* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 10.08.2018
Date of judgment: 27.08.2018

\+ **W.P. (C) 5607/2016 & CMs 2731/2017, 1681/2018 & 16193/2018**

MANAGEMENT OF HINDUSTAN TIMES LTD..... Petitioner

Through: Dr.Abhishek M. Singhvi, Mr.Sandeep Sethi, Mr.Raj Birbal, Senior Advocates along with Ms.Raavi Birbal, Ms.Meghna Mishra, Mr.Ankit Rajgarhia, Mr.Naman Joshi and Ms.Riya Singh, Advocates.

versus

AITA RAM & ORS. ... Respondents

Through: Ms.Meenakshi Arora, Senior Counsel with Mr.Ramesh Kumar Mishra, Mr.V.Madhukar, Mr.Sachin Dev Sharma and Mr.Rajnish Kumar Singh, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE VINOD GOEL**

**VINOD GOEL, J.**

1. It needs no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, freedom enshrined in the Constitution remains illusory.

Therefore, the approach of the Courts must be compatible with the Constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private. [*Harjinder Singh V. Punjab State Warehousing Corpn. (2010) 3 SCC 192)*].

2. The essence of our constitution as explained by eminent jurist Palkhivala was referred to in *Harjinder Singh's* case (supra):-

> *"Our Constitution is primarily shaped and moulded for the common man. It takes no account of 'the portly presence of the potentates, goodly in girth'. It is a Constitution not meant for the ruler*
>
> > *'but the ranker, the tramp of the road,*
> > *The slave with the sack on his shoulders*
> > *pricked on with the goad,*
> > *The man with too weighty a burden,*
> > *too weary a load.' "*
> > *(N.A. Palkhivala, Our Constitution Defaced and Defiled, MacMillan, 1974, p.29)"*

3. Justice Vivian Bose, who was a part of the Constitutional Bench in *Bidi Supply Co. Vs. Union of India AIR 1956 SC 479*, posed the question "*23. After all, for whose benefit was the constitution enacted?"* Having posed the question, Justice Bose answered the same in the next sentence *"23…….I am clear that the Constitution is not for the exclusive benefit of Governments and States; it is not only for lawyers and politicians and officials and those highly placed.* ***It also exists for the common man, for the poor and the humble, for those who have***

***businesses at stake, for the 'butcher, the baker and the candlestick-maker'****. It lays down for this land 'a rule of law' as understood in the free democracies of the world. It constitutes India into a Sovereign Democratic Republic and guarantees in every page rights and freedom to the individual side by side and consistent with the overriding power of the State to act for the common good of all."*

4. The preamble to the Constitution of India says:-

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

> *"JUSTICE, social, economic and political;*
> *LIBERTY of thought, expression, belief, faith and worship;*
> *EQUALITY of status and of opportunity;*
> *and to promote among them all*
> *FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;"*

The preamble to Constitution is a part of it and the objective specified in the preamble contain the basic structure of the Constitution as held in **Keshavananda Bharati Sripadgalvaru Vs. State of Kerala, *AIR 1973 SC 1461*.**

5. The first part of the preamble is a declaration whereby the people of India adopted and gave to themselves the Constitution. The second part is a resolution whereby people of India solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR,

DEMOCRATIC, REPUBLIC. The most vital part is the promise to secure to all its citizens

> *"Justice, social, economic and political;*
> *Liberty of thought, expression, belief, faith and worship;*
> *Equality of status and of opportunity;*
> *And to promote among them all*
> *Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;"*

(Justice R.C.Lahoti, Preamble-The Spirit and Backbone of the Constitution of India, Anundoram Barooah Law Lectures, Seventh Series, Eastern book Company, 2004, at p.3)

6. The judges have a vital role to ensure that the promise contained in the preamble to the constitution is fulfilled. It would not be out of place to refer to Article 38 (I) as under:-

> *"38. State to secure a social order for the promotion of welfare of the people- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."*

This is echoing the preambular promise. It is, therefore, the duty of the judiciary to promote a social order in which justice, social economic and political, informs all the institutions of the national life.

7. This writ petition is an attempt on behalf of the petitioner/management i.e. M/s Hindustan Times Limited (HTL) to impede the efforts being made by the executing Court of learned Additional District Judge -03, Patiala House Courts, New Delhi (in short 'Ld. ADJ') in the execution petition No.23/2016 to execute the Award dated 23.01.2012 passed by the Learned Presiding Officer

