

26. The perusal of the impugned order dated 25.3.1997 goes to reveal that the Chief/Branch Manager, SBI Zonal Office has issued the letter to all the branches with regard to the subject not to make any temporary appointments in the Branch in messengerial category from 1.4.1997. The extract of the said letter is given below:-

"We have been advised by the Deputy General Manager, Zonal Office, Hyderabad that as both the panels of temporary employees of 1989 and daily wagers/casual labours of 1992 will lapse by 31.3.1997, it has been decided by Central Office not to make any temporary appointments in messengerial category from 1.4.1997."

Thus, from the contents of the aforesaid letter, it manifest that Head Office of State Bank of India vide letter dated 25.3.1997 has issued direction to all its branches not to make any temporary appointments in messengerial category from 1.4.1997 due to reason of lapse of both panels i.e., 1989 & 1992 on 31.3.1997 as per terms of settlements entered into by both parties. Further, the contents of the subsequent letter dated 27.3.1997 issued by Respondent Management is also direction to Branch Manager, State Bank of India not to make any temporary messengerial category appointment with effect from 1.4.1997 and it has also been communicated to all concerned that the panels of temporary employees and daily wagers maintained by Zonal offices stand lapsed from 31.1.1997. Further, office order dated 31.3.1997 has been issued by Respondent management that goes to reveal that the said office order has been issued to this effect that, "Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that no one onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed." Therefore, it reflects from the contents of the aforesaid orders that the temporary appointment in messengerial category and daily labour has been stopped by the Respondent management with effect from 1.4.1997 because of the lapsed of panel of temporary workers and daily wagers by 31.3.1997. The agreement for lapse of both the panels on 31.3.1997 is contained in the 5th settlement which has been arrived at between the parties on dated 30.7.1996 with the consensus of both the parties. Therefore, Workman can not challenge the terms and conditions contained in settlement dated 30.7.1996 regarding lapse of panel on 31.3.1997 as agreed between State Bank of India and State Bank of India Staff Federation. As per provision contained u/s.18(1) of I.D. Act, 1947 the said Agreement dated 30.7.1996 is binding on both the parties.

In the case of **Allied Sales Corporation Secunderabad vs.The Authority Under Andhra Pradesh..... 1990 II LLJ 510 AP para 414, Hon'ble Court have held:-**

"*4. There was a settlement between the Management and the workmen under Section 18(1) of the Industrial Disputes Act on 25th April 1983 under which the age of superannuation of the workmen was fixed at 55 years. The settlement was to be in force upto 30th June 1986 and the next settlement, incorporating practically the same terms, was again entered into on 4th February 1987 under Section 18(1) of the Industrial Disputes Act. There is no dispute that these settlements are under Section 18(1).*

14. Now the Authority constituted under Section 41(1) of the Act is an authority with very limited jurisdiction. It can only decide in the first appeal whether a termination by the management is valid or not and is within the parameters of Section 40 of the Act. The said Authority, in our view, has absolutely no jurisdiction to decide whether a settlement entered into under Section 18(1) of the Industrial Disputes Act between the representatives of the Workmen and of the Management, is vitiated by undue influence or misrepresentation or coercion on the part of the Management. The Authority, namely, the Assistant Commissioner of Labour, was never intended by the A.P. Legislature to have jurisdiction to go into the question of the validity of a settlement arrived at under Section 18 of the Industrial Disputes Act by an Industrial Court. That Parliament has, in fact, constituted Industrial Courts under the Industrial Disputes Act, with extensive powers cannot be disputed. What we mean to say is that the Authority under Section 41(1) of the A.P. Act has no jurisdiction what-so-ever either to question or to decide about the validity of any such settlements. If parties to a settlement have a grievance about the validity of a settlement, it is for them to agitate the matter before the appropriate forum and they cannot ask an Authority constituted under Section 41(1) of the A.P. Shops and Establishments Act, 1966 with limited jurisdiction, to go into any such question and, that too, incidentally while deciding whether retirement as per the contract of employment, is legal or not."

It is not the case of Workman that aforesaid settlements are vitiated by undue influence or misrepresentation or coercion on the part of the management. If the Workman feeling aggrieved by any terms of settlement/ agreement on the aforementioned grounds then he can challenge of settlement before a competent authority under the Act, 1947. But here in the instant matter it is not a case of Workman that aforementioned settlement has been entered into between the parties on the ground of undue influence or misrepresentation or coercion. Therefore, Workman is barred to raise any objection in respect of fixing the date of lapse of both panels on 31.3.1997 as agreed between both the parties and Workman can not challenge any terms of said Agreement.

Further in the case of **Herbertsons Limited Vs. Workmen of Herbertsons Limited and Ors, 1977 AIR 322,** Hon'ble Supreme Court have held:-

The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of 1his Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that under section 18 (1) of the Industrial Disputes Act the settlement was binding on the

company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to our mind is again an entirely wrong approach.

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other induce- ments. Nothing of that kind has been suggested against the President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration.

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement. That being the position, we unhold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above, the contention of the Workman that the date fixed for lapse of empanelled list on 31.3.1997 for appointment to the permanent post vide 5th Settlement dated 30.7.1996 is arbitrary, illegal is not untenable. The recognized union of Workmen has negotiated with the Respondent Bank Management representing large number of Workmen and the Workman as individual do not come into picture. Workman in the instant case has work as temporary Workmen in the Respondent Branch and in response of Notification he had applied for inclusion of her name in the panel and he was selected for inclusion her name in the panel list to be utilized for absorption of such Workman to permanent post in order of their seniority in the list. The Settlement dated 30.7.1996 between State Bank of India and All India State Bank of India Staff Federation under Sec.2(p) and Sec.18(1) of I.D. Act, 1947 has clearly provided as regard non-messengerial position and it is agreed that all such posts sanctioned fallen vacant upto 31.3.1997 shall be filled before empanel list is allowed to lapse. Thus, in view of law laid down by the Hon'ble Apex Court, in the instant case, Agreement dated 30.7.1996 was entered into between both the parties in respect of lapsing of the both the panels on 31.3.1997 and absorption of the Workmen from panel list was subject to availability of vacancy of post likely to arise upto 31.3.1997, have a binding force on Workman as well as management of State Bank of India in view of provision contained under section 18 (1) of I.D. Act, 1947.

Thus, Point No.I is answered against the Workman and in favour of the Respondent.

27. **Point No.II**:- Firstly, it is submitted on behalf of the Workman that the Respondent has terminated her services by oral order on 31.3.1997 without issuing any notice or paying any salary or compensation in lieu thereof. Therefore, the termination order of the Workman from service is in violation of provision contained Under Section 25 F of I.D. Act, 1947. Therefore, the order is liable to be set aside.

28. On the other hand, Respondent counsel contended that Workman has not worked for 240 days in any preceding calendar year. Therefore, reference of the industrial dispute is not relevant. In this context, the Workman has examined herself as WW1 who has reiterated that Workman has been terminated from service by Respondent on 31.3.1997 without notice of salary or compensation in lieu thereof. Before examining the claim of the Workman on merit it would be apposite to reproduce the provision contained under section 25 F:-

Section 25F provides:-

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:

(b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service which provides

Definition of continuous service.- For the purposes of this Chapter,--

(1) a Workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the Workman;

(2) where a Workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the Workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a Workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In order to prove the fact of 240 days of service within 12 months of a calendar year just preceding from the date of termination, the initial burden of proof lies upon the Workman and the Workman has to prove this factum by adducing her oral as well as documentary evidence in support of her claim.

Further, how to calculate 240 days of service by the Workman in a calendar year. In this context the reference of decisions of Hon'ble Supreme Court is relevant and the same are discussed below:-

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held:

"It was the case of the Workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the Workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the Workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the Workman to show that he had completed 240 days of service."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL 1981 SCC page 225 has laid down the principle that how to count 240 days of service within one year it is held: *"Clause (2)(a) provides for a fiction to treat a Workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained. move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the Workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the Workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the Workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

"14. We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a Workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a Workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA."

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above the initial burden of proof lies upon the Workman to show that he has completed 240 days of the service with the Respondent just preceding from the date of his termination. Further, in respect of the employment of calculating the 240 days service in view of the contents of Section 25-F read with Section 25-B of the I.D. Act, 1947.

29. Now, in view of the provision contained under Section 25 F and law laid down by the Hon'ble Apex Court, we have to examine whether the Workman has discharged her initial burden of proof in respect of her claim of 240 days continuous service in a calendar year just preceding from the date of her termination i.e., 31.3.1997.

In this context, WW1 in her cross examination has stated that,

"I was not sponsored by any employment exchange. I did not undergo the regular selection process required for engagement / appointment as a temporary attender.."

"I did not work for 240 days in any year in my entire service in the bank."

"I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary messenger in the branch.."

"It is true that I did not work for 240 days in any year in my entire service in the bank in any branch."

Thus, it is clear from the testimony of WW1 that the Workman had not worked for 240 days continuously in any 12 months of a calendar year just preceding from the date of her termination in the Respondent bank. Therefore, Workman failed to establish her plea by her oral and documentary evidence that he had worked for 240 days continuously in calendar year just preceding from the date of her termination i.e., 31.3.1997. Thus, the claim of the Workman that he has been terminated by oral order without issuing notice or payment in lieu after termination, in contravention of Section 25 F of Industrial Disputes Act, 1947 is not tenable. However the documents filed by the Workman in support of her claim, number of days worked with the Respondent goes to reveal that the Workman had worked intermittently as daily wager depending upon availability of work in branch. Workman did not file any document of appointment letter or salary slips in support of her claim for appointment as a non-messenger in the Respondent branch on temporary basis.

30. Per contra, the Learned Counsel for Respondent has submitted the allegation of Workman that he was terminated from services is not correct. As the vacancies were filled up on regular basis in order of their respective seniority the non-engagement of the Workman does not amount to termination. Further, Respondent contended that no law provide that even though there is no work temporary employee should be continued in the bank work as the very engagement of Workman was subject to availability of work. Therefore, the allegation that the bank has indulged in unfair labour practice is incorrect.

31. Thus, in view of the fore gone discussion and contentions made by the Respondent, I find the force in the argument advanced by the Respondent that in the instant matter, Workman was not terminated from service by order dated 31.3.1997 rather he was disengaged in view of the non-availability of the work in the branch. Further, there was direction issued by the Head Office of the Respondent authority not to engage any daily wager Workman/ temporary Worker w.e.f. 1.4.1997. Thus, such disengagement of Workman does not amount to termination. Moreover, the Workman failed to prove her claim that he was terminated in contravention of provision of Sec.25F of the I.D. Act, 1947 as he failed to establish her plea by any oral or documentary evidence that he had worked for 240 days continuously in a twelve months of calendar year just preceding from date of termination i.e., 31.3.1997.

32. Further, perusal of the order dated 25.3.1997 goes to reveal that the Chief Branch Manager, State Bank of India has issued the letter to Zonal Office with direction to all its branches to this effect that they have been advised by the DGM, Zonal Office, Hyderabad that as both the panel of temporary employees of 1989 and daily wagers/casual labour of 1992 will lapse on 31.3.1997 it has been decided by central office not to make any temporary appointments in messengerial cadre from 1.4.1997, therefore it was directed to issue suitable instructions not to make temporary appointments from 1.4.1997. There is no mention in this order that the Workman herein has been terminated from service by this order.

33. Further, the circular dated 27.3.1997 was issued by DGM, SBI to all branches in commercial network in respect of the non-appointment of temporary employees in subordinate cadre and it has directed not to make any temporary employment in the subordinate cadre with effect from 1.4.97 and further, it has directed to ensure that no temporary/casual/daily basis appointment of the petty cash. Further, it is directed to all Branch Managers that any deviation in this regard will be viewed seriously. Thus, these circulars do not reflect that the Workman has been terminated from service by this order.

34. Similarly, office order dated 31.3.1997 is simply a direction to all branches of the Respondent bank by DGM that no further daily labour should be engaged or employed. Therefore, the plea of the Workman that he has been terminated by the aforesaid order dated 25.3.1997, 27.3.1997 and 31.3.1997 from the service by the Respondent is not acceptable. The evidence adduced by the Workman clearly goes to reveal that he had worked as a daily wager for which he has been paid wages according to number of working days. As there was an order for prohibition for engaging temporary workmen, in the bank, therefore, Workman could not be engaged by the Respondent for work from 1.4.1997 and there after. It is settled law that the daily wagers are engaged by the employer depending upon the availability of work and as the work was not available the Workman was not engaged further by the Respondent management. Therefore, the Workman on the ground of number of days he had worked in the Respondent bank cannot claim any right to reinstate her into the employment. As the Workman failed to prove the mandatory condition of 240 days of continuous service as required under Sec.25F of I.D. Act, 1947. Therefore, the disengagement of Workman from work can not be termed in contravention of provision contained under Sec.25F and 25 B of the I.D. Act, 1947.

Thus, this point is answered against the Workman and in favour of Respondent.

35. **Point No.III**:- In this context, the Workman has contended that the management failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993 a copy of the same is filed in the material papers and the same may be read as part of the claim statement. Further, it is submitted that management has to adhere the procedure issued by the Central Government, the instructions dated 16.8.1990 in the year 1995, but same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through employment exchange instead of giving chance to the empanelled candidates like the Workman herein. The management sent call letters to the similarly situated candidates like the Workman in the month of June 1997 subsequent to issuance of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, the copies of call letters issued are filed herein along with claim petition. The Workman herein reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the Respondent management to engage the empanelled candidates like the Workman herein even in temporary vacancies till they are absorbed permanently in regular vacancies.

36. On the other hand, Respondent has contended that the Federation approached Regional Labour Commissioner (Central) for implementation of bipartite settlement in respect of the absorption of temporary employees. The Regional Labour Commissioner (Central) conducted conciliation proceedings and agreement was arrived at between the Federation and the Management bank. It is submitted that it was agreed between the Federation and the Management that both the panels of temporary employees and daily wagers /casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the afore set out settlements will be filled from both the lists concurrently. A copy of the conciliation proceedings dated 9.6.1995 signed by the parties to the dispute is filed as a material paper. Further, it is submitted that the settlement was arrived at and an agreement was signed between the Federation and the Management bank on 30.7.1996 under Section 2(p) read with Section 18(1) of the Industrial Disputes (Central) Rules 1957 which is binding on the parties. A copy of this agreement which hereinafter may be referred to as 5th settlement for brevity, is also filed as a material paper. The 5th settlement dated 30.7.1996 whereunder the earlier four settlements dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 were also referred, it was agreed to, by the Federation and the Management bank that both the panels of temporary employees and daily wagers/casual employees will be kept alive upto March, 1997 for filling the vacancies existing/arrived at as on 31.12.1994 as per the norms agreed to between the bank and Federation and that thereafter the said panels would lapse. It was also agreed that within the framework of the above settlements the modalities about drawing names from either the panel of temporary employees or the panel of daily wagers and casual labour would be decided administratively on circle to circle basis depending upon the local requirements in consultation with the Federation's affiliate by the Circle management. It was further agreed that all messenger real vacancies/positions in the subordinate cadre including part-time attendants specifically provided as leave reserve will be filled by the end of 31.3.1997. Further, Respondent contended that on 27.2.1997 a memorandum of understanding was also signed between the Federation's affiliate and the bank management regarding the fact that the exercise of identifying the messengerial vacancies as on 31.12.1994 has since been completed by central office and thereby 403 messengerial vacancies were sanctioned to the circle of the Management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached upon. Further, it was agreed between the Federations affiliate and the management bank

that in terms of the settlement dated 30.7.1996 both the panels of temporary employees and daily wagers /casual employees would lapse on 31.3.1997.

37. The Workman has contended that the empanelled list prepared by the Respondent management for appointment of temporary and daily wage Workers to the permanent post cannot lapse unless until it is exhausted by appointing all the empanelled persons and it should continue even after 31.3.1997, i.e., the date fixed for the lapse of panel. It is undisputed that the date of lapse of empanelled list of Workmen has been fixed to 31.3.1997 as mentioned in the settlement dated 30.7.1996, and agreed between the parties. It is settled law that and once the life of panel list lapses on the date as agreed between the parties it cannot be extended beyond that date. In the instant case the panel list of the workmen was valid upto 31.3.1997 in view of the terms and conditions enumerated in the 5th Settlement entered into between the parties. As the lapse of panel i.e., 31.3.1997 has been agreed by State Bank of India and State Bank of India Staff Federation through 5th Settlement, the Workman is not competent to challenge the same.

In this context I would like to take reference of the decision of the apex court in the case of **Syndicate Bank and Ors vs. Shankar Paul and Ors , AIR 1997 SC 3091, therein the Hon'ble Apex Court** have held:-

"Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the Respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the Respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively."

Thus, in view of the above law laid down by the Hon'ble Apex Court and in view of the terms and conditions of the 5th Settlement the contention of the Workman that empanelled list should continue even after 31.3.1997 till the last Workman in the panel is absorbed is not tenable. The contention of the Workman is baseless in view of recital in the settlement. Therefore, in view of the fore gone discussion and finding given at Point No. I regarding binding nature of Settlements and terms and conditions enumerated therein, in view of the provision contained u/s.18(1) of the I.D. Act, 1947, I am of the considered view that life of panels lapsed on 31.3.1997 in view of terms of settlement dated 30.7.1996 and plea of Workman that the panel shall continue even after 31.3.1997 till last man absorbed has no legal force and same is untenable.

38. Undisputedly, settlement agreement dated 30.7.1996 was executed between the State Bank of India and State Bank of India Staff Federation and in that settlement it was agreed that both the panels of temporary employees and daily wagers/ casual employees will be used for filling vacancies existing as on 31.12.1994 as per the norms agreed between the bank and the Federation. These empanelled workmen were to be given a chance for permanent appointment in the bank against vacancies arising up to December 1994 whereas the daily wagers/ casual employees were to be considered against the vacancies arise from January 1995 to December 1996, whereby the said panel would lapse. It was agreed that the vacancies falls upto 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus, the claim of the Workman to the post of permanent non-messenger in the Respondent management was subject to the availability of the sanctioned post and vacancies arising upto 31.3.1997. The workmen given chance to the permanent post were seniors in number of working days in panel list and Workman herein was junior to those workmen. Therefore, Workman could not be given absorption to permanent post being junior to other workmen in the panel list.

39. In this context the Workman witness WW1 was cross examined by the Respondent counsel and in the cross examination the witness WW1 states:-

"I applied for appointment as temporary Non-Messenger, in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states*, The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states*, It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

"I applied for appointment as Non-Messenger, in response to the advertisement issued by the bank and the union in the year 1989…. Further, witness states, *The panel was prepared basing upon the number of days of service put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in the order of their seniority in the panel….* Further witness states, *It is true that I am not having any documents to show that any of my juniors are continuing in service in the bank."*

Thus, from the above statement of the Workman witness WW1 it is clear that the panel was prepared in terms of various settlements entered into between Staff Federation of State Bank of India and State Bank of India and it was prepared on the basis of number of days of work put in by the temporary employees. Further, the Workman herself admitted that some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel and he is not having any document to show that any person who worked for less number of days than the Workman was given appointment in the bank. Therefore, the allegation of the Workman that the regular appointment has been made by the bank from the panel list in breach of the terms of the settlement and violation of seniority of panel list is not proved by this evidence of WW1. Thus, there is no evidence on record that bank has given the appointment to the temporary employees as well as daily wagers from the panel list 1989 and 1992 in breach of seniority of the temporary employees in the list. There is no evidence of jumbling in the panel list to make appointment of any permanent Workman in breach of the seniority. Therefore, I am constrained to hold that the Respondent Management has appointed the workmen from panel list in order of seniority and there is no jumbling of workmen in the panel list before it got lapsed on 31.3.1997.