Industrial Tribunal (IT). By Award dated 23.01.2012, the action of HTL in transferring the ownership of its printing undertaking to its subsidiary M/s Hindustan Times Media Limited (HTML) w.e.f. 02.10.2004 and terminating the services of the workmen under Section 25FF of the Industrial Disputes Act, 1947 (ID Act) was held to be illegal and unjustified and HTL was directed to reinstate 272 workmen treating them in "continuity of service" under the terms and conditions of service as before their alleged termination. It is a case of long checkered and tumultuous history where the workmen have still not seen the light at the end of the tunnel despite the Tribunal having passed the award in their favour 6½ years ago. The fruits of the Award have so far not been provided to its workmen by HTL. The notional letters of appointment dated 19.04.2013 were issued to the workmen pursuant to the consensus arrived at between the parties on 17.04.2013 in CM (M) 368/2013 in this Court without prejudice to their rights and contentions. The workmen have not been reinstated w.e.f. 03.10.2004 and the benefit of "continuity of service" has also not been extended to them by HTL. Unfortunately, an attempt has been made by HTL to invoke Section 25FFF of the ID Act on 09.12.2013 against the workmen on the ground that after having sold the printing undertaking to HTML, the printing undertaking of HTL was closed in the year 2005 and permanently removed from the list of registered factories by the Inspector of the factories w.e.f. 04.07.2008.

8. The impugned order dated 14.05.2016 passed by the Ld. ADJ in the Execution Petition No.23/2016 is the subject matter of challenge in this writ petition filed by HTL under Article 227 of the Constitution of India. The operative part of the impugned order reads as under: -

> *"……..*
> *That the reinstatement letter dated 19.04.13 itself shows that it is not being issued in compliance of the Tribunal's Award dated 23.01.12 and is rather been issued on the basis of an offer/undertaking/statement given by the JD to the High Court on 17.04.13 in a subsequent off shoot of the matter.*
>
> *That this reinstatement letter no where contains a specific averment that the workmen, to whom this letter is addressed, is reinstated with effect from 30.10.04 (sic) as directed in the Award.*
>
> *Taking a contrary stand to what was being argued earlier a plea was raised on behalf of JD that despite the above M/s HTL had treated the workmen to be taken into service from 03.10.04, but no document in support of this plea was placed on record granting any benefit to either of the workmen for the period 03.10.04 to 19.04.13 while disbursing the salaries to the workmen. Although attention of this Court is drawn to a statement of account placed on record in this execution petition whereby column is dedicated to a subsequent termination letter issued by the JD to the workmen dated 09.12.13 under Section 25 FFF of Industrial Dispute Act, 1947. The Court is made to believe that the subsequent retrenchment compensation has been calculated in a way as the workmen was in the continued service with effect from 03.10.04. In my considered view this pleas (sic) of no avail to the JD in so far as method of calculation of retrenchment compensation claimed to have been adopted by the JD singly handedly does not justify there claim that the reinstatement service from the workmen from 03.10.04.*

*In view of the above I have no hesitation in concluding that the detail award passed by Ld Industrial Tribunal Karkardooma on 23.01.2012 whereby JD Hindustan Times Ltd was directed to reinstate the services of retrenched workmen with effect from 03.10.04 has not been complied with by the JD either in letter or in spirit. The purported reinstatement letter issued to the workmen on 19.04.13 is an eyewash and a moonshine and is no compliance of the award. It is hereby order (sic) that the Award under execution remains totally non complied till date.*

*To the above extent, the execution petition of the Workmen is hereby ordered to be maintainable and is allowed to continue for Execution of Award dated 23.01.12.*

*The JD M/s Hindustan Times Ltd is given four weeks time to reinstate all the eligible Workmen with effect from 03.10.04 itself. The Workmen shall the (sic) entitled to salaries and other service benefits as per the Award while taking in to account the salaries already disbursed to the employees between the period 18.04.13 to 09.12.13.*

*In so far as fresh and proper reinstatement is happening in compliance of the Award under execution, the subsequent attempt on the part of JD HTL of freshly terminating the services of the workmen by invoking Section 25 FFF of I.D. Act shall not come in the way being without cause of action and nonest. Unless reinstated, service of no workmen can be terminated as sought to be done. The Workmen shall be deemed to be in continuous service, even as on date unless some of them might have reached the age superannuation.*

*Vakalatnama for another three workmen filed on behalf of award holder.*

*Now to come up for compliance of the order on 23.07.2016.*

*Sd/-*
*(Surinder S. Rathi)*
*ADJ-03/PHC/New Delhi*
*14.05.2016."*

9. With regard to the back wages from the date of termination i.e. 03.10.2004 till award, the Ld. ADJ observed as under:-

> *"……..*
>
> *As far* ***as back wages are concerned no doubt that the issue is not subjudice before this Court in this execution and is under consideration of Hon'ble Supreme Court but the issue of reinstatement of workman from 03.10.2004 is something, the compliance of which has to be ensured by this Court."***

10. The impugned order made it clear that the reinstatement is to take effect from 03.10.2004. The relevant para reads as under: -