40. However, Workman has taken the plea that the panels of Workmen for absorption in the employment of the Respondent banks (panels of temporary employees and daily wagers) has been lapsed on 31.3.1997 in contravention of terms of settlement as the object of preparing the entire empanelment of temporary and daily wagers was to provide them permanent employment and till the both the panel lists exhausted the panel list cannot be lapsed on 31.3.1997 and the date of lapsing of the panel on 31.3.1997 has been fixed by the Respondent arbitrarily without any authority.

41. In this context, the perusal of Settlement dated 30.7.1996 reveals that the 5th Settlement dated 30.7.1996 was entered under Section 2(p) and 18(1) of I.D. Act, 1947 read with Rule 58 of Industrial Dispute (Central) Rules 1957. This settlement has been entered into by the competent parties and in this settlement parties thereto agreed that both the panels of temporary employees and daily wagers/casual employees will lapse on 31.3.1997. Thus the date of lapse of panel was fixed by both the parties with consensus under the settlement dated 30.7.1996 and same is binding upon the Workman under the provision of Section 18(1) of I.D. Act, 1947. Moreover, this issue of binding force of the settlement dated 17.11.1987, 16.7.1988, 27.10.1988 and 9.1.1991 has already been discussed, decided at finding in Point No.I of this award. However, the legality and validity of the aforementioned settlement has not been challenged by the Workman before any competent forum. Thus, claim of Workman that the date of lapse of panel i.e., 31.3.1997 has been fixed arbitrarily by the Respondent bank is untenable. As regard the claim of Workman for his absorption to the permanent post it is settled law that the Workman can not claim her regularization to permanent post merely on the basis of number of working days.

42. In this context the reference of the decision of Hon'ble Supreme Court in the case of **Oil and Natural Gas Corporation vs Krishan Gopal 2020(3) SCALE 272, date of decision 7.2.2020** is relevant therein Hon'ble Supreme Court have has laid down principle regarding regularization of the Workman on permanent posts. Hon'ble Supreme Court have laid down the prepositions of regularization of the workmen to permanent post is as under:-

"*(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.

Thus, in view of the principles laid down by the Hon'ble Supreme Court as discussed above, in the instant matter the Workman utterly failed to prove her claim by adducing any documentary or oral evidence that the employer has indulged in unfair labour practice by not filling the permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performance was the same work, as regular workmen on lower wages.

43. Respondent has contended that all the vacancies exist and arise upto 31.3.1997 has been filled up from the panel list in order of seniority and no vacancy exists or arises as on 31.3.1997 remained unfilled. Further, it is contended that as per terms of settlement the life of panel lists has been lapsed on 31.3.1997, hence, there is no occasion to extend the life of panel lists beyond 31.3.1997. However, the workman failed to prove contrary by any evidence to the aforesaid contention of the Respondent that the vacancies were existing as on 31.3.1997 and the workman was not given absorption to the permanent post in order of her seniority. It is settled law that the power to create permanent or sanctioned post lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service. Therefore, the claim of the workman on this ground also not acceptable.

44. Further, as per the of settlement, panel was prepared for absorption of the workmen on the permanent posts has already been lapsed on 31.3.1997 and the vacancies existing and arising upto 31.12.1994 and upto 31.3.1997 as settlement dated 30.7.1996 has been filled up from the panel by appointing the workmen as per seniority in the panel list. Workman witness WW1 in her cross examination has herself admitted this fact that, some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. The Workman failed to show that there was any breach of terms of settlement has been committed by the Respondent in appointment to permanent post from aforesaid panel list.

45. As discussed in preceding paragraph of this Award, the life of the panel has not been extended beyond 31.3.1997, by any further settlement hence, the panel list in which name of the Workman was included got expired on 31.3.1997. It is not the case of the Workman that Respondent has regularized similarly situated workmen either in the scheme or otherwise and the Workman has been deprived of same benefit on par with those workmen or the vacancies remained unfilled on the date of lapse of panels i.e., 31.3.1997, Industrial Tribunal has no jurisdiction to extend the date of lapse of panel i.e., 31.3.1997. This Tribunal can not order for regularization of workmen to the permanent post in contravention of the provision of Article 14 of the Constitution of India.

In the case of **Mahboob Deepak vs. Nagar Panchayat Gajraula & Anr, Civil Appeal No.5875/2007 date of judgement 13.12.2007,** Hon'ble Supreme Court have held:-

"8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Therefore, in view of the law laid down by the Hon'ble Apex Court, the claim of the Workman for absorption merely on the basis of number of day of work in the Respondent bank Branch is not acceptable. As regard plea of the Workman that the Workman should have been given employment even after 31.3.1997 as temporary Workman, it is the discretion of Respondent to engage the Workman depending upon availability of work and this Tribunal can not direct the Respondent to engage the Workman in the absent of such rule/scheme.

46. In view of principle laid down by Hon'ble Apex Court as discussed above, in the instant matter Workman utterly failed to establish the fact of rendering continuous service for a period of 240 days of service within a period of 12 calendar months commencing and coming backward from relevant date i.e., the date of retrenchment, if has he would be denied to be in continuous service for a period of one year. Therefore, the provision contained under Sec.25F of retrenchment is not applicable to Workman.

Counsel for Workman has relied upon number of decisions of Hon'ble High Court and Hon'ble Supreme Court and few of them are discussed herein:-

In the case of **F.C.I., vs. Kamdhenu Cattle Feed Industries 1993 (1) SCC 71,** therein Hon'ble Supreme Court have held:-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a

reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely lo be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but providers for control of its exercise by judicial review."

In the case of **State Bank of India, R.O., Vijayawada vs. Industrial Tribunal, Hyderabad WP No.193/1997,** therein Hon'ble High Court have held,

"*Sri Krovvidi Narasimham, the learned counsel for the 2nd respondent contends, supporting the award that it was a permanent vacancy and even though the 2nd respondent was appointed on temporary basis, his services were not liable to be terminated and he was to be regularised into service on permanent basis. Shastry award warrants that no temporary appointment can be made to a permanent post. But the matter is now covered by two division bench judgements dated 28.11.1986 in W.A. No.791 of 1986 and 25.8.1987 in W.A. No.270 of 1982. The ratio decided in the two judgements is to the effect that there cannot be any mandate to appoint employees on permanent basis when the requirement was for appointment on temporary basis. But it is held in the said judgements that when a temporary appointee is ousted from service and not for misconduct and, if again temporary appointment is to be made, then, the case of such temporary appointee who was ousted, has got to be considered in accordance with Sec. 25-H of the Act."*

In the case of **State of Haryana and others vs. Piara Singh and others. 1992 (4) SCC 118,** therein Hon'ble Supreme Court have held:-

" 49. If for any reason an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

In the above cited judgements by the Workman the facts of the case are different hence do not apply to instant case of Workman.

47. On the other hand, in support of his contention Respondent has examined witness MW1 and MW1 in chief examination states that, Settlements i.e., on 17.11.1987, 16.7.1988, 27.10.1988, 9.1.1991 were entered into between the SBI and SBI Staff Federation for filling up of the vacancies that arise up to 1994 for those temporary employees who has worked on scale wages. Further, MW1 states that two different panels for messengers and non-messengers as per the eligibility criteria prescribed by the bank. There are four modules in Andhra Pradesh and they are Hyderabad, Tirupathi, Vijayawada and Visakhapatnam. MW1 states that the temporary employees so empanelled were given permanent absorption depending upon the vacancies so arise strictly in terms of the settlement. MW1 states that on 9.6.1995 conciliation proceeding was held before the RLC(C), Hyderabad and in said proceedings it was decided that the panels will be kept live up to 31.3.1997 and vacancies will be filled from both the lists concurrently. A copy of the said minutes of proceedings is Ex.M5. Further, MW1 states that on 30.7.1996 another settlement was entered between the SBI and All India SBI Staff Federation providing for filling up of the vacancies arising up to December 1994 in respect of subordinate cadre and daily wage /casual wage employees out of panel so prepared were to be considered against vacancies arising from January 1995 to December 1996, thereafter the said panels lapse. MW1 states that it was also agreed that all the non- messenger positions in subordinate cadre including part time attendants specially provided as leave reserve will be filled before 31.3.1997 and as regards to non-messengerial positions it is agreed that all such posts sanctioned and fallen vacant up to 31.3.1997 shall be filled before the empanelled list is allowed to lapse. Thus in both the cases empanelled list were lapsed on 1.4.1997. Ex.M6 is the copy of the settlement dated 30.7.1996. Further, witness states that on 27.2.1997 a memorandum of understanding was reached between the SBI and SBI Staff Federation providing that both the panels above mentioned will lapse on 31.3.1997. Ex.M7 is the copy of the memorandum of understanding and Ex.M8 is the copy of the statements giving the particulars of 1989 non-messenger panel, Ex.M9 is the copy of the statement of 1989 non-messenger panel, Ex.M10 is the copy of statement of 1992 panel. Further, witness states that petitioner was included in the 1989 panel. As the existing vacancies at that time were exhausted and her turn did not come he could not be given permanent employment in the bank as per the agreements. All the appointments were made strictly in accordance with the settlements reached from time to time between SBI and SBI staff federation and as per seniority, number of days of temporary service put in by them in the bank in the given period. Further, MW1 states petitioner was not sponsored by any employment exchange he did not undergo the regular process of selection required for appointment as a regular non-messenger the petitioner has not worked for 240 days in any year in her entire temporary service in the bank. The petitioner and other temporary employees were terminated from service by the bank. Further, MW1 states that the vacancies were filled up on regular basis with the temporary employees from the panels and these panels were expired in terms of the settlements so reached and there were no vacancies to absorb such employees. Thus, witness MW1 has proved the documents Ex.M1 to Ex.M12 and also contentions made in the

counter. However, MW1 was cross examined by the Petitioner Counsel. But nothing has been elicited in her cross examination so as to discredit the testimony of the witness MW1 as regards the date of lapse of both the panels on 31.3.1997 and reasons assigned for non-absorption of the Petitioner from the panel list to the permanent post. Moreover the witness MW1 was re-examined by the Respondent and the witness MW1 states that panels were expired in terms of the settlement send absorptions to the extent of the available vacancies were made. There was no termination of any temporary messenger as such but their services were not utilized after the cut off date as the available vacancies were already filled up and most of these Petitioners were not in the service of the bank as on the date of the expiry date of the panels. Therefore, in view of the aforesaid testimony of the MW1 in re-examination in the absence of cross examination remained uncontraverted, the claim of the Workman that he was entitled for absorption in permanent post in the branch of Respondent Management on the basis of panel list is found not established.

This point is answered against the Workman.

48. **Point No.IV**:- In view of the discussion and finding given at Point Nos. I, II and III, the Workman is not entitled for any relief and claim statement of Workman sans merit and liable to be dismissed.

This Point is answered accordingly.

AWARD

In view of the fore gone discussion, it is held that the action of the Respondent bank in terminating the services of Smt. B. Shakuntala, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for. The claim statement filed by Workman sans merit, hence, dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. K. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 30th day of April, 2026.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Shakuntala	MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate
Ex.W2:	Photocopy of service certificate
Ex.W3:	Photocopy of service certificate
Ex.W4:	Photocopy of notification
Ex.W5:	Photocopy of interview call letter
Ex.W6:	Photocopy of service certificate
Ex.W7:	Photocopy of Service certificate
Ex.W8:	Photocopy of service certificate
Ex.W9:	Photocopy of Service certificate
Ex.W10:	Photocopy of service certificate
Ex.W11:	Photocopy of Service certificate
Ex.W12:	Photocopy of service certificate
Ex.W13:	Photocopy of Service certificate
Ex.W14:	Photocopy of lr. to employment exchange
Ex.W15:	Photocopy of audit report

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non-messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 5 जून, 2026

का.आ. 1169.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **लखनऊ** के पंचाट (116/2014) प्रकाशित करती है।

[सं. एल-41011/73/2014- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.116/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Center Railway and their workmen.

[No. L-12012/73/2014- IR (B-I)]

SALONI, Deputy Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

ID Case No. 116 of 2014

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

Between:-

The General Secretary,
Rashtriya Chaturth Shreni Rail Mazdoor Congress (INTUC),
29/A, Kabir Nagar, Dayal Bagh,
Agra (U.P)-282005

…...……Workman

AND

The Divisional Railway Manager,
North Central Railway,
Jhansi.

……Management

Award

24.02.2026

Central Government, MOL, vide notification no. L-41011/73/2014-IR (B-I) dated 07/10/2014 has referred the Industrial Dispute to this Tribunal for adjudication. This award arises in response to the reference made by Government of India, Ministry of Labour department in exercise of the powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur. The Reference is stated as follows:-

"Whether the action of the management of Northern Central Railway in awarding the punishment of stoppage of increment of the year 2013 in respect of Shri Nanhe Ram s/o Chet Ram is just, fair and legal? If not, to what relief the workman concerned is entitled to?"

The averments made by claimant in his claim statement are summarized as follows:-

The claimant workman was working on the post of Gangman under Senior Section Engineer, Rail track, Agra Cantonment, Agra. He is also a member of the union. It is also alleged that by union that after medically decategorised, as declared by doctors of railway a case is pending regarding the change in job of claimant workman as per his current competence before Labour commissioner. Though later conciliation took place between parties. But the behavior of O.P management was still unfair towards the claimant workman. Union further states that claimant workman himself submitted a petition in the union's office of redressal of the above mentioned case which was later produced before Labour Commissioner. In response to the action of claimant workman O.P management with malice intention charge sheeted him S.F-11 dated 08.11.12 with false facts. Management accused him that during night duty of chowkidari he photocopied secretly the petition provided Ramkishore's son saru and attaching the petition to the application to Labour Commissioner. And like this he was falsely accused of theft. Claimant workman vehemently refutes all allegations charged by O.P. further he stated that the letter was provided by the union and he enclosed the letter of union also which states that Ramkishore has provided the petition to the union and the union later gave the petition to the claimant worker. But without any investigation the O.P management punished the worker by order dated 16.02.2013 and stopped his increment of Year 2013. Against the punishment the workman submitted his representation but O.P management did not consider it. Union in his prayer requested to quash the order of punishment and should provide him all his dues with interest and any other benefits which deem fit in the eyes of the Hon'ble Tribunal.

O.P management in his written statement has submitted respectfully which are as follows:-

Management has vehemently refuted the alleged claim made by claimant workman. Claimant workman never informed the O.P management about his being member of any union. It is stated that the claimant workman was not a medically de-categorized employee. As per the order of Hon'ble Labour Commissioner he was posted for chowkidari of store and office. Only work of chowkidari was taken from him and no other work was taken from him. It is also stated that no malice behaviour was shown towards him by O.P management. O.P management also refuted the point no. 3 of claim made claim statement and stated that the facts mentioned are imaginary, baseless and misleading. In reality Shri Ram Kishore son of Saru has cleared in written and oral he submitted his representation only to Senior Section Engineer, Railway , South Agra not to union. Management refuted point no. 4 of claim statement and stated that in reality after only in writing submitted by Shri Kishore son of Saru claimant workman was issued Form 11 not with any malicious intention. Management refuted point no. 5 of claim statement stating that it is clearly stated by Ramkishore that representation was given only to Senior Engineer not to the union. Management refuted point 6 and stated that administrative action is taken after carefully considering the representation submitted by the employee only. No exploitation was done of the claimant workman. The whole case is fabricated and based on imaginary facts to fool hon'ble court and gain illegal benefits. O.P management stated that proof of burden is on the worker by providing proof either by himself or any documentary evidence. O.P management in his prayer requested to dismiss the case as it is illegal, not maintainable and the worker is not entitled to get any benefits.

Union in his rejoinder refuted the written facts of the management and stated that the case was raised as he was member of the union. Union further refuted point no. 2 of written statement of O.P and stated that O.P management had accepted that he worked as a gang man and after examination of doctor his job was changed to chowkidar and from there on he consistently serving as Light Job. Union refuted point no. 3 and emphasise on the fact that Ram Kishore submitted his representation only to Union president Shri Surender Singh, Advocate only. Union refuted point no. 5 and emphasised on his facts and stated that no rules laid down in rules 1968 was followed during enquiry.

On perusal of record it is found that claimant workman was provided ample amount of opportunities for cross examination and to provide any oral or documentary evidence in support of his claim. On 13.12.2017 in his cross examination claimant workman stated he is not in condition to say anything as he was retired. At present his age is 61 years. He worked under DWI, Cant Agra. He stated that he could not inform the Tribunal when he joined the duty. He stated that the case which was filed is related to increment as O.P management Railway stopped his increment. The

case was filed by union , not by the name. He didn't remember which union had filed the case. While his service he was never a member of any union. His case which was filed in tribunal was filed in the name of Surender Singh. When his case was filed, he failed to register his presence before the Tribunal. His leader had appeared before the tribunal. He was not very sure that the language of claim statement was hindi but he claimed that he was fully enlightened with all the details of the claim statement. Later on 4/5/2018 he stated that he retired in around diwali festival. He served O.P management from 1985 to 2016. He further accepted that he was member of union belongs to Rashtriye Chaturth Shredi Rail Mazdoor Congress and also member of many other unions but did not remember their name.The union who filed his case was registered with the Railway. He did not remember the registration number of the union. He also did not remember the date and time when he registered in union but around 2011-12 he was a regular member of the union. He had the identity card of union but failed to submit in tribunal. He firstly said during his service it is the only case he had but later he changed his statement and admitted that one more case was pending before the Labour Commissioner.

The main question in this reference "whether the action of the management stoppage of increment of year 2013 in respect of applicant is just, fair and legal"

Applicant said in our claim statement that he was employee of O.P with a malafide motive, issued a charge sheet on 08.11.2012 and false charge was imposed as above and without any inquiry. He was punished with stoppage of increment of year 2013 against that O.P said in written statement that he is caretaker and no any work is taken from him. It is false that O.P kept malafide intentions against the applicant. After hearing and considering to the applicant that the order was raised on the administrative side without any malafide intention, applicant is not entitled to any relief and also requested that this suit was presented by non-recognized union and that is not recognized by INTUC and also requested that against the punishment order dated 16.02.2013. Applicant filed departmental appeal and that is pending hence this I.D. suite is immature. He is not entitled to any relief.

After filing Rejoinder union filed the copy of five documents which are as follows:-

1. photocopy of letter S.F -ll no. AGC/S/W/S-2 dated 8.11.2012 issued to claimant workman by Senior section engineer, railway, south, Agra cantonment
2. photocopy of clarification letter with letter no. S.F-ll dated 10.11.2012
3. photocopy of punishment by senior section engineer issued by letter no. R.P, South Agra Cantonment dated 16.02.2013
4. photocopy of letter of President of union dated 10.11.2012
5. photocopy of claim/appeal dated 1.04.2013

And to some extent he gave our oral evidence.