> *"It has to be borne in mind that the Award under execution dated 23.01.2012 passed by ld Industrial Tribunal has attained finality and being legally binding the same has to be complied both in letter as well as spirit. The part relief qua payment of back wages as detail supra, is now subjudice before Hon'ble Supreme Court and it is the only the issue qua reinstatement which is sought to be executed.* ***Having once concluded by Ld. Industrial Tribunal that the termination of the workmen done by M/s. HTL on 03.10.2004 is illegal and nonest this finding cant be fiddled in any manner. The consequential reinstatement ordered by Ld. Tribunal has to be with effect from 03.10.2004 itself and not from any future date which the JD may decide or agree to. There is no ambiguity in the Award on this score."***

11. The Ld. ADJ found favour with the arguments submitted on behalf of the workmen that salaries offered to them from 18.04.2013 were not calculated on the basis of what the workmen would have drawn had they continued unabruptly in the JD's services from 03.10.2004 to 18.04.2013 and that the workmen have not been given

the benefits like leave encashment, medical benefits and other deemed benefits to which they are entitled over and above the salary.

12. To adjudicate upon the point raised by the petitioner in this writ petition, it would not be out of place to refer to the terms of the reference dated 02.02.2015 by the Govt. of NCT of Delhi to the IT: -

> *"Whether the action of management of M/s Hindustan Times Ltd. in transferring the ownership of its printing undertaking to M/s H.T.Media Ltd. w.e.f. 02.10.2004 and terminating the services of workmen whose names are given in Annexure A by invoking the provisions of Section 25FF of Industrial Disputes Act, 1947 is illegal and/or unjustified and if so, to what relief are the workmen entitled and what directions are necessary in this respect?"*

13. The IT framed the following issues on 20.02.2009:-

1. Whether HTML is the subsidiary company of HTL and managed by same management i.e. persons belonging to the same family, if so, its effect? OPW
2. Whether the transfer letters were issued to the workmen?
3. Whether decision of management No.1 in transferring of the ownership of Printing Undertaking to management No.2 is bonafide to protect the interest of workmen? If not, to what effect? OPM
4. Whether there was any refusal on the part of individual workmen to the said transfer of ownership from HTL to HTML? OPM
5. Whether management No.1 duly communicated the workmen about the transfer of printing undertaking to management No.2, if not, its consequences? OPM.
6. Whether termination/retrenchment of the workmen is in terms of relevant provisions of the ID Act i.e. Chapter 5B of the Act?
7. Whether the workman are bound by the unauthorised statement of the office bearer of the Union that workmen will not comply the order of transfer? OPM.

8. Whether references are illegal incompetent? (OPM). Whether 315 workmen named in Annexure A have taken their full and final settlement. Whether the claim statement has been sent by competent person having locus standi? OPW
9. In terms of reference."

14. Following additional issues were framed on 07.08.2009:-

"1. Whether any employer-employee relationship has ever existed between the claimants and the applicant/Management No.2? OPW
2. Whether the claimants can claim any relief from the management No.2? OPW
3. Whether the Hindustan Times Employees Union represents the interest of the employees of the management No.2 and is entitled to raise an industrial dispute against them? OPW"

15. By award dated 23.01.2012 the IT found that the Directors of the holding company HTL and its subsidiary HTML are inter-changeable. He found that the ownership of the management of these two companies is substantially in the holding company and it cannot be said that under any agreement to sell, transfer has taken place, though, in form it has taken place, and when the transferor and transferee are the same set of the companies, Section 25FF of the ID Act is not applicable.

16. Under issue no.3, the IT found that the management no.1 and 2 are not separate entities as HTML is the subsidiary company of HTL and is managed by the same management. HTML is the extended version of HTL. The decision of the petitioner in transferring the

ownership of printing undertaking to HTML is not *bona fide* to protect the interest of the workmen. HTML's refusal to continue with the services of workmen of HTL in printing undertaking is not justified.

17. Under issue no.4, the IT held that there was no refusal on the part of either of the workmen to the said transfer of the ownership to HTML from HTL.

18. Under additional issue no.1 and 2, the IT found that the workmen are the employees of HTL and not of HTML and there is no question of the workmen claiming relief from HTML. He also held that Section 25H of the ID Act is not applicable as there is no retrenchment within the meaning of Section 2 (oo) of the ID Act.

19. Under issue no.8, the IT found that 43 workmen out of 315 had taken their full and final settlement.

20. The concluding paras 87, 89 and 90 of the **Award dated 23.01.2012** read as under: -

> ***"87. In view of my findings on issue No.1, it is held that action of management of M/s Hindustan Times Ltd. in transferring the ownership of its Printing undertaking to M/s H.T. Media Ltd. w.e.f 02.10.2004 and terminating the services of workmen whose names are given in Annexure-A by invoking the provisions of Section 25FF of Industrial Disputes Act 1947 is illegal and unjustified."***
>
> ***"89. In view of above factual and legal position of law, workmen/claimants (except 43 workmen/claimants, who have settled their disputes u/s 18(1) of I.D. Act) are entitled to the relief of treating them in continuity of***

***service under terms and conditions of service as before their alleged termination w.e.f. 03.10.2004. They will not be entitled to any notice pay or compensation u/s 25 FF of Industrial Disputes Act. The said notice pay or compensation, if any, received by them, will have to be refunded by them."***

***"90. Hence, by way of relief, it is directed that management of M/s Hindustan Times Ltd. will reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. 03.10.2004. Award is passed accordingly."***

21. The observation of the IT in Para 89 of the Award about refund of notice pay/compensation u/s 25FF of the ID Act by the workmen to HTL, ***"……The said notice pay or compensation, if any, received by them, will have to be refunded by them"*** has unnecessarily given the opportunity to the petitioner to deny/delay the benefit of the award to the workmen.

22. In the Execution Petition No.1/2012 (RBT 3/2012), the workmen had, *inter-alia*, claimed back wages against the petitioner. However, by an order dated 12.10.2012, the executing court declined their request to grant them back wages as the IT had not awarded the same. This order dated 12.10.2012 came to be challenged in W.P.(C) No. 1000/2013 by the workmen. The learned Single Judge vide judgment dated 17.11.2014 held that *"learned Tribunal has granted reinstatement with full back wages vide its award dated 23.01.2012."* This order of the learned Single Judge was set aside by the Division Bench in LPA No.6/2015 by judgment dated 23.02.2015 concluding

*"....Thus, it has to be held that the workmen were not held entitled to the payment of any back wages……..."* The order of the DB was assailed by two groups of workmen in SLP(C) No.10578/2015 and SLP(C) No.8979/2016, which were dismissed on 01.08.2016 and 08.07.2016 respectively.

23. In the meanwhile, on 04.01.2013 before the executing court, it was argued on behalf of the workmen that they had not received any notice pay or compensation under Section 25FF of the ID Act and therefore, the question of refund to the management does not arise. This contention was disputed by HTL. The executing court, however, held that the refund of notice pay or compensation under Section 25FF of the ID Act is not a precondition to the reinstatement of the workmen and therefore the management/judgment debtor is bound to reinstate the decree holders/workmen.

24. This order dated 04.01.2013 was already a subject matter of challenge in CM(M) No. 368/2013 by HTL when the LPA No. 6/2013 was decided by the DB on 23.02.2015. The subject matter before the DB i.e. whether the workmen are entitled to back wages, was decided against the workmen but with further observation as *"24.....the workmen who had taken the compensation could not have retained the same and additionally claimed a right of reinstatement. The return of the compensation to the management was thus linked to the relief of reinstatement and had nothing to do with the idea of the back wages."*

25. The learned Single Judge has decided the said CM(M) No.368/2013 by judgment dated 14.09.2015. The court held that *"20… The court is of the view that the impugned order has not gone beyond the award and the learned Executing Court has passed the order under Section 11(9) and (10)."* The Ld. Single Judge further held that *"23…… Insofar as the impugned order has limited itself to the Award as well as in terms of the submissions made on behalf of the management, the impugned order does not suffer from any material irregularity. It has limited itself to the material on record and no interference is called for in the present proceedings. It cannot be said that the impugned order suffers from either lack of jurisdiction or is not based on the record or suffers from material irregularity or would lend to palpable miscarriage of justice. There is no reason to interfere with the impugned order".* However, keeping in view the observations of the DB in Para 24 of the judgment dated 23.02.2015, the Ld. Single Judge observed that *"25. The Executing Court did not have the benefit of the above view of the Division Bench hence the impugned order cannot be faulted. But now, it having been adjudicated that the return of compensation to the management is linked to the relief of reinstatement, the parties will be at liberty to pursue the logical corollary thereto".*

26. The learned Senior Counsel for the petitioner initially argued that the workmen had received notice pay/retrenchment compensation under Section 25FF of ID Act from HTL. This was vehemently disputed by the learned Senior Counsel for the workmen who requested that let a specific affidavit be filed by the petitioner enlisting

the details of workmen who had received the notice pay/compensation under Section 25FF of the ID Act. The petitioner could not specify the name of any workman, either in the petition or during the course of the arguments as to who had received the notice pay or compensation under Section 25FF of ID Act. Ultimately, during the course of arguments, on instructions, learned senior counsel Mr.Abhishek M. Singhvi and briefing counsel Ms.Raavi Birbal, admitted at the Bar that the notice pay/compensation cheques handed over to the workmen under Section 25FF of the ID Act were not enchased by either of the workmen. Therefore, when there was no payment of notice pay or compensation u/s 25FF of the ID Act by the HTL to either of the workmen, there is no question of any refund by the workmen.