Applicant said that his increment was stopped by year 2013. He filed above documentary evidence and himself produced for support of our claim statement. A departmental enquiry was initiated and his reply was not found non-satisfactory and his punishment order was passed on 16.02.2013 as above order copy is annexed as paper no. 11/4. In that order it is mentioned that reply was not satisfactory. Hence the punishment order was passed. Accept those papers no other papers are filed as such support of claim statement. It is also important that in our written statement para 11 O.P said that departmental appeal is filed by applicant and that is pending. In reply applicant said in rejoinder that is wrong and unacceptable against punishment order dated 16.12.2013. No departmental appeal is pending but as per above rejoinder no documentary evidence is filed that shows no departmental enquiry is pending. There is no any proof.

To some extent applicant is produced himself for oral evidence in chief of his support of our claim statement but when by order dated 04.05.2018 cross examination was deferred for 18/07/18 but applicant was not turned up for cross examination. Hence cross examination due to non appearance of the applicant is not completed.

In our cross examination claimant workman stated he is not in condition to say anything as he was retired. At present his age is 61 years. He worked under DWI, Cant Agra. He stated that he could not inform the Tribunal when he joined the duty. He stated that the case which was filed is related to increment as O.P management Railway stopped his increment. The case was filed by union , not by the name. He didn't remember which union had filed the case. During his service he was never a member of any union. His case which was filed in tribunal was filed in the name of Surender Singh. When his case was filed, he failed to register his presence before the Tribunal. His leader had appeared before the tribunal. He was not very sure that the language of claim statement was hindi but he claimed that he was fully enlightened with all the details of the claim statement.

Later on 4/5/2018 he stated that he retired in around diwali festival. He served O.P management from 1985 to 2016. He further accepted that he was member of union belongs to Rashtriye Chaturth Shredi Rail Mazdoor Congress and also member of many other unions but did not remember their name.The union who filed his case was registered with the Railway. He did not remember the registration number of the union. He also did not remember the date and time when he registered in union but around 2011-12 he was a regular member of the union. He had the identity card of union but failed to submit in tribunal. He firstly said during his service it is the only case he had but later he changed his statement and admitted that one more case was pending before the Labour Commissioner.

As per above evidence the applicant is retired in year 2016. He himself admitted that this suite was presented before court I was not came in court.

Because applicant is not coming to court for long time as discussed above. He is not filed any documentary evidence that shows no any departmental enquiry is pending.

In view of foregoing above discussions and findings, answered in the negative.

Answered Accordingly.

Parties are left to bear their respective costs.

RAJENDRA PRASAD SRIVASTAVA, H.J.S (Retd.) Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1170.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफॅ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कानपुर** के पंचाट (101/2010) प्रकाशित करती है।

[सं. एल-12011/20/2010- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.101/2010*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur* as shown in the Annexure, in the industrial dispute between the management of Union Bnak of India and their workmen.

[No. L-12011/20/2010- IR (B-II)]

SALONI, Deputy Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

ID Case No. 101 of 2010

The Secretary,
Union Bank Staff Association (U.P.)
C/o Union Bank of India, Main Branch
24/53, Birhana Road,
Kanpur (U.P.)-

…….Workman

Vs.

1. The Dy. General Manager,
   Union Bank of India, Nodal Regional Office Aliganj,
   Lucknow-
2. The Assistant General Manager,
   Union Bank of India, Regional Office,
   117/H-1/24, Pandu Nagar,
   Kanpur (U.P.)-

……Management

JUDGMENT

(Passed on this 26th day of February, 2026)

As per letter dated 30/09/2010 by the Government of India, Ministry of Labour, New Delhi, the reference has been made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-12011/20/2010-IR(B-II) dt. 30/09/2010. The dispute under reference relates to:

"Whether the demand of regularization of services of Shri Ajay Singh as sub-Staff at Union Bank of India, General Ganj Branch, Kanpur raised by the Secretary, Union Bank Staff Association (U.P.) Kanpur is just, fair & legal? What relief the concerned workman entitled to?"

Claimant/workman Ajay Singh (hereinafter stated as the claimant) has filed the statement of claim with averments which may be concisely stated as hereunder:

1. Sri Ajai Kumar Singh (in short Ajai Singh) is resident of 13/9 Parmat, Kanpur.

2. In search of employment Sri Ajai Kumar Singh approached the Manager, Union Bank of India, General Ganj Branch Kanpur where he was offered employment as Temporary Peon as from December 2000.

3. By the nature of his employment Sri Ajai Kumar Singh falls in the category of workman as defined under Section 2(s) of the I.D. Act., 1947.

4. Sri Ajai Kumar Singh here-in-after referred to as the workman was required to work for the full hours of work of General Ganj Branch, Kanpur i.e. from 11 A.M. to 6 P.M. which are the hours of work at General Ganj Branch Kanpur. Not only he was required to perform the ordinary duties of peon, he was also required to perform the duties of Cash Peon, Daftari and Electrician.

5. As for the remuneration the workman was initially paid wages @ Rs.50/- per day excluding Sundays anx holidays which was gradually raised to Rs.100/- per day These payments were not shown as wages but in different other forms viz., cost of electric goods conveyance etc. At times payments were made in fictitious names which the workman was made to write while receiving payments.

6. The Bank by employing the workman as detailed in paragraphs 7 and 8 here-in-above and not absorbing him in the regular and permanent service of the Bank indulged in unfair labour practice as defined under Section 2(ra) of the I.D. Act., 1047.

7. The moment the authorities of the Bank came to know about the industrial dispute raised by the Union it terminated the services of the workman Sri Ajai Kumar Singh from 21.2.2009 and appointed Sri Dilip Rastogi in his place.

8. While terminating the services of the workman the Bank did not advise the reason for termination and did not, pay notice pay and retrenchment compensation.

9. As the Bank did not advise the reason for termination, did not pay notice pay and retrenchment compensation it committed breach of Section 25F of the I.D. Act., 1947.

10. The Govt. of India, Ministry of Labour New Delhi inadvertently referred the industrial dispute over regularisation of service of the workman which it subsequently amended as detailed in paragraphs 1, 2 and 3 here-in-above.

11. As the Bank terminated the services of the workman Sri Ajai Kumar Singh making breach of Section 25 F of the I.D. Act 1947 the workman is entitled to reinstatement with full back wages and other consequential benefits.

12. It is therefore respectfully prayed that this Hon'ble Tribunal may kindly adjudicate over the industrial dispute referred to this Hon'ble Tribunal and may; be pleased to hold that the action of the management of Union Bank of India is terminating the services of Sri Ajai Kumar Singh, Temporary sub-staff, General Ganj Branch, Kanpur w.e.f. 21.2.2009 is illegal and unjustified. In relief this Hon'ble Tribunal may order reinstatement of the workman Sri Ajai Kumar Singh with full back wages and other consequential benefits. Any other relief deemed fit and appropriate may also be awarded to Sri Ajai Kumar Singh.

Respondent side has submitted the written statement with averments which may be summarized as stated below:

1. Present Industrial Dispute has been raised by the union to misuse & abuse of provisions of Industrial Disputes Act, 1947[14 of 1947] & for creating illegal pressure upon the answering party bank General Manger Union Bank of India, Lucknow & Asstt. General Manager Union Bank of India, Kanpur have deliberately been made party in the instant matter. Moreover it is specifically stated that material facts have been concealed/suppressed by the

concerned union hence claim is not tenable in the eyes of law & is deserved to be rejected forthwith by the Hon'ble Court.

2. It is necessary to plead here that case for termination w.e.f. 21.02.09 was not raised by the union before the A.L.C.[C], Kanpur & this fact is clearly apparent/evident from the F.O.C. report so that reference is bad in the eyes of law. To enrich our contentions it is specifically pleaded on behalf of the bank that Shri Ajay Singh was never in the services of the bank therefore there is no question of terminating the services of Shri Ajay Singh by the management of the Bank, hence, claim is not maintainable & liable to be dismissed forthwith by the Hon'ble Presiding Officer.

3. Moreover, it is submitted that Mr. Ajay Kumar Singh was not an employee of the Bank. He was never appointed by the bank under the prescribed procedure of the bank. The relation of employer & employee never existed between Sh. Ajay Kumar Singh and the Bank. Hence, the present complaint is not an industrial dispute as per section 2(k) of Industrial Disputes Act, 1947.. Thus, the question of termination of Mr. Ajay Kumar Singh w.e.f. 21.02.09 does not arise on the basis of claim filed before the Hon'ble A.L.C.[C], Kanpur & demand of the union is liable to be rejected at this juncture.

4. It is clearly mentioned that plea of termination has only been raised by the union to get sympathy of the Hon'ble Court. It is settled law of land that burden of proof is on applicant union to show that Shri Ajay Kumar Singh was appointed by the bank otherwise claim has no merit & is deserved to be dismissed forthwith.

5. In addition to referred objections it is submitted that Mr. Ajay Kumar Singh was an electrician. Being an electrician Shri Ajay Singh was engaged for electrical repairing works of the branch as and when required. He was never a regular employee of the bank and performed the work on piecemeal basis and was compensated promptly towards the Labour charges. It is specifically narrated here that Ajay kumar Singh has not worked for 240 days in one year under the provisions of section 25 B hence provisions of 25 F of the Industrial Disputes Act, 1947 are not attracted in the present matter.

6. The facts as mentioned in paras 5, 6 & 7 of the claim are wholly wrong hence vigorously denied by the answering party bank except Ajay Singh was an electrician. He was never employed by the Bank as an employee of the bank and there was no employer employee relationship with him. Hence, he can't claim that he was covered in the definition of workman as defined in Sec. 2 (s) of Industrial Disputes Act, 1947. It is clearly pleaded that vacancy of temporary peon did not exist at General Ganj branch in the year 2000.

7. In reply to paras 8 & 9 of the claim it is humbly stated that allegations as made in said paras being incorrect are not found trustworthy, hence denied. No remuneration was paid to Sh. Ajay Kumar as wages or in lieu thereof. He was compensated for the work done by him on quid pro quo basis and he was never an employee of the bank. Nobody can claim regularization or appointment if he is not appointed under the prescribed procedure for appointment. Hence, the claim of the Union is bad on facts as well on law.

8. The averments as brought in paras 16 & 17 of the claim are matters of records hence no fresh reply is required on behalf of the bank.

9. It is therefore humbly prayed that Award may be passed by the Hon'ble Tribunal in favour of the bank & against the applicant union in the light of bank's reply.

After filing of above written statement, rejoinder is also filed by applicant which is read as under:

1. the contents of para 1 of the reply are false and without any basis. The General Manager and Asstt. General Manager are necessary parties hence they have been arrayed as parties. There is no concealment of facts as alleged. The claim suffers from no illegality and is maintainable.

2. The contents of para 2 of the reply are not admitted as they stand. It is true that initially the Reference for 'Regularization' came which was subsequently amended to the 'Termination'. It is denied that the plea of termination was not taken w.e.f. from 21.02.2009 was not taken before the A.L.C. (C) Kanpur. In para 7 of the Rejoinder filed before the A.L.C.(C), Kanpur there is specific mention that by raising the dispute of 'Regularization' before the A.L.C. (C)., Kanpur the management got annoyed and terminated the services of Ajay Kumar Singh. It is specifically denied Ajay Kumar Singh was not in the services of bank and was never terminated.

3. The contents of para 3 of the reply are false and baseless. Sri P.N. Shukla is a life member of the union and is elected Secretary of the said union.

4. The contents of para 4 of the reply are false and denied. Ajay Kumar Singh was the sub staff of the bank and there existed the employer & employee. He being workman under section 2(s) hence he has right to raise the Industrial dispute which is before the Hon'ble Tribunal for adjudication.

5. The contents of para 5 of the reply are not admitted and are denied. Ajay Kumar Singh was the sub staff of the bank whose services were terminated by the bank from 21.02.2009.

6. The contents of para 6 of the reply are not admitted as they stand. Ajay Kumar Singh was the sub staff who was acting as peon, Daftari end as an electrician and was not only electrician and has worked for 240 days in one year and the provisions of 25 F of the I.D.Act ere applicable in the present case.

Applicant filed document which is read as under:

- Photocopies of 58 sheets of Cash Payments Vouchers.

Main question in this reference is that Whether the demand of regularization of services of Shri Ajay Singh as sub-Staff at Union Bank of India, General Ganj Branch, Kanpur raised by the Secretary, Union Bank Staff Association (U.P.) Kanpur is just, fair & legal? What relief the concerned workman entitled to?

In our claim statement applicant is requested that applicant Shri Ajay Kumar Singh is resident of 13/9 Parmat, Kanpur. Applicant approached the Manager, Union Bank of India, General Ganj Branch Kanpur where he was offered employment as Temporary Peon as from December, 2000. Applicant was required to work for the full hours of work of General Ganj Branch, Kanpur i.e. from 11 A.M. to 6 P.M. which are the hours of work at General Branch Kanpur and not only he was required to perform the ordinary duties of Peon, he was also required to perform the duties of Cash Peon, Daftari and Electrician. He was initially paid wages Rs. 50/- per day excluding Sunday and holidays which was gradually raised to Rs. 100/- per day. These payment were not shown as wages but in different other forms like cost of electric goods, conveyance etc. The bank terminated the services of the workman Shri Ajay Kumar Singh from 21.02.2009 and appointed Shri Rastogi in his place.

In reply of above claim statement bank filed written statement and in his written statement preliminary objection is raised that it is necessary to plead that case for termination w.e.f. 21.02.2009 was not raised by the union before the A.L.C. (C), Kanpur and this fact is clearly apparent/evident from the F.O.C. report so that reference is bad in the eyes of law. Shri Ajay Singh was never in the services of the bank therefore there is no question of terminating the services of Shri Ajay Singh by the management of the bank. He was never appointed under the prescribed procedure of the bank. The relation of employer & employee never existed between Shri Ajay Kumar Singh and the bank. It is settled law of land that burden of proof is on applicant union to show that Shri Ajay Kumar Singh was appointed by the bank otherwise claim has no merit and is deserved to be dismissed forthwith. Further, it is specifically narrated here that Ajay Kumar Singh has not worked for 240 days in one year under the provisions of Section 25 B hence provisions of 25 F of the Industrial Disputes Act, 1947 are not attracted in the present matter.
Main question in this reference that applicant is employee in said bank as stated by him.

A perusal of the record shows that, as per the order sheet dated 22.04.2015, the applicant filed several photocopies of documents which remain on file. Subsequently, the case was fixed for the filing of documents and evidence by the opposite party. On 13.10.2023, this Tribunal passed the following order:

"None for workman. Shri Neeraj Sharma for respondent.
Last opportunity is granted to the workman to file an affidavit.
Failing which the matter will be proceed to ex-parte.
Office is directed to issue notice to workman.
List on 15.12.2023. "

In the claim statement, the applicant asserted that he was an employee of the opposite party bank. In Paragraph 5, he stated he was offered employment as a
Temporary Peon starting from December 2000 and was paid wages as mentioned in Paragraph 8.

Conversely, the opposite party maintained that the applicant was never in the service of the bank; hence, the question of termination does not arise. The bank contended that there is a formal procedure for appointment, and no employer-employee relationship ever existed between the parties. In Paragraph 6 of the written statement, the bank stated that the applicant was an electrician engaged only for electrical repair work at the branch as and when required; he was never a regular employee.

In his rejoinder, the applicant denied these facts, claiming he was a member of the sub-staff acting as a Peon, Daftari, and Electrician. He asserted that he worked for 240 days in a year under the provisions of Section 25-F of the ID Act.

While the applicant filed several photocopies, the Tribunal finds that these documents merely show that certain amounts were paid to the applicant—and occasionally to other persons—as quoted for specific tasks. The applicant failed to file essential documents to prove he was a bank employee, such as an appointment letter, interview letter, or salary certificate. Furthermore, he never appeared in court after filing the photocopies to prove their authenticity or to provide oral evidence. Consequently, the papers filed by the applicant fail to establish that he was an employee of the opposite party bank as claimed.

The burden of proof to establish the existence of an employer-employee relationship and the alleged 240 days of continuous service lies squarely on the workman.

Despite multiple opportunities and several dates fixed for evidence, the claimant failed to produce:

(i) Any documentary evidence (Appointment letter, salary slips, attendance records).

(ii) Any oral evidence to substantiate his claims of employment or the alleged unfair labour practice.

In the absence of any evidence, the claimant has failed to discharge the primary onus of proof. The mere filing of a statement of claim does not constitute proof of the facts alleged therein.

Since the claimant failed to prove that he was an "employee" of the respondent bank or that any termination took place as alleged, the question of illegal termination or right to re-employment does not arise.

Accordingly, the reference is answered in the **negative**. The claimant is not entitled to any relief. A **'Nil'** Award is hereby passed.

Parties are left to bear their respective costs.

Date: 26.02.2026

RAJENDRA PRASAD SRIVASTAVA, H.J.S (Retd.) Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1171.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कानपुर** के पंचाट (43/2015) प्रकाशित करती है।

[सं. एल-12011/89/2014- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1171.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 43/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur* as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12011/89/2014- IR (B-II)]

SALONI, Deputy Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

KANPUR

ID Case No. 43 of 2015

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

Between:-

The District Secretary,
Allahabad Bank Staff Association U.P.,
3/13, Mathura Nagar,
ALIGARH(U.P)-202001

……Workman

AND

1. The Chief Manager/Disciplinary Authority,
   Allahabad Bank, Zonal Office,
   1/42, Babu Gulab Rai Marg, Delhi Gate,
   AGRA (U.P)-282002

2. The Appellate Authority/Dy. General Manager,
   Allahabad Bank, Zonal Office,
   1/142, Babu Gulab Rai Marg, Delhi Gate,
   AGRA (U.P) -282002

……Management

Award

26.02.2026

Central Government, MOL, vide notification no. L-12011/89/2014-IR(B-lI) dated 08/07/2015 has referred the Industrial Dispute to this Tribunal for adjudication.This award arises in response to the reference made by Government of India, Ministry of Labour department in exercise of the powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent.Govt.Indus.Tribunal-/cum-Labour Court, Kanpur. The Reference is stated as follows:-

"Whether the action of the management of Allahabad Bank, Zonal Office in awarding the punishment of 'Warning' and non- payment of interest on the refunded amount to the workman after amending earlier punishment order to Warning is legal and justified? If not, what relief the workman Shri Jag Mohan Sharma is entitled to? "

The averment of claimant workman may be summarized as follows:-

Claimant workman stated in claim statement that he was appointed to the post of cashier in Allahabad Bank on 04.12.1975. He also worked in Mahavir Ganj branch , Aligarh as head Cashier and in AMU branch, Aligarh as special assistant. Since claimant workman served as regional secretary of Allahabad Bank Staff Association and District Secretary of his hereditary organization UPBEU and due to which he was always involved in the fight/struggle of workman against the management. Due to which management had personal hatred towards him. While working as head cashier in mahaveer branch he used to take cash in different banks and in return the bankers cheque of submitted cash to his Branch manager. In claim statement claimant claimed that he was issued charge sheet with NO. Z0AG/ADMN/VIG/906 dated 12.09.2013 on imaginary basis and alleged him that he failed to submit bankers cheque of that day to Branch Manager after taking the cash to different banks. It is stated by claimant workman that during proceeding O.P management failed to submit photocopy of bankers cheque. O.P management forced claimant workman to prove that he was innocent but burden to proof was on the person who leveled the accusation. It is claimed by workman that all other bankers cheque was brought before investing officer except the alleged banker cheque and Disciplinary officer found him guilty and punished him with fine of Rs 10,000/-. According to Shastri Award no claimant workman no so much fine or recovery can be done. Against the illegal punishment an appeal was made and it was long pending for execution. But later when an appeal was made before Labour Commissioner then Appellate Officer on 04.07.2014 entertained the appeal and changed the nature of punishment from fine of Rs 10,000/- to "Warning". As a result the management refunded the illegally fined money but management did not pay the interest on refunded money. It is also stated that claimant workman is not able to

comprehend the fact of meaning of warning to retired claimant workman. It is prayed by claimant workman that he is entitled to be payed interest on refunded money of Rs 10,000/-.