27. The learned senior counsel for the petitioner argued that the Ld.ADJ by impugned order exceeded its jurisdiction beyond the award dated 23.01.2012 and granted not only the relief of payment of the back wages but also the service benefits like leave encashment, medical benefits and notional increments in salary, which were never granted by the IT. He urged that the award dated 23.01.2012 directed the petitioner to reinstate the workmen on 23.01.2012 treating them in "continuity of service" whereas the executing court directed the petitioner to reinstate the workmen w.e.f. 03.10.2004. He argued that the workmen were in fact reinstated by the letter dated 19.04.2013 and salaries were paid in accordance with law and the executing court has committed an error by holding that these letters of notional

reinstatement are an eyewash and the award has not been complied with.

28. He has relied upon a judgment of Hon'ble Supreme Court in **A.P. SRTC Vs. Abdul Kareem,** ***(2005) 6 SCC 36,*** to urge that merely because a workman had been directed to be reinstated without back wages, he could not claim the benefits of increments notionally earned during the period he was out of service. He further relied upon another judgment of Hon'ble Supreme Court in **A.P. SRTC Vs. S.Narsagoud,** ***(2003) 2 SCC 212,*** to urge that in case of reinstatement with continuity of service without back wages, benefit of notional increment was not granted by the Apex Court. He also relied upon a DB Judgment of Madras High Court in **N. Krishnamoorthy Vs. Abhijit Datta and others,** ***2005 SCC OnLine Mad 833,*** to urge that *"reinstatement with continuity of service alone"* means that the employee will get the terminal benefits at the time of retirement as he had been in continuity of service. He further relied upon a judgment of Single Bench of AP High Court in **G. Srinivasan Vs. APSRTC & Anr.,** ***2003 (4) ALD 18,*** to urge that in the absence of specific direction other than reinstatement and continuity of service, workman is not entitled to notional increments.

29. He referred to a DB decision dated 08.11.2012 of Karnataka High Court in Writ Appeal No. 16714/2011 **Bangalore Metropolitan Transport Corporation Vs. G.V. Thimmappa,** to urge that where an

employee is directed to be reinstated with continuity of service, either grant of back wages or consequential benefits is not automatic and the employee would be entitled to only to those benefits which are expressly granted.

30. He, in the alternative, without prejudice, submitted that in case, this Court awards some benefits because of award dated 23.01.2012 directing *"continuity of service under terms and conditions of service as before their alleged termination"*, the workmen are still not entitled to the benefit of LTC, medical reimbursement, salary for earned leave, etc. He relied upon a judgment of Karnataka High Court in the case of **K.R. Tyagi Vs. National Textile Corporation and Another,** ***1997 (3) LLN 226,*** to urge that the word reinstatement contemplates payment of back wages and the employee must be deemed to have remained in service once the order of termination is set aside. But it cannot be said that earned leave salary, LTC and medical reimbursement were payable for the period the employee was prevented from performing his duties. He also relied upon a judgment of Apex Court in **Bharat Electronics Ltd. Vs. Industrial Tribunal, Karnataka, Bangalore and Anr.,** ***1990 (2) SCC 314,*** to urge that the night shift allowance unless earned is not a part of the wages.

31. He referred to Section 25FFF of the ID Act to urge that a fresh cause of action accrued to the petitioner on account of closure of the printing undertaking of HTL in the year 2005 and its name was

removed from the list of registered factories by the Chief Inspector of Factories, Delhi in the year 2008. He emphasized that on account of closure of the industry, no entry to any workman is possible, and for that reason on accrual of the fresh cause of action, the petitioner had issued notice dated 09.12.2013 to all the workmen offering them compensation under Section 25FFF of the ID Act. He relied upon a judgment of the Single Bench of this court in **Shri Krishan Pal Singh Vs. Delhi Transport Corporation,** ***(2000) 83 DLT 537.*** He submitted that in case the workmen had any grievance, they could have raised a fresh industrial dispute for adjudication by the Industrial Tribunal. He urged that the executing court could not have observed that the termination of the workmen under Section 25FFF of ID Act is *nonest* and the workmen shall be deemed to be in continuous services.

32. He placed reliance on a judgment of Punjab and Haryana High Court in the case of **Darshan Singh Vs. Presiding Officer,** ***Manu/PH/1980/2014,*** to urge that after reinstatement, a fresh order of retrenchment constituted a fresh cause of action which could be challenged only by an independent reference.

33. He has relied upon a judgment titled as **Hondoram Ramchandra Vs. Kadam,** ***(2007) 14 SCC 277,*** wherein the reference of the industrial dispute before the Labour Court was under Section 25FFF of the ID Act, which is not in the present case. Similar is the

position in **District Red Cross Society Vs. Babita Arora,** ***2007 (7) SCC 366.***

34. *Per contra*, it is argued by Ms.Meenakshi Arora, learned senior counsel for the respondent/workmen that paras 89 and 90 of the award dated 23.01.2012 directed the management to reinstate 272 workmen treating them in "continuity in service" under the terms and conditions of service as before the alleged termination on 03.10.2004. She argued that the impugned order rightly held that the workmen are to be reinstated w.e.f. 03.10.2004 and not from any subsequent date. She argued that reinstatement letters dated 19.04.2013 were issued by the management pursuant to the semi-consensus between the parties on 17.04.2013 in CM (M) 368/2013 without prejudice to their respective rights and contentions leaving all the issues open. She submitted that the letters of notional reinstatement dated 19.04.2013 issued by HTL did not provide *de facto* or *de jure* appointment to the workmen. She urged that vide letters dated 19.04.2013, the management asked the workmen to report in person to collect their salaries towards notional reinstatement. They were not allowed to enter the premises to do the work. She further submitted that the benefits of continuity in service as per the terms and conditions of the service of the workmen as directed by the Award were never offered or given by the management and the executing court has rightly given the directions to HTL.

35. She has relied upon a DB Judgment of this Court in **Mahabir Prasad v. Delhi Transport Corporation** ***2014 SCC OnLine Del***

***3757,*** wherein the charges of theft against the workman were not proved and the Labour Court ordered his reinstatement without back wages but with continuity of service and the workman was granted benefit of ACP, Notional Pay Fixation Gratuity in order to reckon the period between his removal and reinstatement as having been in employment for pension gratuity and contribution of provident fund etc.

36. She further argued that the action of the management to invoke Section 25FFF of the ID Act is *per se* illegal and void *ab initio*. She submitted that the services of the workmen were terminated by HTL on 03.10.2004 and the reference was made by the Government of NCT of Delhi on 02.02.2005. She referred to the notices dated 09.12.2013 issued to the workmen by HTL under Section 25FFF of the ID Act, which *inter alia* mentions *"the printing undertaking had in fact been physically, completely and lawfully closed on and from 04.07.2008 i.e. the day the name of the factory was formally removed by the Inspectorate of Factories from the list of registered factories, since the company has no work to offer, it is now exercising its right under the Act and proceeding to issue notice and compensation under Section 25FFF of the Industrial Disputes Act, 1947 in view of the closure of the undertaking in the year 2008."*

37. She pointed out that the service of the workmen were terminated under Section 25FF of the ID Act for the alleged reason of transferring the ownership of printing undertaking to HTML by HTL

w.e.f. 02.10.2004. She submitted that the notices issued under Section 25FFF of the ID Act due to closure of printing undertaking in the year 2005 and its removal from the list of factories on 04.07.2008 by Inspector of Factories were based on the same ground of transfer. She submitted that the plea of closing the printing undertaking was never taken by the petitioner before the IT.

38. She referred to an order dated 12.10.2012 to argue that even during the course of arguments before the Executing Court, the learned counsel for the petitioner stated that they are ready and willing to reinstate the Decree Holders and consequently the executing court directed that the Decree Holders be reinstated in terms of the Award dated 23.01.2012. She submitted that if the petitioner had closed the factory in the year 2005, why was such a statement made. She submitted that the management has filed WP (C) 2247/2007 against an interim Award dated 08.03.2007 which was finally disposed of on 16.01.2009 and even in this writ petition, the petitioner never disclosed anything about the closure of its printing undertaking.

39. She submitted that the plea of closure of printing undertaking taken by the management in CM(M) No.368/2013 in written arguments dated 28.03.2014 was rejected by this Court on 23.02.2015.

40. She submitted that renowned newspapers, The Hindustan Times (English) and Hindustan Dainik (Hindi) and many magazines continue

to go to print and publication even now under HTL and HTML and the plea of transfer and closure taken by the petitioner is false.

41. I have heard the learned senior counsel for the parties.

42. After a threadbare analysis of Article 226 and 227 of the Constitution and considering a large number of judicial precedents, the Hon'ble Supreme Court in **Surya Dev Rai Vs. Ram Chander Rai *(2003) 6 SCC 675*** laid down the parameters for exercise of jurisdiction by the High Court as under:-

> *(1) Amendment by Act 46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.*
>
> *(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.*
>
> *(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.*

***(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.***

*(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.*

*(6) A patent error is an error which is self-evident i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.*

***(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and***

> ***entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.***
>
> ***(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.***
>
> *(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.*

43. In **Harjinder Singh (supra)** the Hon'ble Supreme Court has held that the ID Act and other similar legislative instruments are social welfare legislation which are to be interpreted in view of the goal set

out in the preamble of the Constitution and the provisions contained in Part-IV thereof in general and Article 38, 39 (a) to (e) 43 and 43A in particular and ensure that the workers get their dues. The paras No.21, 23, 24 and 26 of the judgment reads as under:-

> *"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one,* ***the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues.*** *More than 41 years ago, Gajendragadkar, J. opined that:*
>
> > *"10……the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State."*
>
> ***(State of Mysore Vs. Workers of Gold Mines, AIR p.928, para 10****).*
>
> ***"23. The preamble and various Articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and***