The averments of O.P management may be summarized as follows:-

The O.P management refuted the allegation made in para 5 of claim statement of claimant workman and stated that the misconduct committed by the workman was self explained in the charge sheet. O.P management refuted para 6 of claim statement and stated that if charges are alleged and initial burden has been discharged by the management then it would be liability of the workman to adduce evidence in his support. Lastly mere allegation of malafide is not a proof; the heavy burden is imposed upon the workman to prove the malafide.The contents of para 7 of the claim statement are denied and stated that the disciplinary authority had rightly awarded the punishment in consonance with the misconduct done by the workman and also in accordance with provisions of bi-partite settlement. The contents of para 11 of claim statement denied and denied the employers of the workman had any malafide or any malice with the workman. However, the appellate authority had sympathetically considered the appeal preferred by the workman accordingly the punishment was altered from fine of Rs 10,000/- to "WARNING" only and the same was fully justified and legal. Finally the O.P stated that the prayer of the workman is not maintainable under the present proceedings being beyond reference and also the same being devoid of merit, as such the claim filed by the workman is liable to be rejected on initial stage itself.

The rejoinder filed by claimant workman may be summarized as follows:-

Claimant workman opposed the content of para 7 of w.s and stated that Appellate officer modified the punishment as it was illegal and based on imaginary facts. Further it stated that burden of proof is on the person who lodge the allegation not on the victim. It is also stated by workman that there is no provision for fine of Rs 10,000/- except in Shahtri Award which states:-

"**The total amount of fine which may be imposed in any one calender month on any workman shall not exceed an amount to ½ anna in the rupee of the salary and allowance payable to lui in respect of that period**".

Claimant workman refuted content of para 11 of w.s as decision is made on hardcore facts not compassionate ground or on malice intent. It is prayed by claimant workman that Rs 10,000/- collected from him as fine and refunded later after long time but management did not pay interest on that and claimant is entitled to get interest on that money.

The following documents are submitted by claimant workman:-

1. photocopy of Show cause No. 20AG/VIG dated 25.09.2013 and reply of claimant workman dated 26.09.2013
2. photocopy of cash and remittance , P.O Details dated 17.01.2013 submitted during enquiry
3. photocopy of correspondence dated 06.04.2013 and details of cash remittance etc.
4. photocopy of order of Appellate officer dated 27.09.2013

The main question in this reference is as follow:-

" Whether the action of the management of Allahabad Bank, Zonal Office in awarding the punishment of 'WARNING' and non payment of interest on the refunded amount to the workman after amending earlier punishment order to Warning is legal and justified? If not, what relief the workman **Shri Jag Mohan Sharma** is entitled to?"

Applicant said in our claim statement that he was appointed in above bank in 04.12.1975. He also worked as General Secretary of union hence the O.P keep him malafide intention. One chargesheet has been issued as mentioned in para 5 of our claim statement and punished him a fine of Rs 10,000/- feeling aggrieved by the above punishment order he preferred appeal and after hearing of the appeal my appeal was admitted and instead of previous punishment amended punishment was given warning. He also said in our evidence in chief para 7 and para 10 of chief examination that appeal was admitted and punishment was changed as above. Now the above employee is retired, the punishment is changed and only warning is now punishment.

From so many dates applicant is not coming and not participated in this proceedings. Applicant is retired and punishment is as above "WARNING" only. A departmental enquiry was initiated against him and punished him a fine of Rs 10,000/- but in appeal the punishment was amended and only punishment "WARNING" only is given.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Answered Accordingly.

Parties are left to bear their respective costs.

Date: 26.02.2026 RAJENDRA PRASAD SRIVASTAVA, H.J.S (Retd.) Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1172.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कानपुर** के पंचाट (44/2019) प्रकाशित करती है।

[सं. एल-12011/61/2009- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.44/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/61/2009- IR (B-II)]

SALONI, Deputy Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Present Shri Rajendra Prasad Srivastava, H.J.S (Retd.)

ID Case No. 44 of 2009

Shri Kamlesh Chaturvedi, Secretary,
Punjab National Bank Workers Union UP,
128, F/75 Kidwai Nagar, Kanpur,
Kanpur (U.P.)-

…….Workman

Vs.

The Dy. General Manager,
Punjab National Bank,
Regional Office Birhana Road,
Kanpur,
Kanpur (U.P.)-

……Management

JUDGMENT

(Passed on this 27th day of February, 2026)

As per letter dated 12/10/2009 by the Government of India, Ministry of Labour, New Delhi, the reference has been made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-12011/61/2009-IR(B-II) dt. 12/10/2009. The dispute under reference relates to:

> *"Whether the demand of the union that Shri R. S. Kakkar workman of the Punjab National Bank Branch Office Birhana Road, Kanpur is entitled to stagnation increment w.e.f. 1/4/2003 as per the bipartite settlement is legal and justified. What relief the workman concerned is entitled to?"*

Claimant/workman R. S. Kakkar (hereinafter stated as the claimant) has filed the statement of claim with averments which may be concisely stated as hereunder:

(i) Service conditions of bank employees are governed by Shastri Award as modified from time to time by subsequent bipartite settlements. These bipartite settlements are being entered into between Indian Banks Association consisting of representatives of management of banks on the one hand and representatives of all the major unions of workmen in the banks on the other. As such provisions of these settlements have a binding force. The mandatory provisions of the Bipartite Settlement which are applicable in the instant case and which are desirable for adjudication of the dispute are given here under:

Stagnation Increments:

"In partial modification of Clause 5 of Bipartite Settlement dated 27th March, 2000, both clerical and subordinate staff (including permanent part-time employees on scale wages) shall be eligible for six stagnation increments with effect from 1st November, 2002 at the rate and frequency, as stated here in under:-

The clerical and the subordinate staff (including permanent part-time employees on scale wages) on reaching the maximum in their respective scales of pay, shall draw six stagnation increments at the rate Rs. 560/- and Rs. 270/-each, due under the Settlement, and at frequencies of 3 years and 2 years respectively, from the dates of reaching the maximum of their scales as aforesaid.

(ii) The workman Shri R. S. Kakkar joined the services of the bank on 24.04.1972 and reached on the maximum of the scale on 01.04.1991 and become entitled for the stagnation increments on 01.04.1994, 01.04.1997, 01.04.2000, 01.04.2003, 01.04.2006 and 01.04.2009 in terms of mandatory provisions of the Bipartite Settlement quoted here in above. The management sanctioned and released the first three stagnation increments due on 01.04.1997, 01.04.2000 and 01.04.2003.

(iii) Vide Orders 10.04.2003, the Disciplinary Authority decided to inflict the punishment of Bringing down to lower stage in the scale of pay by two stages for gross misconduct in terms of Para 6(e) of the Bipartite Settlement dated 10.04.2002 on the workman Shri R.S. Kakkar.

(iv) Management of the bank violated the mandatory provisions of the Bipartite Settlement relating to sanctioning and release of Stagnation Increments with malafide and bad motive to the detriment and disadvantage of the workman in as much as that it did not release the fourth stagnation increment w.e.f. 01.04.2003 for which the workman had already become entitled. The management released the fourth stagnation increment w.e.f. 01.04.2005 and Fifth Stagnation increment w.e.f. 01.04.2008.

(v) From a mere look of the mandatory provisions of the Bipartite Settlement, it is evidently clear that Stagnation increments stand on different footing than annual graded increments and as such stagnation increments are not part of scale of wages. The mandatory provisions of the Bipartite Settlement have not clothed the management with the power to stop or postpone stagnation increments. A mere look of the relevant clause of the Bipartite Settlement would make it clear that a workman becomes entitled for stagnation increment three years after reaching the maximum of the scale. The words "after reaching the maximum of the scale" make it undoubtedly clear that Stagnation Increments are not part of scale of wages.

(vi) Aforesaid action of the management of not releasing the stagnation increment w.e.f. 01.04.2003 violates Article 14 and 16 of the Constitution of India in as much as that it places the aggrieved workman in much inferior position as compared to other similarly placed employee who other things being equal have been awarded the same punishment prior to reaching the maximum of the scale.

(vii) In view of what is stated here in above, it is evidently clear that since Stagnation Increments are not part of scale of pay and hence they remain unaffected. Thus, the demand of the Union that Shri R.S. Kakkar workman is entitled to fourth stagnation increment w.e.f. 01.04.2003, Fifth Stagnation Increment w.e.f. 01.04.2006 and Sixth Stagnation Increment w.e.f. 01.04.2009 is legal and justified.

(viii) We accordingly pray that Dispute may very kindly be adjudicated in favour of the workman and the management be directed to release the aforesaid stagnation increments from the date the same have become due and make payment of arrears along with 18% rate of interest from the date the same have been denied to the workman to meet the end of the justice.

Respondent side has submitted the written statement with averments which may be summarized as stated below:

(i) Shri R S Kakkar joined the services of the bank on 24.04.1972 and reached at the maximum of the scale wages of clerical cadre on 1.04.1991. Thereafter, three stagnation increments were released to him on 01.04.1994, 01.04.1997 and 01.04.2000.

(ii) The date of AGI of Shri Kakkar is 24th April. However, in terms of para 2 of Bipartite Settlement dated 08.09.1983 which states that the increment specified in the various scales of pay applicable to

workmen shall accrue on yearly basis and shall be given effect to on the first date of the month in which they fall due, his notional increment has been given effect on the first date of the month i.e. 1st April.

(iii) The fourth stagnation increment of Shri Kakkar was due on 24.04.2003, but before it become due, Disciplinary Authority imposed the punishment of " be brought down to lower stage of pay up to two stages vide order dated 10.04.2003. On account of imposition of this punishment, Shri Kakkar could not remain on maximum scale of pay for three years to become eligible for stagnation Increment as his pay was reduced by two stages in the scale of pay.

(iv) On 01.04.2004 and 01.04.2005, two AGIs which were brought down on 10.4.2003 on account of imposition of punishment, were released to him. As in April 2005, shri Kakkar had again reached the maximum of his scale, his 4th stagnation increment was also released.

(v) Further, it is clarified that in terms of para 5 of the Bipartite Settlement dated 27.3.2000, the stagnation increment is due to the workman when he remained on maximum of the scale for 3 years. In the present case, 4th stagnation Increment was not released to Shri Kakkar as he could not complete 3 years on the maximum of the scale on 24.4.2003 as before fat date, the punishment was imposed upon him and he was brought down to lower stage of pay upto two stages. As soon as he reached on maximum of the scale in the year 2005, his 4th stagnation increment was also released.

(vi) The contents of para 5 and 6 of the claim statement are wrong and hence denied. In reply it is stated that union is misinterpreting the relevant provisions of the Bipartite Settlement in respect of stagnation Increment. Para 5 of the Bipartite Settlement dated 27.03.2000 provides as under:-

> The clerical and the subordinate staff on reaching the maximum in their respective scales of pay shall draw five stagnation increments at the rate of Rs. 380/- and Rs. 170/- each, due under this settlement and at frequencies of three years and two years respectively, from the dates of reaching the maximum of their scale as aforesaid.

(vii) In the present case, 4th stagnation increment was not released to Shri Kakkar as he could not complete 3 years on the maximum of the scale on 24.04.2003 as before that date, the punishment was imposed upon him and he was brought down to lower stage of pay upto two stages. As soon as he reached on the maximum of the scale in the year 2005, his 4th stagnation increment was also released. As such 4th stagnation increment of Shri R.S. Kakkar was deferred because he had not completed 3 years on the maximum of scale to become eligible for stagnation increment on account of the imposition of punishment of " Be brought down to lower stage of pay upto two stages" before due date of stagnation increment i.e. 24.04.2003."

(viii) In view of the facts and statements made above it is therefore most humbly and respectfully prayed from this tribunal that the Claim application of the union should not be allowed and be dismissed summarily, as the claim of the union is misconceived and has made misinterpretation of the relevant clause of the BPS, otherwise the opposite party will suffer an irreparable loss.

After filing of above written statement, rejoinder is also filed by applicant which is read as under:

(i) The management has unnecessarily raised the preliminary objection with malafide and bad motive of dragging the union in long drawn proceedings. As a matter of fact, the dispute has been duly and validly espoused as per the requirement of the Industrial Disputes Act, 1947 and is an Industrial Dispute as per the provisions of the Industrial Disputes Act, 1947.

(ii) The story narrated by the management under the heading "Brief Facts of the Case" is misconceived, concocted, misleading and hence denied. It is respectfully submitted that workman Shri R. S. Kakkar joined the services of the bank on 24.04.1972 and reached on the maximum of the scale on 01.04.1991 and become entitled for the stagnation increments on 01.04.1994, 01.04.1997, 01.04.2000, 01.04.2003, 01.04.2006 and 01.04.2009 in terms of mandatory provisions of the Bipartite Settlement quoted here in above. The management sanctioned and released the first three stagnation increments due on 01.04.1994, 01.04.1997 and 01.04.2000 and there is no dispute between the union and the management on this factual position.

(iii) It is totally wrong to say that the date of AGI of Shri Kakkar is 24th April. Provisions of Bipartite Settlement duly enclosed along with settlement and also quoted by the management in its written reply which provides that the increment specified in the various scales of pay applicable to workmen shall accrue on an annual basis and shall be given effect to on the first day of the month in which it falls due. Thus, there can be no doubt that date of AGI of Shri Kakkar is 1" April and he had already earned and become entitled for fourth Stagnation Increment on 01.04.2003. The management has committed violation of Bipartite Settlement in as much as that it did not release the stagnation increment on 01.04.2003.

(iv) The contents of Para 3 of the written statement is misleading, far from truth, frivolous and hence denied. The management itself is stating that punishment inflicted on 10.04.2003 was "Bringing down to lower stage in the scale of pay by two stages". Since Stagnation Increments are not part of scale of pay and hence they remain unaffected. The workman is entitled for fourth stagnation increment w.e.f. 01.04.2003 and Fifth Stagnation Increment w.e.f. 01.04.2006. There is no provision in the Bipartite Settlement giving right to the management to postpone/differ the payment of Stagnation Increment. Even the punishment imposed does not give right to the management to postpone the granting of stagnation increment for two years. The action of the management violates Article 14 and 16 of the Constitution of India in as much as that it places the aggrieved workman in much inferior position as compared to other similarly placed employee who other things being equal have been awarded the same punishment prior to reaching the maximum of the scale.

Main question in this reference is that Whether the demand of the union that Shri R. S. Kakkar workman of the Punjab National Bank Branch Office Birhana Road, Kanpur is entitled to stagnation increment w.e.f. 1/4/2003 as per the bipartite settlement is legal and justified. What relief the workman concerned is entitled to?

In our claim statement claimant requested that the service conditions of bank employees are governed by Shastri Award as modified from time to time by subsequent bipartite settlements. Workman Shri R. S. Kakkar joined the services of the bank on 24.04.1972 and he reached maximum of the scale on 01.04.1991 and become entitled for the stagnation increments on 01.04.1994, 01.04.1997, 01.04.2000, 01.04.2003, 01.04.2006 and 01.04.2009 in terms of mandatory provisions of the Bipartite Settlement but vide order dated 10.04.2003, the Disciplinary Authority decided to inflict the punishment of Bringing down to lower stage in the scale of pay by two stages for gross misconduct. The bank violated the mandatory provisions of the Bipartite Settlement relating to sanctioning and release of Stagnation Increments with malafide and bad motive because workman becomes entitled for stagnation increment three years after reaching the maximum of the scale. The words "**after reaching the maximum of the scale**" make it undoubtedly clear that Stagnation Increments are not part of the scale of wages.

Against that in our written statement bank requested that the fourth stagnation increment of Shri Kakkar was due on 24.04.2003, but before it become due, Disciplinary Authority imposed the punishment of be brought down to lower stage of pay up to two stages vide order dated 10.04.2003. On account of imposition of this punishment, Shri Kakkar could not remain on maximum scale of pay for three years to become eligible for stagnation increment due to that punishment. In para 5 of the Bipartite Settlement dated 27.03.2000, the stagnation increment is due to the workman when he remained on maximum of the scale for 3 years. In the present case, 4th stagnation increment was not released to Shri Kakkar as he could not complete 3 years on the maximum of the scale on 24.04.2003 as before that date, the punishment was imposed upon him as mentioned above.

After filing above written statement applicant filed our rejoinder and stated that:

In terms of mandatory provisions of Bipartite Settlement, stagnation increments cannot be stopped. Stagnation increments relate to the date on which the workman has reached on the maximum of scale. The management itself has stated in its reply that the workman had reached on the maximum of the scale on 01.04.1991. Thus, in terms of mandatory provisions of the Bipartite Settlement, following position ought to have been emerged:

B. P. AS ON	NORMAL	PENALITY	REMARKS
01.04.2000	13210+560*3		THIRD Stagnation Increment
01.04.2003	13210+560*4		Fourth Stagnation Increment
10.04.2003	13210+560*4	13210+560*2	Two Stages Reduced
10.04.2004	13210+560*4	13210+560*3	AGI Released
10.04.2005	13210+560*4	13210+560*4	AGI Released
01.04.2006	13210+560*5	13210+560*5	Fifth Stagnation Increment
01.04.2009	13210+560*6	13210+560*6	Sixth Stagnation Increment

Further, case was fixed for evidence but claimant/applicant is not given any evidence. Against that opposite party filed documentary evidence Bank Circular dated 18.01.2007 which is read as under:

Whether or not the above penalty imposed on a workman who has reached the top of the scale will affect the date of release of stagnation increment(s) to him has been examined by the Indian Banks' Association and the IBA has taken a view that the penalty which is awarded to a workmen for proven gross misconduct should have some rigor when in fact increments can be stopped with cumulative effect. Accordingly, the penalty imposed under Clause 6(e) of BPS dated 10.4.2002 should be more rigorous than Clause 6(1) and therefore, Would affect release of future stagnation increments. The effect of such view taken by IBA is that, in effect, the release of stagnation increments will be delayed by the period spent by the employee at a stage below maximum.

Against that neither any documents is filed nor any evidence is filed by claimant in support of our claim statement and also mentioned as in our rejoinder which is quoted above.

Claimant said that as per mandatory provisions Stagnation Increment cannot stop, stagnation increment relate to the date on which workman has reached on the maximum pay scale and he give a chart in our rejoinder which is mentioned above. Rejoinder filed by claimant on 14.01.2011.

Against that above circular and above settlement summary is also filed by bank and terms of settlement is mentioned above documents. And also PNB Circular dated April, 1984.

Against that all documents no any oral and documentary evidence is filed by applicant. So many opportunities are given to applicant for filing documents but applicant is failed to file any documents and oral evidence.

In the absence of any evidence, the claimant has failed to discharge the primary onus of proof. The mere filing of a statement of claim does not constitute proof of the facts alleged therein.

Accordingly, the reference is answered in the **negative**. The claimant is not entitled to any relief. A **'Nil'** Award is hereby passed.

Parties are left to bear their respective costs.

Date: 27.02.2026

RAJENDRA PRASAD SRIVASTAVA, H.J.S (Retd.), Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1173.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **लखनऊ** के पंचाट (04/2026) प्रकाशित करती है।

[सं. एल - 39025/01/2026- आई आर (बी-II)-57]

सलोनी, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 04/2026*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L-39025/01/2026- IR (B-II)-57]

SALONI, Deputy Director

ANNEXURE

BEFORE THE PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

I.D. No. 04/2026
Reference No. BE-07(04)/2025-ALC dated 13.02.2026

PRESENT
JUSTICE ANIL KUMAR
PRESIDING OFFICER

BETWEEN

Jamna Prasad, Nagar Panchayat Ward No 9 Maswasi Tehsil Suar
Distt, Rampur, Uttar Pradesh-244901

AND

Bank of Baroda, Bank Of Baroda Rehmat Ganj

AWARD

By means of Reference no. BE-07(04)/2025-ALC dated 13.02.2026, the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by sub-section (5) of Section 12 read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"Whether Sh. Jamna Prasad is a workman and the dispute between him and the management is an industrial dispute? if so, whether the act of management of issuance of charge sheet dated 31.07.2025 against Sh. Jamna Prasad is fair, legal and justified. If not, what relief Sh. Jamna Prasad is entitled to?"*

Accordingly, an I.D. Case No. 04/2026 was registered before this Tribunal.

Sri Sharad Kumar Shukla, learned counsel for respondent raised a preliminary objection that the individual workman/Sri Jamna cannot raise the industrial dispute u/s 10 (1) of the Act, so, the present reference is liable to be dismissed on the said ground.

Sri B.P. Singh, learned counsel for workman, in rebuttal, to the same submits that once the reference has been made by the Appropriate Government, then this Tribunal has to answer the said reference on merit.

I have heard learned counsel for parties and gone through record.

After hearing the learned counsel for the parties, the question which arose for consideration in the present case is whether an individual workman can raise industrial dispute under Section 10 of Industrial Disputes Act before this Tribunal or not?

Answer to the said question find place in the judgment rendered by the Hon'ble the Apex Court wherein after taking into consideration the Section 10(1) & 2(k) of the Industrial Dispute Act in the case of ***Dharampal Prem Chand (Saughandi) Versus Dharmpal Premchand (Saughandhi) AIR 1966 SC 182*** held as under:-

7. In support of its conclusion, the Tribunal has relied upon the decision of this Court in Bombay Union of Journalists v. The "Hindu" Bombay 1961-2 Lab LJ 436; (AIR 1963 SC 318 [LQ/SC/1961/324]). In that case, the services of one Salivateeswaran, who claimed that he was a full-time employee of the "Hindu", a daily newspaper published in Madras, were terminated and an industrial dispute was raised in respect of the said termination by the Bombay Union of Journalists. The contention raised by the employer was that the reference was invalid inasmuch as the dispute referred for a adjudication was an individual dispute and not an industrial dispute. This contention was accepted by the Tribunal; and that brought the dispute before this Court.

8. In dealing with the effect of the decision pronounced by this Court in that case and particularly of certain observations made in the course of the judgment, it is necessary to bear in mind one finding of fact which had been recorded by the Tribunal and confirmed by this Court. It appears that in that case, the appellants strongly relied upon a resolution passed on April 17, 1948, by which it was alleged that the Bombay Union of Journalists had taken up the dispute of Salivateeswaran against the "Hindu" and had decided to demand reliefs for the "retrenched Journalist". Evidence was led to prove that such a resolution had been passed, but that evidence was discarded both by the Tribunal and this Court, and this Court definitely found that "the evidence tends to establish the plea raised by respondent No. 1 that the record of the alleged resolution was fabricated with a view to support the case of Salivatesswaran". In other words, in point of fact, there was no reliable evidence to show that the Bombay Union of Journalists had taken up the case of the retrenched employees Salivateeswaran. In view of this finding, it follows that the observations made by this Court in regard to the requirements of a valid reference under S. 10 (1) of the Act are in the nature of obiter observations.

9. It does appear that in dealing with the point of law as to the requirements of a valid reference, this Court observed that "the dispute, in the present case, being prima facie an individual dispute, in order that it may become an industrial dispute it had to be established that it had been taken up by the Union of employees of the "Hindu", Bombay, or by an appreciable number of employees of the "Hindu", Bombay". Similarly, it was also observed that the "principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute, applied to the case before the Court"; and so one of the tests which this Court applied was whether the persons who supported the cause, were employees of the same employer; if they were not, it was though that they could not be regarded as interested in the dispute and as such, their support may not convert an individual dispute into an industrial dispute. That is why the support lent to the cause of Salivateeswaran by the Bombay Union of Journalists was found to be insufficient to convert the cause into an industrial dispute.

10. These observations, no doubt, prima facie lend support to the view which the Tribunal has accepted. It appears that the Bombay Union of Journalists had on its roll several working Journalists in other journals; but out of the three working journalists working with the "Hindu" at its Bombay office, two had become the

members of the Bombay Union of Journalists, viz., Salivaeeswaran and Venkataswaran. Tiwari, the third working journalist working in the office of the "Hindu" Bombay, had not became a member of the said Union. In the Office of the "Hindu", there were seven other workmen, but they were working on the administrative side. In other words, out of the ten employees in the office of the "Hindu", seven were on the administrative side, and three on the journalism side and out of these three, two were members of the Union. It is in the light of these facts that this Court expressed the opinion that the Bombay Union of Journalists was not competent to raise the dispute, and even if it had raised it, the dispute could not have become an industrial dispute.

11. In our opinion, the observations on which the Tribunal has relied in support of its conclusion in the present case, should not be read as laying down any hard and fast rule to the matter. Take, for instance, the case of an employer who employs 20 workmen, and assume that these workmen have not formed any Union. If the employer illegally dismisses all the workmen employed by him, it cannot be suggested that the dispute about the dismissal of these employees would not become an industrial dispute because there is no Union to support them and the dismissed employees themselves cannot convert their individual dispute into an industrial dispute. In the present case, out of 45 employees 18 have been dismissed, and there is no evidence to show that these employees have a Union of their own. In such a case it would be difficult to hold that though the number of employees dismissed is 18, they cannot raise a dispute by themselves in a formal manner. Considerations which would be relevant in dealing with a dispute relating to an individual employees dismissal, would not be material in dealing with a case where a large number of employees have been dismissed on he same day. It is not disputed that a Union of workmen may validly raise a dispute as to dismissal even though it may be a Union of the minority of the workmen employed in any establishment. The majority Union, of course, can raise a dispute, and if a reference is made under S. 10 (1) of the Act at its instance, the reference is valid. Similarly, if there is no Union of workmen in any establishment, a group of employees can raise the dispute and the dispute then becomes an industrial dispute, though it may relate to the dismissal of an individual employee. This position is not disputed. If that is so, it is difficult, we think, to apply or extend the observations made in the case of the Bombay Union of Journalists. 1961-2 Lab LJ 436: (AIR 1963 SC 818) (supra) to the present case. In the present case, we are dealing with a reference made by the Delhi Administration in relation to the appellants contention that the dismissal of 18 employees is invalid, and not with a case of the dismissal of a single employee. Therefore, we do not think that the Tribunal was right in relying upon the decision in the case of the Bombay Union of Journalists, 1961-2 Lab LJ 436: (AIR 1963 SC 318 [LQ/SC/1961/324]) (supra) in support of its conclusion that the present reference was invalid.

12. It is well known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial disputes has necessarily to be pragmatic, and the tests which it applies and the considerations on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decisions of this Court in interpreting the effect of the definition prescribed by S. 2 (k) of the Act were based on such pragmatic considerations. It may also be conceded that if the dismissal of an individual employee working in an establishment in Delhi is taken up by the Union of workmen in a place away from Delhi, that would

clearly not make the dispute an industrial dispute. Section 36 of the Act which deals with the representation of parties, incidentally suggests that the Union which can raise an individual dispute as to a dismissal validly, should be a Union of the same industry. Generally it is the Union of workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of an establishment have no Union of their own, and some or all of them join the Union of another establishment belonging to the same industry. In such a case, if the said Union takes up the cause of the workmen working in an establishment which has no Union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute because the Union which has sponsored it is not the Union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the Union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. "Industry" has been defined by S. 2 (j) of the Act and it seems to us that in some cases, the Union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no Union of their own, and an appreciable number of such workmen had joined such other, Union before their dismissal. In fact, the object of trade Union movement is to encourage the formation of larger and bigger Unions on healthy and proper Trade Union lines and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred under S. 10 (1) of the Act, it should receive the support of the Union consisting exclusively of the workmen working in the establishment concerned.

13. Besides, there is another way in which this question can be considered. If 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that they themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by this Court on the denotation of the words "industrial dispute" as defined by S. 2 (k) of the Act. Therefore, we are satisfied that the Tribunal was in error in rejecting the reference on the preliminary ground that the dispute referred to it was an individual dispute and not an industrial dispute within the meaning of S. 2 (k).

Further Hon'ble Karnataka High Court at Bengaluru taking into consideration the judgment passed by Hon'ble the Apex Court in the case of *Dharampal Prem Chand (supra)* vide is judgment and order dated 18.1.2024 in ***Writ Petition No. 7674/2023 (L-Res) (Management of M/s. Tata Advanced System Limited Versus The Secretary to Department of Labour, Government of Karnataka)*** has held as under:-

"*8. The Co-ordinate Bench of this Court in the case of Prakash and ors. Vs. Superintending Engineer (Electrical), O and M Circle, Belgaum and Ors. has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.*

9. The Delhi High Court in the case of Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors. has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the I.D. Act.

10. In light of the provisions enumerated and the decisions stated supra, the proposition is well settled an no more res integra that an individual workman can raise a dispute, it can only be for removal, termination or dismissal and if the workman wants to raise a dispute with regard to absorption and regularization, that can only be done by a union, which can raise a dispute on behalf of the workman."

Reverting to the facts of the present case as the present industrial dispute has been filed by the workman/claimant in the individual capacity, so the same is not maintainable in view of the position of law as stated above.

AWARD

For the foregoing reasons the workman is not entitled for the reliefs as claimed by him in the present industrial dispute; hence, the claim of the workman, Sri Jamna Prasad is hereby dismissed.

The reference is answered accordingly.

Lucknow
16th April, 2026.

JUSTICE ANIL KUMAR, Presiding officer

नई दिल्ली, 5 जून, 2026

का.आ. 1174.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **नं 1 धनबाद** के पंचाट (02/2023) प्रकाशित करती है।

[सं. एल - 12011/111/2022- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.02/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1,Dhanbad* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank their workmen.

[No. L-12011/111/2022- IR(B-II)]

SALONI, Deputy Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,DHANBAD
In the matter of reference U/S 10 (1) (d)& (2A) of I.D.Act. 1947.

Reference Case No. 02/2023

Parties:
Employer in relation to the management of Punjab National Bank,
Motijheel Branch, Ramna, Muzaffarpur
AND
Their Workman

Present: Shri Sachindra Kumar Pandey
Presiding Officer

Appearances:

For the Employers :- None.

For the workman :- None.

State : Jharkhand. Industry:-Bank

Dated 18/03/2026

AWARD.

In exercise of powers conferred under clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947),Government Of India through the Ministry of Labour, vide its Order No.L-12011/111/2022 -IR(B-II) dated 19/12/2022 has been pleased to refer the following dispute between the employer i.e. management of Punjab National Bank, Motijheel Branch, Muzaffarpur and their workman through President, Bank Employees' Federation, Bihar, Patna for adjudication by this Tribunal:

SCHEDULE

"Whether the demand raised by the President, Bank Employee' Federation, Bihar vide letter dated 21.02.2022 against the management of Punjab National Bank, Muzaffarpur to regularize the workman Shri Rahul Kumar as permanent workman of the Bank is justified, fair and legal? If yes, what relief the workman is entitled to ?"

2. This case is taken through Special Campaign organized by Ministry of Labour & Employment, Govt. of India for disposal of pending cases.

3. On receiving order no. L-12011/111/2022 -IR(B-II) dated 19/12/2022 Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, Reference case no. 02 of 2023 was registered on 05.01.2023 and thereafter the notices were sent to the parties with a direction to appear and submit their written statements along with relevant documents and witnesses in support of their claims.

4. After receipt of the reference on 05.01.2023 neither the workman nor the management appeared before this Tribunal. Thereafter on 25.09.2025 Sri B. Prasad, Representative on behalf of the workman appeared and notice was issued to management for appearance but management again failed to appear. Thereafter on 19.02.2026 Sri B. Prasad appeared and filed a petition stating therein that workman is not traceable so case may be closed.

5. As per petition dated 19.02.2026 it is clear that workman has lost his interest in this case and therefore, for the ends of justice, this case deserves to be dismissed for non prosecution.

6. Hence,

ORDERED

that this case is hereby dismissed for non prosecution and a "No Dispute Award" be drawn up in respect of the above reference case. Let the copies of Award in duplicate be sent to the Ministry of Labour & Employment, Government of India, New Delhi for information and notification.

SACHINDRA KUMAR PANDEY, Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **डब्लू सी एल** क प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण. सह - श्रम न्यायालय, नागपुर** के पंचाट **(संदर्भ संख्या 11/2013-14)** को प्रकाशित करती है,

[सं. एल.22012/14/2013-आई.आर.(सी.एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2013-13*)* of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the Management of M/s. WCL and their workmen.

[No. L-22012/14/2013– IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE SHRI SHIV SHANKER PRASAD PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/11/2013-14 Date: 23.03.2026.

Party No.1: The Chief General Manager,
Ballarpur Area of WCL, Post Sasti,
Tah. Rajpura, Distt. Chandrapur (M.S.)

V/s.

Party No.2: The Secretary,
Rashtriya Colliery Maxdoor Congress,
Dr. Ambedkar Ward, Ballarpur,
Post Ballarpur, Distt. Chandrapur (M.S.)

AWARD

(Dated: 23rd March, 2026)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfield Limited and his workman Shri. Vinod Thakur, for adjudication, as per **No. L-22012/14/2013 (IR(CM-II)) dated 03.04.2023,** with the following schedule: -

"Whether the action of the management of CGM Office of Ballarpur Area of Western Coalfields Limited, in denying employment to Shri Vinod Thakur, the dependent son of Shri Sitaram G. Thakur who has already put in more than 35 years' service, which is contrary to the provision of para 9.4.4. of NCWA is legal and justified? If not, to what relief the workman is entitled to?"

2. Case is called out. Both parties are absent on repeated calls. From perusal of record, it is apparent that petitioner is not responding and attending the court since 20.06.2019 long back. Although Statement of Claim and Written Statements have been filed by the parties respectively. Petitioner has also filed his affidavit as evidence and some cross examination has been done upon him. But no other evidence has been adduced by the petitioner to prove the contents of the Statement of Claim and the contents of the affidavit. It appears that he is not interested to contest the case further more. Claim of the petitioner is not proved. So, it is closed.

Hence, it is ordered.

ORDER

"The action of the management of CGM Office of Ballarpur Area of Western Coalfields Limited, in denying employment to Shri Vinod Thakur, the dependent son of Shri Sitaram G. Thakur who has already put in more than 35 years' service, which is contrary to the provision of para 9.4.4. of NCWA is legal and justified. The workman is not entitled to any relief."

Justice (retd.) Shiv SHANKER PRASAD, Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **डब्लू सी एल** क प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण.-सह- श्रम न्यायालय, नागपुर** के पंचाट **(संदर्भ संख्या 15/2021-22)** को प्रकाशित करती है,

[सं. एल.22012/41/2021-आई.आर.(सी.एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 15/2021-22*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, Nagpur** as shown in the Annexure, in the industrial dispute between the Management of **M/s. WCL** and **their workmen.**

[No. L-22012/41/2021– IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE SHRI SHIV SHANKER PRASAD PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/15/2021-22 Date: 18.03.2026.

Party No.1: The Chief General Manager,
Western Coalfields Limited,
Pench Area, Parasia Distt. Chindwara- 480441

V/s.

Party No.2: The General Secretary,
Lalzanda Coal Mines,
Mazdoor Union (CITU) Tehsil –
Parasia, Distt. Chindwara - 480441

AWARD

(Dated: 18th March, 2026)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and his workmen Shri. Vijay Kumar Yadav, Shri Anand Rao, Shri. Yashawant Bhalavi for adjudication, as per **No. L-22012/41/2021 (IR(CM-II)) dated 28.09.2021,** with the following schedule: -

"क्या वेकोलि पेंच क्षेत्र प्रबंधन द्वारा कर्मकार श्री विजय कुमार यादव, श्री आनंद राव, श्री यशवंत भलावी को पीआरसी कॉलोनी छिंदवाड़ा में उन्हें आवंटित आवासों को प्रबंधन के कार्यालय आदेश दिनांक २४.०८.२०२० के द्वारा सक्षम अधिकारी के मौखिक आदेश का ज़िक्र करते हुए उक्त आवास आवंटन को स्थगित किया जाना न्यायोचित है? यदि नहीं, तब कर्मकार श्री विजय कुमार यादव, श्री आनंद राव, श्री यशवंत भलावी किस अनुतोष के हक़दार हैं ?"

2. Case is called out. Shri. Rutej R. Pimpalkute, learned counsel has put in appearance on behalf of the respondent today in court which is taken on record, but no one is present on behalf of the petitioner despite repeated calls and service of notices. Notice has already been served to the petitioner, but he has refused to take it. Therefore, notice is served by way of refusal. No statement of claim has been filed by the petitioner. No other evidence has been filed by the petitioner to prove his case. Petitioner is not coming to this court to contest the case. Therefore, it appears that he is not interested to contest the case further more. Claim of the petitioner is not proved. So, it is closed.

Hence, it is ordered.

ORDER

"वेकोलि पेंच क्षेत्र प्रबंधन द्वारा कर्मकार श्री विजय कुमार यादव, श्री आनंद राव, श्री यशवंत भलावी को पीआरसी कॉलोनी छिंदवाड़ा में उन्हें आवंटित आवासों को प्रबंधन के कार्यालय आदेश दिनांक २४.०८.२०२० के द्वारा सक्षम अधिकारी के मौखिक आदेश का ज़िक्र करते हुए उक्त आवास आवंटन को स्थगित किया जाना न्यायोचित है। कर्मकार श्री विजय कुमार यादव, श्री आनंद राव, श्री यशवंत भलावी किसी अनुतोष के हक़दार नहीं हैं।"

Justice (retd.) SHIV SHANKER PRASAD, Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **डब्लू सी एल** क प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण. सह - श्रम न्यायालय, नागपुर** के पंचाट (**संदर्भ संख्या 56/2015-16**) को प्रकाशित करती है,

[सं. एल.-22012/03/2016-आई.आर.(सी.एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 56/2015-16***)* of t**he Central Government Industrial Tribunal-cum-Labour Court, Nagpur** as shown in the Annexure, in the industrial dispute between the Management of **M/s. WCL** and **their workmen.**

[No. L-22012/03/2016– IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE SHRI SHIV SHANKER PRASAD PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/56/2015-16 Date: 23.03.2026.