***development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society.***

**24. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Factories Act, 1948; Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Workmen's Compensation Act, 1923; Employees' State Insurance Act, 1948; Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Shops and Commercial Establishments Act enacted by different States.**

**26. In LIC v. Consumer Education and Research Centre, K. Ramaswamy, J. observed that social justice is a device to ensure life to be meaningful and liveable with human dignity. The State is obliged to provide to workmen facilities to reach minimum standards of health, economic security and civilised living. The principle laid down by this law requires courts to ensure that a workman who has not been found guilty cannot be deprived of what he is entitled to get. Obviously when a workman has been illegally deprived of his device then that is misconduct on the part of the employer and employer cannot possibly**

**be permitted to deprive a person of what is due to him.**

44. The Ld. senior counsel for the workmen has admitted that the back wages from 03.10.2004 to 23.01.2012 against the management were not in issue before the Executing Court. The Executing Court has also referred to the order of the DB dated 23.02.2015 wherein it was held that workmen are not entitled to any back wages. The SLP (C) No.10578/2015 and SLP (C) No.8979/2016 against the order dated 23.02.2015 of the DB were dismissed by the Hon'ble Supreme Court on 01.08.2016 and 08.07.2016 respectively. Admittedly, the workmen are not entitled to wages for the period from 03.10.2004 till 23.01.2012.

45. This Court is to deal with the issue of legality of the impugned order directing:-

> *(i) that reinstatement is to take place w.e.f. 03.10.2004;*
>
> *(ii) grant of service benefit to the workmen;*
>
> *(iii) that the letter of notional reinstatement dated 19.04.2013 does not comply with the award dated 23.01.2012; and*
>
> *(iv) that the subsequent action of terminating the services of the workmen by notices dated 09.12.2013 under Section 25FFF of the ID Act is nonest and unless reinstated, service of no workman can be terminated.*

46. Vide Para 87 of the Award dated 23.01.2012, the IT has held the action of HTL in transferring the ownership of its printing undertaking

to HTML w.e.f. 02.10.2004 and terminating the services of the workmen under Section 25FF to be illegal and unjustified. Para 89 of the Award entitled the workmen to the relief of being treated in "continuity of service" under the terms and conditions of service as before their termination w.e.f. 03.10.2004. Para 90 of the Award directed HTL to reinstate 272 workmen treating them in "continuity of service" under the terms and conditions of service as before their termination i.e. 03.10.2004. Since the termination of the workmen w.e.f. 03.10.2004 has been held to be illegal and unjustified by the IT by Award dated 23.01.2012, HTL is required to reinstate the workmen w.e.f. 03.10.2004 and there is no ambiguity and the award is explicit.

47. The award has granted the benefit of continuity of service to the workmen as per the same terms and conditions of service which they were availing before their termination i.e. 03.10.2004. Similar question came up for consideration before the DB of this Court in **Mahabir Prasad (*supra*).** DB has elaborately considered the judgment of the Hon'ble Supreme Court in **S. Narsagoud *(supra)*** and **Abdul Karim (*supra*).** In **Narsagoud *(supra)***, the Labour Court directed the reinstatement of the workmen but without back wages and there was no specific direction that the employee would be entitled to the consequential benefits. The Hon'ble Supreme Court held that it would be incongruous to suggest that an employee who has been held guilty and has remained absent for a long time continues to earn increments though there is no payment of wages for the period of

absence. Similarly, in **Abdul Karim *(supra)*** the Apex Court has held that employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence for want of a specific direction merely because he has been directed to be reinstated with benefit of continuity in service. In **Mahabir Prasad's case (*supra)*** the Industrial Adjudicator has directed the reinstatement of workmen with continuity of service but without back wages like the present case. This Court in **Mahabir Prasad's case *(supra)*** found that the petitioner had to battle for over a decade and a half. The Industrial Adjudicator held the enquiry against him to be illegal; went into the material and found that the charge of misconduct was baseless. It consequently directed reinstatement without back wages. The denial of back wages was not in question before the DB. The workman claimed benefits of promotion, ACP, notional pay fixation for the purpose of pension, gratuity and contribution to the provident fund, which was opposed by the management/DTC. The Court observed that if the DTC's contention is to be accepted, the workman would stand doubly penalized for the delay in securing justice, plainly for no fault of his. This Court appreciated the fact that the denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits and if these benefits are denied, the direction to grant continuity of service would be a hollow relief. Para 20 and 21 of the judgment in **Mahabir Prasad's case (*supra)*** reads as under: -

*"20. The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In Deepali Gundu Surwase(supra), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the* ***petitioner had to battle for over a decade and a half to secure justice. The Labour Court held the enquiry against him illegal; went into the material and found that the charge of misconduct was baseless. It consequently directed reinstatement without backwages. Whilst the denial of backwages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief.*** *Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable.It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two scales. Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.*

*21****. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale.***

> ***Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc.*** *This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs."*