Party No.1: The Manager,
Western Coalfield Limited,
Mohan Colliery, kanhan Area, Ambada,
Distt. Chdindwara (MP).

V/s.

Party No.2: The General Secretary,
Bhartiya Koyla Khadan Mazdoor Sangh (BMS),
Parasia, Distt. Chhindwara (MP)

AWARD

(Dated: 23rd March, 2026)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalified Limited and his workman Shri. S. R. Wadghane, for adjudication, as per **No. L-22012/03/2016 (IR(CM-II)) dated 16.03.2016,** with the following schedule: -

"क्या वरिष्ठ प्रबंधक (माइनिंग), प्रबंधक मोहन कॉलरी वेस्टर्न कालफील्ड्स लिमिटेड कन्हान क्षेत्र पोस्ट अम्बाड़ा जिला छिंदवाड़ा द्वारा श्री एहसान उल हक भू0पू0 फोरमेन इंचार्ज की जन्मतिथि 07.12.1956 के स्थान पर राष्ट्रीय कॉल वेतन समझौता के अंतर्गत जारी दिशा निर्देश आई आई 76 के अनुसार 01.07.1954 लिखना व आवेदक को दिनांक 30.06.2014 को सेवानिवृत्त करना उचित है यदि नहीं तो कर्मकार क्या अनुतोष पाने का अधिकारी है?"

2. Case is called out. Both parties are absent. From perusal of record, it is apparent that both parties are not responding and attending the court since 24.10.2019 long back. Although Statement of Claim has been filed by the petitioner. But no written statement has been filed by the respondent till today. The petitioner has filed an affidavit but petitioner is not coming to the court since long back to prove the contents of the affidavit as well as contents of the statement claim. No other evidence has been adduced by the petitioner to prove his case. It appears that petitioner is not interested to contest the case further more. Claim of the petitioner is not proved. So, it is closed.
Hence, it is ordered.

ORDER

"वरिष्ठ प्रबंधक (माइनिंग), प्रबंधक मोहन कॉलरी वेस्टर्न कालफील्ड्स लिमिटेड कन्हान क्षेत्र पोस्ट अम्बाड़ा जिला छिंदवाड़ा द्वारा श्री एहसान उल हक भू0पू0 फोरमेन इंचार्ज की जन्मतिथि 07.12.1956 के स्थान पर राष्ट्रीय कॉल वेतन समझौता के अंतर्गत जारी दिशा निर्देश आई आई 76 के अनुसार 01.07.1954 लिखना व आवेदक को दिनांक 30.06.2014 को सेवानिवृत्त करना उचित है। कर्मकार किसी अनुतोष को पाने का अधिकारी नहीं है."

(Justice (retd.) SHIV SHANKER PRASAD, Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1178.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **डब्लू सी एल** क प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर** के पंचाट **(संदर्भ संख्या 71/2014-15)** को प्रकाशित करती है,

[सं. एल - 22012/104/2014- आई आर (सी.एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1178.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 71/2014-15)** of t**he Central Government Industrial Tribunal-cum-Labour Court, Nagpur** as shown in the Annexure, in the industrial dispute between the Management of **M/s. WCL** and **their workmen.**

[No. L-22012/104/2014– IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE SHRI SHIV SHANKER PRASAD PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/71/2014-15 Date: 23.03.2026.

Party No.1: The Director (Personnel),
Western Coailfields Limited,
Coal Estate, Civil Lines,
Nagpur - 440001

V/s.

Party No.2: The Secretary,
Koyala Sharmik Sabha (HMS), WCL,
HQ Branch, Coal Estate,
Civil Lines, Nagpur - 440001,

AWARD

(Dated: 23rd March, 2026)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and his employee Smt. Sanghamitra, for adjudication, as per **No. L-22012/104/2014 (IR(CM-II)) dated 19.02.2015,** with the following schedule: -

"Whether the action of the Management of Western Coalfields Ltd., H.Q. Nagpur in denying the employment on compassionate ground to Smt. Sanghamitra widow daughter of Late Sakhubai Ramteke, is just, fair & legal? If not, to what relief the concerned workman is entitled to?"

2. Case is called out. Both parties are absent on repeated calls. From perusal of record, it is apparent that both parties are not responding and attending the court since 14.10.2019 long back. Although Statement of Claim and Written Statements have been filed by the parties respectively. But no other evidence has been filed by the petitioner to prove his case. Petitioner is not coming to the court since long back. It appears that petitioner is not interested to contest the case further more. Claim of the petitioner is not proved. So, it is closed.

Hence, it is ordered.

ORDER

"The action of the Management of Western Coalfields Ltd., H.Q. Nagpur in denying the employment on compassionate ground to Smt. Sanghamitra widow daughter of Late Sakhubai Ramteke, is justified, fair & legal. The concerned workman is not entitled to any relief."

(Justice (retd.) Shiv SHANKER PRASAD, Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1179.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट; **संदर्भ संक्या**-16/**1994**) को प्रकाशित करती है,

[सं. एल. **22012/263/94**-आई.आर.(सी.एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.16/1994*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **ECL** and their workmen,

[No. L-22012/263/94 – IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 16 OF 1994

PARTIES: Nakhru Horijan and Seventy-Seven Others

Vs.

Management of Lachipur Colliery, ECL

REPRESENTATIVES:

For the Union/Workmen: Mr. Kishore Chatterjee, Adl. Gen. Secy., NCWC.
Mr. Suresh Thakur (since 17.11.2004).

For the Management of ECL: Mr. Dibyendu Ghosh, Manager (HR), Khas Kajora Group.
Ms. Richa Kumari, Asst. Manager (HR), Central Kajora Colliery.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 04.02.2026

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/263/94-IR(C-II)** dated 13.10.1994 has been pleased to refer the following dispute between the employer, that is the Management of Lachipur Colliery under Kajora Area of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the management of Proper Kajora Unit of Lachipur Colliery under Kajora Area, M/s. Eastern Coalfields Ltd. was justified in transferring the workmen of P. K. Unit to Lachipur 1 and 2 Unit by denying the deployment in Incline Drivage (presently been done by contractor) job at P. K. Unit itself? If not, to what relief is the workmen entitled to ?* **"**

1. On receiving Order **No. L-22012/263/94-IR(C-II)** dated 13.10.1994 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 26.10.1994 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims.

2. Mr. Kishore Chatterjee, union representative filed written statement on behalf of the aggrieved workmen on 14.08.1996. Union's case in gist, giving rise to this Industrial Dispute is Nakhru Horijan, Under Ground Loader along with
seventy-seven (77) other workmen, working in different categories at Proper Kajora Unit of Lachipur Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) recorded their attendance in the Attendance Register in Form 'C' and 'E' as per the Mines Act, 1952 and attended their duty at underground and surface locations but management did not provide them empty tubs for loading coal from 26.10.1993 to 13.12.1993. The matter was informed to the Agent, Lachipur Colliery. A meeting was held on 06.11.1993 in presence of Assistant Labour Commissioner (C), Raniganj, where it was stated by the aggrieved workmen that the management illegally enforced lockout at Proper Kajora Unit by not supplying empty tubs to the Underground Loaders and no Notice of lockout was issued to the workmen concerned. The concerned workmen attended their duty at their respective places from 26.10.1993 to 13.12.1993 after recording their attendance in the Form 'E'. The management of Proper Kajora Unit however did not issue any letter to stop their duty. Some of the workmen were sent to Pit No. 1 and 2 of Lachipur Colliery but no letter was issued to the petitioner workmen to stop their duty. The petitioner workmen in this case were not issued any Letter or Notice of transfer to attend duty at Pit No. 1 and 2 of Lachipur Colliery. The

management without Notice arbitrarily deducted eight (8) days' wages of the workmen from the pay of October, 1993. After discussions were held between the union and the management, it released six (6) days' wages out of eight (8) days. The Additional General Secretary of National Coal Workers Congress issued a letter dated 14.12.1993 addressed to the Agent, Lachipur Colliery, informing that the workmen of Proper Kajora Unit reported for their duties at other units of Lachipur Colliery from 14.12.1993 and the management should pay full wages to the workmen who have recorded their attendance from 26.10.1993 to 13.12.1993.

3. Due to non-payment of wages an Industrial Dispute was raised before the Assistant Labour Commissioner (C), Raniganj, who advised the management to

produce Form 'C' and 'E' Register for the period from 26.10.1993 to 13.12.1993 and Form 'B' Register of Proper Kajora Unit in respect of the workmen. According to the union contractor workmen were engaged by the management for performing the job of Stone Cutting and Coal Loading for more than one and a half years in an illegal manner depriving the permanent workmen. In their written statement, the union claimed that the workmen are entitled to get full wages along with benefits from 26.10.1993 to 13.12.1993.

4. Management has contested the case by filing written statement on 30.10.1996. It is contended that the alleged dispute has been raised by Mr. Kishore Chatterjee, Additional General Secretary, National Coal Workers Congress, which has never participated in the Joint Consultative Committee (hereinafter referred to as JCC) meetings, he does not have a locus standi to raise the Industrial Dispute and the union has not been authorized by the seventy-eight (78) workmen to espouse their case. Management's case is that Lachipur Colliery has been divided into three units namely, (i) Proper Kajora Unit, (ii) Roy Dutta Kajora Unit and (iii) Pit No. 1 and 2. All the units are under the administrative control of the management. Since coal production at Proper Kajora Unit was not possible from June, 1993, as it was exhausted, an Annual Action Plan of 1993-94 was formulated with the object of opening Pit No. 1 and 2 at Lachipur Colliery and workers were shifted from Proper Kajora Unit to Pit No. 1 and 2 of Lachipur Colliery after discussion with JCC members at the Colliery Level. A joint inspection was held by the members of JCC, consisting of Mr. S. P. Roy, President and Mr. Kishore Chatterjee, Additional General Secretary of the union and other members of the management. A decision was taken to discontinue the production at Proper Kajora Unit. In pursuance of the said decision one hundred and forty-one (141) workmen reported for duty at Pit No. 1 and 2 of Lachipur Colliery without any objection, Ninety-two (92) workmen of Proper Kajora Unit have been retained for maintenance, safety and essential

service of the unit, and only seventy-eight (78) workmen refused to report for duty in Pit No. 1 and 2 of Lachipur Colliery. The union representative knowing fully well that the seventy-eight (78) workmen did not report for duty at Pit No. 1 and 2 and resulted in huge loss in production. The workmen thereby resorted to illegal strike without complying the provision of Section 22(1)(a) of the Industrial Disputes Act, 1947, which is illegal, unjust and prohibited under Section 25(T) of the Industrial Disputes Act, 1947. In spite of repeated requests and pursuance the workmen failed to report for duty from first shift of 26.10.1993 and the employer appealed to them in writing on 26.10.1993 under the signature of the Agent. The Agent issued Notice to seventy-eight (78) persons to report for their duties at Pit No. 1 and 2 of Lachipur Colliery but the workmen did not comply and continued their illegal strike up to 13.12.1993. It is contended that such act on the part of the workmen is illegal, unauthorized and improper. Therefore, there is no question of deployment of the said seventy-eight (78) workmen at Proper Kajora Unit from and after

26.10.1993. It is further stated that some false allegations were made by Mr. Kishore Chatterjee in his letter dated 29.10.1993 and the same has been duly replied by the Agent in his letter dated 01.11.1993. Management further stated that all these workmen have been reporting for their duties in Pit No. 1 and 2 of Lachipur Colliery, w.e.f. 14.12.1993 and their dues and proper wages have been regularly paid to them. The management therefore prayed that the workmen on whose behalf this Industrial Dispute has been raised are not entitled to any relief and the same may be dismissed.

5. The central point for consideration in this case is whether the management of Proper Kajora Unit, of Lachipur Colliery under ECL was justified in transferring the workmen of Proper Kajora Unit to Pit No. 1 and 2 of Lachipur Colliery by not deploying them in the Incline Drivage of Proper Kajora Unit and to what relief the enlisted workmen are entitled to.

6. Union filed their rejoinder on 03.12.1996. According to the union the concerned workmen are bona fide members of the union. It is contended that the management denied work to the permanent workers at the Incline Drivage of Proper Kajora Unit and engaged Brijnandan Ram and one hundred and nineteen (119) other workers to perform prohibited job in place of the permanent Loaders. The management transferred some workmen to Pit No. 1 and 2 of Lachipur Colliery but no Transfer Order was issued to the workman involved. The management did not transfer or stop the seventy-eight (78) workmen from their underground job at Proper Kajora Unit and they also marked their attendance in the Attendance Register up to 13.12.1993, which indicates that they did not violate any standing order. It is further contended that the permanent workers were denied deployment at Proper Kajora Unit and were transferred by way of engining contractual employees, illegally. Union denied that the concerned workmen participated in any illegal strike. It is asserted that they work regularly and attended their work for eight (8) hours from 26.10.1993 up to 13.12.1993. The union prayed that Nakhru Horijan and seventy-seven (77) other workmen be paid full wages along with other benefits from 26.10.1993 to 13.12.1993.

7. Management of the employer company in their rejoinder dated 30.10.1996 against the written statement filed by the union on 14.08.1996 stated that as per earlier decision mining operations at Proper Kajora Unit were discontinued from 26.10.1993 and out of three hundred and twenty-one (321) workmen of Proper Kajora Unit, except 92 workmen, retained for maintenance and safety and all other workmen were asked to report to another unit of Lachipur Colliery on 26.10.1993. One hundred and forty-one (141) workmen duly complied the said direction of the employer company and reported to Pit No. 1 and 2 of Lachipur Colliery but the seventy-eight (78) workmen involved in this Reference absented themselves from Pit No. 1 and 2 in a concerted manner which amounted to illegal strike, contravening the provisions of Section 22(1)(a) and Section 25(T) of the

Industrial Disputes Act, 1947. The employer company without taking any legal action against the seventy-eight (78) workmen for their unlawful activity and without starting any disciplinary action decided that they will receive no pay for no work done during the period from 26.10.1993 to 13.12.1993. Management denied that there was any lockout of any establishment. The management displayed a Notice on the Notice Board, asking the workmen to report for duty at Pit No. 1 and 2 of Lachipur Colliery and no Notice was given to the individual as it was a decision of JCC. Management contended that the workmen are not entitled to any pay during the period of their absence from duty. It is contended that the workmen did not attend their duty from 26.10.1993 to 13.12.1993 and if any attendance was

recorded by them the same has been done in collusion with the Recording Clerk and the employer reserve the right to take action.

8. Mr. Kishore Chatterjee, the union representative at the very inception on 04.09.1996 filed and application under Section 36(4) of the I.D. Act, 1947 objecting against engagement of legal practitioner by the management in this case. Mr. A. K. Roy, Personnel Manager was authorised to represent the management of Lachipur Colliery. During pendency of the case management of ECL was directed to produce a copy of Transfer Order as well as Attendance Register in Form 'C' and 'E' relating to the aggrieved workmen in Proper Kajora Unit. Management filed a writ petition against order dated 24.06.1997, for striking out defence due to non-production of documents. No final order of the Hon'ble High Court in the Writ Petition bearing No. 12777(W) of 1998 was produced by any of the parties. On 26.08.1998 management filed an application before the Tribunal to grant them an opportunity to contest the case. At the time of considering such application the authorized representative of the management submitted that the record called for could not be produced as the General Manager of the Area had taken away the same. The order dated 24.06.1997, striking out defence of the management was recalled subject to fulfilment of

certain conditions, by producing supplementary documents and deputing seniormost Personnel Manager of Kajora Area to represent the management. Subsequently, management intimated the Tribunal that another Writ Application was filed before the Hon'ble High Court at Calcutta against order dated 14.09.1998. No stay order was however produced before this Tribunal to indicate if the same was extended or the writ petition is pending.

9. Mr. Suresh Thakur filed a letter of authorization on behalf several workmen and started representing them since 17.11.2004. On 03.05.2005 union filed an application for closing the case. Mr. Kishore Chatterjee, Additional General Secretary of the union, who raised this Industrial Dispute moved an application on 10.03.2005 and it has been reflected in order dated 20.09.2017 that the workmen involved in the Reference have either retired / superannuated or have taken voluntary retirement and since nobody is present the union is not inclined to continue the case. It is further stated by Mr. Kishore Chatterjee that some outsiders with ulterior motive have appeared before this Tribunal without any authorization from the union. Mr. Kishore Chatterjee prayed that Reference No. 16 of 1994 may be closed. Mr. Suresh Thakur appeared on 17.11.2004 and claimed to have been duly authorized by all seventy-eight (78) workmen. Due to want of proper representative of the workmen this Tribunal by letter No. 18/ITC/(1996)-53 dated 16.01.2013 requested the Government of India, Ministry of Labour and Employment, New Delhi to transfer the case from CGIT-cum-LC, Asansol to CGIT-cum-LC, Kolkata or Dhanbad. In reply, the Ministry of Labour and Employment by letter No. Z-22019/1/2013-IR(C-II) dated 04.10.2013 informed the Presiding Officer that to ascertain genuine representation of the union the Tribunal should obtain a clarification from the Registrar of Trade Unions or to direct the rival factions to submit the list of workers along with individual affidavits and to allow them to represent the case of their respective worker, if rules permitted. Mr. Suresh Thakur, the person representing the

workmen was initially authorized by Ram Keyat whose name appeared at Serial No. (4) of the workmen's list but the same did not contain the signatures of other seventy-seven (77) workmen. On 06.07.2005 Mr. Suresh Thakur produced an authorization bearing signatures and Thumb impressions of seventy-eight (78) persons but their identity could not be verified due to their absence. After receipt of the communication from the Deputy Secretary to the Government of India dated 04.10.2013. Mr. Suresh Thakur did not comply the same till date and no affidavit from individual workman was submitted.

10. In this case the management of ECL has not adduced any evidence. It is worthwhile to mention that on 30.06.2023 an order was passed for appearance of all seventy-eight (78) workmen on 06.09.2023and producing their letter of authorization in favour of Mr. Suresh Thakur. On 06.09.2023 Mr. Suresh Thakur was unable to produce any of the concerned workmen. Since no evidence was adduced by any of the parties, case was fixed on 21.02.2024 and 15.07.2024 for adducing evidence. It was pointed out by Mr. Suresh Thakur that on 23.12.1997 their evidence was complete. It may be gathered from the record that Mr. Suresh Thakur claiming to have represented the workmen since 17.11.2004 and did not participate on 23.12.1997. The union was represented by Mr. Kishore Chatterjee, who filed affidavit-in-chief of Nebulal Das, Loosman and Banshu Horijan, Underground Loader on 17.11.1997. On a perusal of the record, I find that 17.11.1997 was only fixed for filing affidavit-in-chief of the witness by the union. There is no reflection in the record that the case was fixed for adducing evidence by the workmen / union. Therefore, it can safely be presumed that neither Nebulal Das nor Banshu Horijan presented themselves for facing cross-examination in respect of statements made in their affidavit-in-chiefs and there is no indication in the order sheet that witnesses were discharged without cross-examination. It is well settled position of law that unless the witnesses make themselves available for facing cross-examination, the statement made in their

affidavit-in-chief have no evidentiary value. The case was thereafter fixed on 23.12.1997 and 04.02.1998 for evidence of management witness. On the date management took no steps. Management continuously remained absent and the evidence was closed on 04.02.1998.

11. On a conspectus of materials on record, I find that Mr. Suresh Thakur failed to file proper authorization of the seventy-eight (78) employees in his favour to represent them. No individual affidavit-in-chiefs of the workmen were filed to comply the direction of the Ministry of Labour and Employment, Government of India in their letter No. Z-22019/1/2013-IR(C-II) dated 04.10.2013. Section 36(1) of the I.D. Act, 1947 lays down :

"(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by--

(a) any member of the executive or office bearer] of a registered trade union of which he is a member:

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed."

Mr. Suresh Thakur is neither a member of any Trade Union nor is he a workman employed in the industry in which the other seventy-eight (78) workmen are employed. Therefore, I find that Mr. Suresh Thakur is not duly authorized by the workmen to representative their case. Neither the workmen nor the management have adduced any evidence in this case.

12. Mr. Suresh Thakur, arguing the case on behalf of the workmen submitted

that by order dated 24.06.1997 management was not allowed to contest and their defence was struck out due to non-production of document. It is further submitted that by the order dated 14.09.1998, the earlier order dated 24.06.1997,

striking out defence was recalled. It is argued that the workmen were temporarily suspended from their work and they are entitled to their pay during the period from 26.10.1993 to 13.12.1993.

13. Mr. Dibyendu Ghosh, Manager (HR), Khas Kajora Group of Mines who appeared for the management was unable to produce any Notice issued to the workmen asking them to report for duty at Pit No. 1 and 2 of Lachipur Colliery. Management neither issued any order of transfer nor stopped the workmen from their work at Proper Kajora Unit. It is argued that only seventy-eight (78) workmen refused to report for their duty at Pit No. 1 and 2 and they resorted to illegal strike up to 13.12.1993. It is argued that the Industrial Dispute has no merit and is liable to be dismissed.

14. The main contention of the workmen in their pleading is that they have been attending their duties at Proper Kajora Unit from 26.10.1993 to 13.12.1993 but the management of the colliery stopped supplying them with empty tubs for loading which amounted to illegal lockout without issuing proper Notice under Section 22(2) of the I.D. Act, 1947.

15. Let us now examine the provisions of Section 22(2) of the I.D. Act, 1947 which lays down as follows :

" *(2) No employer carrying on any public utility service shall lock-out any of his workmen--*

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

*(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.***"**

The management on the other hand in their written statement stated that coal production in Proper Kajora Unit was not possible from June, 1993 for which working area was shifted from Proper Kajora Unit to Pit No. 1 and 2 of Lachipur Colliery and out of three hundred and twenty (320) workmen employed at Proper Kajora Unit ninety-two (92) workmen were retrained, one hundred and forty-one (141) workmen were deployed at Pit No. 1 and 2 and only seventy-eight (78) workmen in concerted manner refused to report for duty at Pit No. 1 and 2. According to the management such act on the part of the seventy-eight (78) workmen amounted to illegal strike as per provision under Section 22(1) of the I.D. Act, 1947. In their rejoinder management stated that the workmen who did not perform any work from 26.10.1993 to 13.12.1993 are not entitled to any pay. I find from the pleadings of the parties that there is no dispute regarding deployment or engagement of the seventy-eight (78) workmen from 14.12.1993 onwards. The dispute which surfaces from the pleadings of the parties is that seventy-eight (78) workmen who attended their duty at Proper Kajora Unit from 26.10.1993 to 13.12.1993 were not paid their remuneration. Management had the opportunity of producing a copy of the Office Order relating to transfer of all the affected workmen to Pit No. 1 and 2 of Lachipur Colliery but no such document was produced. The Tribunal called upon management of ECL to produce Attendance Register in Form 'C' and 'E' of the Colliery but instead of producing the same, in paragraph (k) of their rejoinder, management stated that the attendance recorded for the period from 26.10.1993 to 13.12.1993 in Form 'C' and 'E' have been made in collusion with Recording Clerk and the employer reserved the right to take appropriate action against the seventy-eight (78) workmen as well as the said clerk for deliberately recording the wrong attendance.

This statement is a clear admission of the fact that the attendances of the concerned workmen were recorded for the period from 26.10.1993 to 13.12.1993. Non-production of such document by the management from their custody gives rise to an adverse presumption against the management and in favour of the workmen that if such Registers were produced it would have been evident that the attendance of the seventy-eight (78) workmen at Proper Kajora Unit were recorded during the period from 26.10.1993 to 13.12.1993. Till date management has not taken any action against the concerned workmen for any mala fide action on their part for allegedly recording false attendance for the said period in collusion with the Recording Clerk. The management of Lachipur Colliery has not issued any Notice against the alleged illegal strike by the seventy-eight (78) workmen. Therefore, the claim of the management that the workmen are not entitled for the payment for the period of their absence from duty is not sustainable under the law.

16. The Industrial Dispute referred to this Tribunal for adjudication is confined to the question whether the management of Lachipur Colliery is justified in transferring the workmen of Proper Kajora Unit to Pit No. 1 and 2 of Lachipur Colliery by denying deployment in Incline Drivage job at Proper Kajora Unit.

17. The settled position of law as laid down in the case of **Axis Bank vs Union of India and Others [(2022) 175 FLR 2571]** is that the Labour Tribunal under the I.D. Act, 1947 has a limited authority and jurisdiction to proceed only with the scheduled reference which arose from the conciliation proceeding and cannot travel beyond the scope of reference. The tribunal does not have jurisdiction also to adjudicate the validity, correctness and legality of the reference. In the present case no documentary evidence has been produced by the union regarding issuance of any transfer order in respect of the seventy-eight (78) workmen. The Tribunal has no occasion to consider the details of such transfer order for the

purpose of ascertaining its legality. There cannot be any valid order relating to verbal transfer of the workmen from one place to another place. Therefore, in absence of any specific and tangible order of transfer the workmen cannot be denied their wages. However, management of the employer company reserves the prerogative to transfer their employees to a different unit for their effective utilization. The workmen are enjoined with the obligation to obey such direction of the employer company. The Schedule of the Industrial Dispute referred does not raise any issue as to whether the seventy-eight (78) workmen had attended their duty at Proper Kajora Unit during the period from 26.10.1993 to 13.12.1993 nor does it entrust this Tribunal to adjudicate the question to as to whether the workmen are entitled to any pay during the said period.

18. On a scrutiny of the facts and circumstances of this case and the pleading of parties, bereft of any evidence I hold that the workmen in this case are not properly represented and they are not entitled to any relief. The Industrial Dispute is therefore dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. The enlisted seventy-eight (78) workmen are not entitled to any relief as per the dispute referred in the Schedule. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 5 जून, 2026

का.आ. 1180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, आसनसोल के पंचाट **(संदर्भ संक्या -19/2022)** को प्रकाशित करती है,

[सं. एल. 22012/46/2022**-आई.आर. (सी.एम-II)]**

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. 19/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **ECL** and their workmen,

[No. L-22012/46/2022 – IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 19 OF 2022

PARTIES: Ananta Prasad Ghosh

Vs.

Management of Mohanpur Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Chandi Banerjee, General Secretary, CMU (INTUC)

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.03.2026

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order No. **L-22012/46/2022-IR(CM-II)** dated 12.05.2022 has been pleased to refer the following dispute between the employer, that is the Management of Mohanpur Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"** Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its Mohanpur Colliery (under Salanpur Area) in non-payment of the arrear wages in respect of Sundays and paid Holidays to Shri A.P. Ghosh, Foreman Incharge, UM No. 072929, of Mohanpur Colliery on his reversion from Executive Cadre to Non-Executive Cadre vide order dated 18/10/2013, is just and legal? If not, to what relief Shri A.P. Ghosh is entitled to? **"

1. On receiving Order No. **L-22012/46/2022-IR(CM-II)** dated 12.05.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 18.05.2022 / 01.07.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims.

2. Mr. Chandi Banerjee, General Secretary, Colliery Mazdoor Union (INTUC) filed written statement on 24.08.2022 on behalf of the aggrieved workman Ananta

Prasad Ghosh. The fact of the case as disclosed in the written statement is that Ananta Prasad Ghosh, Foreman-in-charge (E&M), U.M. No. 072929, previously posted at Mohanpur Colliery under Salanpur Area of Eastern Coalfields Limited (hereinafter referred to as ECL) was promoted to the post of Subordinate Engineer (E&M) in the Executive Cadre E-1 on the basis of Office Order No. ECL/C-5(D)/Upgradation(E1)/E&M/EE/925 dated 21/25.05.2011 issued by Chief Manager (Personnel/EE), ECL. Ananta Prasad Ghosh joined the post of Subordinate Engineer (E&M) on 01.06.2011 and consequently he was transferred to Gourandi OCP. After two and a half (2½) years upon submission of representation along with others he was reverted to his previous Non-Executive post of Foreman-in-charge (E&M) by order bearing No. ECL/C-5(D)/Order/Revert Back/E&M/EE/2499 dated 18.10.2013, on the ground that the concerned workman was suffering financial loss due to his posting in the Executive rank. The union cited the case of one Mr. Apurba Kumar Roy and Mr. Ushapati Samanta to whom the management had paid the difference of wages. It is urged that the status of the workman has changed by order issued by the Coal India Limited (hereinafter referred to as CIL) bearing No. CIL/C5A(iv)/B-303 dated 06/12.09.2013. The union accordingly prayed for payment of arrears of difference of Basic wages and Dearness Allowance between the post of Subordinate Engineer and Foreman-in-charge and payment of wages for Sunday and holiday and for Dearness Allowance with other consequential entitlements as deemed fit.

3. Management contested the case by filing written statement on 03.02.2023 refuting the claims of Sri Ananta Prasad Ghosh. The rival case of the management is that as per order of CIL, Subordinate Engineers were reverted to their Non-Executive Cadre in terms of order No. ECL/C-5(D)/Order/Revert Back/E&M/EE/2499 dated 18.10.2013and they were paid consequential benefits treating them as if they had been not been upgraded. It is averred by the management that all the benefits, facilities of an Executive of CIL have been drawn

by the workman and his fixation of pay according to National Coal Wage Agreement-IX (hereinafter referred to as NCWA-IX) has been allowed, granting increments and benefits of pay protection. Further contention of the management is that while working as an Executive, Ananta Prasad Ghosh has drawn salary of thirty (30) or thirty-one (31) days in place of twenty-six (26) days payable to the non-executives. According to the management Wage Board employees are deployed on Sundays and holidays as per quota / sanction, whereas the executives of the company work on Sundays and holidays without quota. Therefore, executives upon reversion to non-executives are not entitled to the wages of Sundays and holidays as they have already received their wages for Sundays and holidays and the same cannot be calculated as deemed deployment. Eventually, it is urged that the reference case filed by the union is harassing, vexatious, baseless and is liable to be dismissed.

4. The short point for consideration in this case is whether the management committed any illegality by not paying arrears of difference of wages in respect of Basic pay, Dearness Allowance, and wages for Sundays and holidays between Executive Cadre and Non-Executive Cadre for the period he served in the Executive Cadre i.e., from 01.06.2011 to 31.10.2013 and if he is entitled to any consequential benefit.

5. Ananta Prasad Ghosh filed his affidavit-in-chief and the union examined him as Workman Witness No. 1. The witness stated in his affidavit-in-chief that he was promoted to the post of Subordinate Engineer (E&M) vide Ref. No. ECL/C-5(D)/Upgradation(E1)/E&M/EE/925 dated 21/25.05.2011 and was posted at Salanpur Area. Thereafter, he was reverted in the Non-Executive Cadre vide order Ref. No. ECL/C-5(D)/Order/Revert Back/E&M/EE/2499 dated 18.10.2013, following which he joined as Foreman-in-charge on 01.11.2013. The witness stated that in the order of reversion it was clearly mentioned that upon

reversion of the Subordinate Engineers to the Non-Executive Grade they would be treated as if they have not been upgraded and pay fixation would be done as per rule applicable to non-executives including benefits relating to increments provided in NCWA-IX. Similar cases of Mr. Apurba Kumar Roy and Mr. Ushapati Samanta have been referred. The workman witness further stated that the status of the workman has been changed by order dated 06/12.09.2013 and the workman should be paid the difference of Basic wages, wages for Sunday and holiday and other monetary benefits which has already been paid to five workers of Bankola Area with whom the management has executed a Memorandum of Settlement. In his evidence-in-chief witness stated that he has retired from the service of ECL w.e.f. 31.08.2023. He was upgraded to the post of Subordinate Engineer w.e.f. 01.06.2011 till 31.10.2013. Copy of the Office Order dated 21/25.05.2011 issued by the Chief Manager (Pers/EE), ECL regarding upgradation has been admitted in evidence as Exhibit W-1.

6. In cross-examination Workman Witness No. 1 admitted that in case of non-executives the number of working days is twenty-six and overtime to wage board staff is provided as per quota sanctioned in different units. Furthermore, in Mohanpur Colliery the workers had to work on Sundays and holidays not on overtime basis

7. Mr. Mukesh Kumar Burnwal, Deputy Manager (Personnel), Mohanpur Colliery has been examined as Management Witness No. 1. The witness has produced a Calculation sheet of arrears payable to Ananta Prasad Ghosh duly singed and stamped by all the official concerned of the management as Exhibit M-1. The Calculation sheet shows that Rs. 1,33,119.79/- (Rupees one lakh thirty-three thousand one hundred nineteen and seventy-nine paise only) is payable to the workman as difference of pay for the period from 01.06.2011 to 31.10.2013.

8. In cross-examination Management Witness No. 1 admitted that the amounts on account of quarterly and annual Puja bonus payable to the aggrieved workman have not been reflected in the Calculation sheet / statement.

9. Mr. Chandi Banerjee, union representative in his short argument submitted that the facts relating to promotion and reversion of Ananta Prasad Ghosh is admitted. It is also admitted that management passed an Office Order on 18.10.2013 to the effect that in furtherance of Office Order dated 31.05.2013 in exercise of irrevocable option by interested Subordinate Engineers for reversion to their substantive post in Non-Executive Grade workmen have been reverted from the post of Subordinate Engineers to Non-Executive Grade and they treated as if they have not been upgraded, and pay fixation would be done as applicable to Non-Executives with benefits as per NCWA-IX and annual increments. It is argued that the service of the workman would be considered as continuing in the Non-Executive Cadre and he would be entitled to all benefits including difference of wages for the period he served in the Executive Cadre and would also get the benefits of Quarterly and Annual Puja Bonus during the said period. Mr. Banerjee argued that the workman has already superannuated from service on 31.08.2023 and he cannot wait for indefinite period and urged that necessary order may be passed directing the management to pay the legal dues of the workman in respect of his pay from 01.06.2011 to 31.10.2013.

10. Mr. P. K. Das, learned advocate for the management of ECL fairly admitted the entire claim as his position is guided by the order of reversion dated 18.10.2013. The only objection raised by the learned advocate for the management is that the workman is not entitled to payment of wages for Sundays and holidays on account of the fact that a non-executive is employed for twenty-six days in a month except on the dates he was actually deployed. It is argued that while the workman was serving as an Executive, he received payment for

thirty days a month. Therefore, he would not be entitled to any additional pay for Sundays and holidays.

11. I have considered the argument advanced by the union representative and learned advocate for the management in the light of fact and circumstances of the case and the relevant orders passed by the management of ECL. Admittedly, Ananta Prasad Ghosh was promoted to the post of Subordinate Engineer (E&M) and joined his promotional post on 01.06.2011 at Salanpur Area. Thereafter, on a representation made before the company on the ground of suffering financial loss as an Executive, a group reversion was made to the post of Foreman-in-charge (E&M). The workman joined the post of Foreman-in-charge (E&M) on 01.11.2013. In Office Order No. ECL/C-5(D)/Order/Revert Back/ E&M/EE/2499 dated 18.10.2013 issued by the Senior Manager (Personnel/EE), ECL, it was ordered that upon reversion from Subordinate Engineers to their substantive post in the non-executive, they would be treated as if they have not been upgraded, and pay fixation would be done as applicable to non-executives as per rules with benefits relating to NCWA-IX. There is no evidence to suggest that the payment of PRP has been made to the reverted employees. No argument has been advanced by the learned advocate for the management that PRP has been paid in lieu of arrears of difference of wages. I therefore, hold that the concerned employee is entitled to receive arrears of difference of wages in respect of Basic Pay and Dearness Allowance as a Non-Executive less the Basic Pay and Dearness Allowance already received by him as an Executive from 01.06.2011 to 30.06.2011 as per prevailing rates of NCWA-VIII and from 01.07.2011 to 31.10.2013 as per NCWA-IX. He is also entitled to Annual Puja Bonus and Quarterly Bonus for the period he was posted as an Executive which has not been paid and shown in the Calculation sheet (Exhibit M-1). The concerned workman having received payment for Sundays and holidays as Executive would not be entitled to any additional payment of Sundays and holidays. It is not mandatory

that a workman in Non-Executive Cadre would be deployed on all Sundays and holidays in the year nor are they entitled to any difference of pay for all Sundays and holidays. Therefore, the difference of pay should be calculated only in respect of the twenty-six (26) working days.

12. In the instant case the workman has not been paid any Annual Puja Bonus or Quarterly Bonus during his posting in the Executive Cadre for the period from 01.06.2011 to 31.10.2013. I therefore, hold that Ananta Prasad Ghosh, U. M. No. 072929, who was posted at Salanpur Area on reversion and already superannuated from service is entitled to payment of arrears of difference of Basic Pay and Dearness Allowance from the management of ECL for the period from 01.06.2011 to 31.10.2013 while he was posted as a Subordinate Engineer (E&M) at Salanpur Area.

He is also entitled to Quarterly Bonus and Annual Puja Bonus from the management of ECL for the same period. The management of the Management of Salanpur Area of Eastern Coalfields Limited is directed to assess the dues payable to Ananta Prasad Ghosh within two (2) months from the date of communication of the Award irrespective of the amount depicted in Exhibit M-1 and disburse the same without further delay.

Hence,

ORDERED

that the Industrial Dispute is allowed in part on contest against Mohanpur Colliery under Salanpur Area of Eastern Coalfields Limited. Ananta Prasad Ghosh U.M. No. 072929, Foreman-in-charge (E&M), who superannuated from service of Eastern Coalfields Limited is entitled to receive arrears of difference of Basic Pay and Dearness Allowance between the post of Foreman-in-charge (E&M) in Non-Executive Cadre and Subordinate Engineer (E&M) in Executive Cadre for the

period from 01.06.2011 to 31.10.2013 and he is further entitled to Annual Puja Bonus and Quarterly Bonus for the said period. Management is directed to assess the above dues payable to the retired employee within two (2) months from the date of communication of this Award and disburse the same without further delay. The calculations are to be made afresh. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer,

नई दिल्ली, 5 जून, 2026

का.आ. 1181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण– सह – श्रम न्यायालय**, आसनसोल के पंचाट **(संदर्भ संक्या -08/2020)** को प्रकाशित करती है,

[सं. एल. 22012/110/2019-आई.आर.(सी.एम-II)]

जयदीप यादव, उप निदेशक

New Delhi, the 5th June, 2026

S.O. 1181.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.08/2020*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **ECL** and their workmen,

[No. L-22012/110/2019 – IR (CM-II)]

JAIDEEP YADAV, Deputy Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 08 OF 2020

PARTIES: Narad Bouri
(substituted by the legal heirs)
Vs.
Management of MIC, Jhanjra Project, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 05.02.2026

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/110/2019-IR(CM-II)** dated 04.02.2020 has been pleased to refer the following dispute between the employer, that is the Management of MIC, Jhanjra Project under Jhanjra Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its MIC Jhanjhra Project under Jhanjhra Area in imposing a punishment of dismissal on Shri Narad Bouri, Trammer of MIC Jhanjhra Project w.e.f. 04/6-07-2012 vide order No. GM/JNR/PER/2012/472 dated 04/06-07-2012 is just and legal? If not, to what relief the workman is entitled to?* **"**

1. On receiving Order **No. L-22012/110/2019-IR(CM-II)** dated 04.02.2020 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 24.02.2020 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims.

2. After service of Notice, the President of Koyala Mazdoor Congress filed a petition on 12.09.2023 for substitution of legal heirs of the deceased workman Narad Bouri. The petition was made by Suchitra Bouri, the widow of the deceased employee. Where she stated that her husband died on 31.05.2022, leaving behind her as widow, one son Sumanta Bouri and two daughters namely Puja Bouri and Priyanka Bouri. On 12.09.2023 the legal heirs were substituted in place of Narad Bouri. On 18.10.2023 a written statement was filed by Suchitra Bouri, widow of the deceased employee. In brief, the facts as disclosed in the written statement is that Narad Bouri was posted as trammer, bearing U.M. No. 692267 at MIC, Jhanjra Project and was a permanent employee of Eastern Coalfields Limited (hereinafter referred to as ECL). He could not attend duty from 24.05.2011 due to his illness. After recovery from his illness Narad Bouri went to join his duty but management did not allow him. A Charge Sheet bearing No. AGT/JNR/MIC/P/CS/2011/1076 dated 16.07.2011 was issued by the management against Narad Bouri. The workman submitted reply to the Charge Sheet, explaining the situation that he was unable to attend his duty due to illness. The

management was not satisfied with the reply and appointed an Enquiry Officer to hold a Departmental Enquiry in respect of the charge of unauthorized absence for more than ten days. It is further stated on behalf of the employee that the management of MIC, Jhanjra Project did not provide accommodation to the charged employee and he had to attend his duty from Ranisayer More, near Nimcha Colliery, which is approximately 35 to 40 km away from his place of work. Narad Bouri also applied for his transfer to Satgram Area so that he could attend his duty in time but the management of ECL did not consider his prayer. The Enquiry Officer in course of a domestic enquiry held that Narad Bouri could not attend his duty due to his sickness and submitted treatment papers but management dismissed the workman form his service for his absence from duty for a period of one month and twenty-two days only that is from 24.05.2011 to 16.07.2011. It is admitted that a second Show Cause Notice was issued prior to the dismissal and Narad Bouri submitted his reply to the second Show Cause Notice. The petitioner wife and the employee also met the General Manager of the Area and requested him for allowing the workman to join his duty. Management did not pay any heed to their prayer and dismissed the workman from service of the company with effect from 06.07.2012. It is contended that the punishment of dismissal from service for absenting from duty for one month and twenty-two days is harsh and disproportionate to the gravity of misconduct. It is claimed that management should take a lenient view as the absence was not deliberate but due to illness and he had to attend duty from a distant place. A mercy appeal was made before the management of ECL after dismissal of the employee as per the Certified Standing Order but the prayer was not considered. According to the union management of ECL has entered into a Memorandum of Settlement before the Regional Labour Commissioner (Central), Asansol on 22.05.2007 with all functioning unions of ECL where it was agreed that mercy appeals would be considered in respect of dismissed employees who were up to forty-five (45) years of age and their period of absence was up to nine months. The petitioner dependent in the written statement has prayed for declaring the order of dismissal of Narad Bouri as illegal and unjustified and prayed for payment of full back wages with other consequential benefits.

3. Management of ECL filed their written statement on 18.10.2023, stating therein that Narad Bouri, ex-Trammer was absenting from his duty since 24.05.2011 without any information or permission and he had no satisfactory reason to remain absent. Management issued a Charge Sheet dated 16.07.2011 levelling a charge under Clause 26.23 for habitual low attendance or habitual absence from duty without sufficient cause and under Clause 26.29 against the workman for being absent from duty beyond ten days without sanctioned leave or sufficient reason or overstaying beyond sanctioned leave without valid reason. The workman after receiving the Charge Sheet submitted a reply which was not found satisfactory and the management decided to hold domestic enquiry in respect of the charge. Four Notice of enquiry were issued at the address of the workman but he did not turn up for enquiry. A fifth Notice of enquiry was issued on 01/02.12.2011 fixing 05.01.2012 for enquiry. The fifth Notice was also published in the local Newspaper, circulated in an around the district of the employee's native village. The workman participated in the domestic enquiry. Management further disclosed that in the year 2008 the workman attended duty on eighty-three (83) days, in the year 2009 thirteen (13) days, nil in the year 2010 and in the year 2011 twenty-eight (28) days only. Due to the previous misconduct Narad Bouri was awarded punishments like stoppage of two increments in 2008, demotion from Category-V (SLU) to Category-IV with stern warning in 2009, stoppage of two annual increment in 2011. The Enquiry Officer held enquiry wherein the charges were established and second Show Cause Notice was issued to the workman, dated 01/06.06.2012 along with copies of enquiry proceeding and findings under registered post with A/D, calling upon him to submit his explanation, if any. The workman did not reply to the second Show Cause Notice. The management did not find any extenuating circumstance in favour of Narad Bouri and passed an order dated 04/06.07.2012 dismissing him from service of the company. It is asserted that the concerned

workman sacrificed his service at his will and he was dismissed as he was not entitled to any relief. Management asserted that the action taken by the management against Narad Bouri is justified and legal and the referred Industrial Dispute is liable to be dismissed.

4. The central point for consideration is whether the action of the management in imposing punishment of dismissal against Narad Bouri w.e.f. 04/06.07.2012 is justified and legal. If not, to what relief the workman is entitled to.

5. Union examined Suchitra Bouri, the wife of the deceased employee as Workman Witness No. 1. She filed her affidavit-in-chief, reiterating the case disclosed in the written statement. In paragraph no. (8) she stated that her husband was not allotted with quarters for which he had to attend duty for Ranisayer More which is about forty (40) km from MIC, Jhanjra Project as a result he was late in attending his duty and his attendance was not marked by the Attendance Clerk. In paragraph (12) she stated that before issuing the order of dismissal she and her husband met the General Manager of Area and requested him to allow Narad Bouri to join his duty and assured that he would not repeat such type of incident and would be regular in attending duty. It transpires from the averment in affidavit-in-chief that husband died on 31.05.2022 during pendency of this case. The workman witness produced several documents :

(i) Copy of the Reply submitted by Narad Bouri against the Charge Sheet is produced as Exhibit W-1.

(ii) Copy of the Enquiry Proceeding held against Narad Bouri, as Exhibit W-2.

(iii) Copy of the Enquiry Report, as Exhibit W-3.

(iv) Copy of the Order of dismissal dated 04/06.07.2012 issued by the General Manager, Jhanjra Area, as Exhibit W-4.

(v) Copy of the Mercy Petition submitted by Narad Bouri for his reinstatement in service, as Exhibit W-5.

(vi) Copy of the Death Certificate of Narad Bouri, as Exhibit W-6.

(vii) Copies of Aadhaar cards of dependents of Narad Bouri, as Exhibits W-7 series (from W-7 to W-7/3).

6. In cross-examination workman witness deposed that her husband was suffering from Jaundice at the relevant time and was under medical treatment of Jamuria Health Centre. She also admitted that on some occasion her husband did not attend duty as he has to travel by bus and reached late. She failed to produce any document to show that her husband applied for allotment of quarters under the company. In the affidavit-in-chief the witness stated in paragraph no. (7) that her husband attended the enquiry and disclosed the reason for his absence from duty. In course of cross-examination the witness however denied the suggestion that her husband attended the enquiry proceeding conducted by the company.

7. Management examined Mr. Alaric Oneal Lyndem, Manager (Personnel), Jhanjra Project Colliery as Management Witness No. 1. He has filed an affidavit-in-chief where he reinstated the facts disclosed in the written statement. The witness averred that five Notice of enquiry were issued to the workman and the fifth Notice was also published in the local Newspaper for ensuring his participation. It is averred that the attendance of the workman in the previous three years i.e., 2008 to 2010 was very poor. He attended only eighty-three (83) days in the year 2008, thirteen (13) days in the year 2009 and nil in the year 2010. Due to his previous misconducts, minor punishments were imposed, like warning in the year 2007 and 2008, stoppage of two increments in the year 2008, demotion from Category-V to Category-IV with stern warning in the year 2009 and stoppage of two annual increments in the year

2011. It is further stated that a second Show Cause Notice was issued to the workman along with copy of Enquiry Report and findings of the Enquiry Officer but the workman did not submit any reply to the second Show Cause Notice. Witness asserted that the principles of natural justice was followed by the management at all stages. Reasonable opportunity was given to the workman to defend his case and thereafter the management awarded the punishment of dismissal though Office Order bearing No. GM/JNR/PER/2012/472 dated 04/06.07.2012. Management produced the following documents in support of their case :

(i) Copy of Charge Sheet dated 16.07.2011 issued against Narad Bouri is produced as Exhibit M-1.

(ii) Copies of five Notices of Enquiry dated 02.08.2011, 29.08.2011, 26.09.2011, 31.10.2011 and 01/02.12.2011 issued to the concerned workman under registered post, as Exhibits M-2 series (from M-2 to M-2/4).

(iii) Copy of Notice dated 01/02.12.2011 was also published in a Bengali Newspaper 'Sambad', publication is marked as Exhibit M-3.

(iv) Copy of Reply submitted by Narad Bouri dated 04.01.2012, as Exhibit M-4.

(v) Copy of the Enquiry Proceeding, as Exhibit M-5.

(vi) Copy of the Enquiry Report and Findings dated 05.01.2012, as Exhibit M-5/1).

(vii) Copy of the second Show Cause Notice dated 01/06.06.2012 issued to the workman under registered post, as Exhibit M-6.

(viii) Copy of the order of dismissal dated 04/06.07.2012 issued by the General Manager, Jhanjra Area, as Exhibit M-7.

8. In course of cross-examination the management witness deposed that mercy appeal was submitted by the workman after his dismissal was not considered. He denied the suggestion that the punishment of dismissal for unauthorized absence for one month and twenty-two days is disproportionate, unjust and improper. Witness also deposed that the workman never applied for quarters at Jhanjra Project Colliery and denied the suggestion that the management acted illegally by not considering his mercy appeal in terms of Memorandum of Settlement dated 22.05.2007.

9. Mr. Rakesh Kumar, union representative advancing his argument submitted that the workman participated in the enquiry and produced a Medical Certificate to the effect that he was suffering from jaundice from 24.05.2011 to 30.12.2011. The certificate was issued by the office of the Block Medical Officer of Health (hereinafter referred to as BMOH), Akhalpur Block Primary Health Centre (hereinafter referred to as BPHC), but the same was not relied upon by the Enquiry Officer. The workman had been absented from duty due to no fault on his part, but such facts were not considered by the Enquiry Officer in the proper perspective who found him guilty of the charge. It is further argued that the workman submitted mercy appeal before the management for his reinstatement but the management did not consider the same. It is argued that the workman having expired during pendency of the case, the order of dismissal of the workman should be set aside and the legal heirs of the deceased employee should be paid back wages for the period from his dismissal till his death along with all consequential benefits.

10. Mr. P. K. Das, learned advocate argued that the workman is a habitual absentee and on the last occasion he remained absent from duty without any information or sanctioned leave of the Competent Authority from 24.05.2011 till 16.07.2011. The workman submitted a reply to the Charge Sheet only after issuance of Notice for the fifth time on 02.12.2011 along with a publication in a Newspaper. The workman thereafter submitted a reply to the Charge Sheet on 04.01.2012 along with a copy of Medical Certificate dated 31.12.2011. Learned advocate submitted that though

the period of unauthorized absence mentioned in the Charge Sheet is for one month and twenty-two days, the workman in fact continued to remain absent until he submitted his reply to the Charge Sheet on 04.01.12. It is evident that if the workman had made himself available on earlier occasion, he would not have submit the reply to the Charge Sheet on 04.01.2012. Learned advocate further submitted that the workman participated in the enquiry and the Enquiry Officer held a fair enquiry observing the principles of natural justice by providing opportunity to the charged employee to participate and represent his case. The copy of Enquiry Proceeding has been produced as Exhibit M-5 and the Report of the Enquiry Officer has been produced as Exhibit M-5/1. Learned advocate referred to the written statement filed by the dependent of the workman where in paragraph no. (11) it is stated that the management issued a second Show Cause Notice before the order of dismissal and Narad Bouri, replied to the second Show Cause Notice. It is argued on behalf of the management that the Enquiry Officer found supporting of evidence against the charged employee which established the charge under Clause 26.23 and 26.29 of the Certified Standing Orders. The Competent Authority after considering the findings of the Enquiry Officer and other materials on record did not find any extenuating circumstance in favour of the workman and issued an order dated 04/06.07.2012 (Exhibit M-7), dismissing Narad Bouri from his service. Learned advocate argued that the management has acted consistent with the law and there is no ground for interfering with the action taken by the management.

11. I have considered the gamut of the rival cases disclosed in their respective written statement, evidence adduced and arguments advanced by the union representative and learned advocate for the management. In the instant case the copy of the Charge Sheet has been produced as Exhibit M-1. Narad Bouri submitted a reply to the Charge Sheet dated 16.07.2011 which is admitted in the evidence as Exhibit W-1 / M-4. In his reply the workman admitted that he had remained absent from duty but at that time he was suffering from jaundice and was under the treatment of the BMOH, Akhalpur BPHC from 25.04.2011 to 30.12.2011 with medication and was strictly advised to take rest. The reply was accompanied by a copy of medical certificate dated 31.12.2011. No treatment paper or other medical records have been produced by the union or dependents of the workman in support of illness of Narad Bouri. On a close reading of the medical certificate, it is gathered that there is no mention that Narad Bouri was under the treatment of the said Doctor, issuing the said certificate or at the said BPHC at Akhalpur. On considering the Enquiry Report and findings of the Enquiry Officer (Exhibit M-5/1) it appears to me that the workman participated in the enquiry proceeding and he filed a medical certificate without any treatment papers in connection with the alleged medical treatment during the period of his unauthorized absence from duty and the management did not find any justification for his long absence. Statement of the employee was recorded and during his cross-examination he admitted that he was absent and he did not inform the Controlling Officer the reason of his long absence. The charged employee in his examination was asked if could produce prescription, cash memo and other test report in support of his medical certificate submitted during enquiry to which the workman remained silent and admitted his fault. He did not give any answer for his not producing the treatment papers. The Enquiry Officer in his report Exhibit M-5/1 found that the workman was guilty of habitual absence and also for long unauthorized absence for more than ten days. It is observed in the report that the charges have been fully established against Narad Bouri. Before dismissing the workman, a second Show Cause Notice was issued by the management which is admitted in the evidence as Exhibit M-6. The workman did not reply to the second Show Cause Notice and the Competent Authority who is the General Manager of Jhanjra Area passed an order dated 04/06.07.2012 (Exhibit M-7), dismissing him from service.

12. In order to find out if the enquiry held was valid or not it is necessary to find out if there has been compliance of the principles of natural justice and whether the report of the Enquiry Officer is a reasoned order. The

Hon'ble Supreme Court of India in the case of **State Bank of India Vs. Ram Lal Bhaskar and Another [2011 (10) SCC 249]**, held :

" Coming now to the contention of the appellant, we find that the enquiry officer has found that charges no. 1, 2, 4 and 6 had been proved against the respondent no.1. While arriving at these findings on the four charges proved against the respondent no.1, the enquiry officer has considered a number of documents marked as exhibits and has also considered the documents produced on behalf of the respondent no.1 and marked as exhibits. The findings of the enquiry officer were based on evidence and the appointing authority had agreed with the findings of the enquiry officer."

In another case, **Mihir Kumar Hazara Choudhury Vs. Life Insurance Corporation of India and Another [(2017) 9 SCC 404]**, the Hon'ble Apex Court held :

" As held supra, the departmental proceedings were conducted strictly in accordance with law by following the principle of natural justice in which the

appellant duly participated. The appellant neither set up any defense nor denied the factum of charges, yet the respondent proved the charges with the aid of relevant evidence, which found acceptance to the Division Bench and this Court too. As an Appellate Court, neither we can sit over the findings of the Enquiry Officer and find fault in it nor can we re-appreciate the evidence of witnesses examined in departmental Enquiry."

In the case of **The State of Bihar and Others Vs. Phulpari Kumari [2020 (2) SCC 130]**, the Hon'ble Supreme Court of India held :

" ……. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. ……."

13. In the present case the evidence on record clearly establishes the fact that the charged employee was a habitual absentee and on earlier occasion minor punishments were imposed against him by way of issuing warning, stoppage of two increments, demotion from Category-V to Category-IV with stern warning and stoppage of two annual increments. The workman did not rectify his conduct and continued to remain absent without information. At one stage a plea was taken that his place of residence was far away from his place of work due to which he was unable to attend duty in time and was marked absent. The union however failed to adduce any evidence that the employee had made any prayer before the management for allotment of quarters. In absence of documents relating to medical treatment, such as prescription and test reports, especially in a case of long absence on medical ground, the Enquiry Officer did not rely upon the medical certificate produced by the charged employee as it was the only document regarding his absence on medical ground. The Enquiry Officer extended reasonable opportunity to the workman to participate in the enquiry and found him guilty of charge. In course of the enquiry the principles of natural justice was followed. Therefore, the findings of the Enquiry Officer are based upon evidence. At this stage the Tribunal cannot sit over the findings of the Enquiry Officer to reappraise the evidence on record and hold that the findings would have been different on the same set of evidence. In the instant case the report of the Enquiry Officer as well as the decision of Competent Authority are based upon reasoned order. The principle laid down in the decision discussed above squarely applies to the present case. Therefore, I hold that there is no ground to interfere with the order of dismissal passed against Narad Bouri held guilty of charge under Clause 26.23 and 26.29 of the Certified

Standing Orders. The legal heirs of the dismissed employee are therefore not entitled to any relief in this case. The Industrial Dispute is liable to be dismissed.

Hence,

O R D E R E D

that the Industrial Dispute is dismissed on contest. The legal heirs of Narad Bouri are not entitled to any relief. The management of MIC, Jhanjra Project under Jhanjra Area of Eastern Coalfields Limited is directed to pay all outstanding dues of Narad Bouri, ex-employee to his legal heirs, if not paid earlier. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

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KUMER CHAND MEENA Digitally signed by KUMER CHAND MEENA Date: 2026.07.25 09:31:37 +05'30'