48. The SLP No.18985/2014 filed by the DTC against the DB judgment of this Court in **Mahabir Prasad's case (supra)** was dismissed *in limine* by the Hon'ble Supreme Court on 12.12.2014

49. In the present case, there is no fault of the workmen unlike in **Abdul Karim *(supra)*** and **Narsagound *(supra)***. HTL terminated the services of the workmen on 03.10.2004 on the pretext of transfer of its printing undertaking w.e.f. 02.10.2004, an action which was held illegal and unjustified by the IT by award dated 23.01.2012. The IT did not grant them the benefit of back wages but only continuity of service under the terms and conditions of service as before termination i.e. 03.10.2004. HTL is under command by Award dated 23.01.2012 to extend all service benefits to the workmen as they were entitled to prior to the termination of their service on 03.10.2004. The words in Para 89 of the award *"In view of above factual and legal position of law, workmen/claimants (except 43 workmen/claimants, who have*

*settled their disputes u/s 18(1) of I.D. Act) are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination w.e.f. 03.10.2004"* and para 90 *"it is directed that management of M/s Hindustan Times Ltd. will reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. 03.10.2004"* are not at all superfluous but have been rightly scribbled to bestow workman with service benefits particularly when they have been denied the back wages, otherwise, it would amount to doubly penalizing the poor workmen for no fault of theirs.

50. Admittedly the letter of notional reinstatement dated 19.04.2013 issued by HTL to the workmen did not mention their reinstatement in service in terms of the Award w.e.f. 03.10.2004. Further, admittedly the benefits of continuity of service under the terms and conditions of service as mentioned in the Award have also not been extended to the workmen by the petitioner. Therefore, this Court is not persuaded with the arguments of the learned senior counsel for the petitioner to disagree with the directions given by the Ld. ADJ.

51. HTL terminated the services of the workmen on 03.10.2004 on the ground of transferring the ownership of its printing undertaking to HTML w.e.f. 02.10.2004 under Section 25FF of the ID Act. The reference was made by the Government of NCT of Delhi on 02.02.2005. Pursuant to the filing of the statement of claim by the workmen, both the managements filed their respective written

statements. It was not the case of either of the managements in the written statement that the printing undertaking was closed by HTL in 2005. Issues were framed on 20.02.2009 and additional issues on 07.08.2009 but neither of the management averred or even mentioned before the IT that the printing undertaking of the petitioner/HTL was closed in the year 2005 or that its name was removed by the Inspector of Factories w.e.f. 04.07.2008 from the list of registered factories. HTL has examined its Director-cum-Company Secretary Mr. V.K. Charoria as MW1 and Sh. Manoj Bhargava, Deputy General Manager (Legal) as MW2. HTML has examined its AVP (supply chain) Sh. Harish Nagpal but nowhere in their respective depositions have they disclosed closure of its printing undertaking. Further, no arguments were addressed on the point of closure before the IT, which ultimately passed the award dated 23.01.2012. Even during the execution proceedings, on 12.10.2012 it was stated by the Ld. Counsel on behalf of petitioner that they are ready to reinstate the workmen and accordingly the Executing Court directed that the workmen be reinstated in terms of the Award. This fact of alleged closure was also not pleaded by the petitioner in its Writ Petition (C) No.2247/2007 challenging the interim Award dated 08.03.2007 by the IT which was disposed of on 16.01.2009.

52. HTL initially took the plea of transferring/selling its printing undertaking on 02.10.2004 to its subsidiary HTML by an agreement and services of the workmen were terminated under Section 25FF of

the ID Act w.e.f. 03.10.2004. The IT vide award dated 23.01.2012 held that the transfer was not *bona fide* and found that under an agreement to sell, no transfer took place, though in form it had taken place as HTL is a holding company and HTML is its subsidiary and the Directors are inter-changeable. The award has held the action of HTL in transferring the printing undertaking to HTML w.e.f. 02.10.2004 and terminating the services of the workmen to be illegal and unjustified. Despite the award dated 23.01.2012 having attained finality, **the petitioner in CM (M) 368/2013** came up with the same plea with a deceptive twist in **written arguments dated 28.03.2014** under the heading **"plea of closure is not a new plea"** that on the basis of an agreement dated 01.10.2004, HTL sold the printing undertaking to HTML and applied to Inspector of Factories for transfer of factory rights to HTML and after several correspondence, printing undertaking was permanently removed from the list of registered factories by letter dated 04.07.2008 and invoked Section 25FFF of the I.D. Act.

53. The action of HTL in issuing notice u/s 25FFF of the ID Act to the workmen is nothing but an act of rubbing salt into the wounds of the workmen. Since the action of HTL to transfer its printing undertaking to its subsidiary HTML on 02.10.2004 has already been held to be illegal and unjustified by award dated 23.01.2012, the defence of HTL in applying to Inspector to transfer printing undertaking to HTML or removal of its name from the list of

registered factories w.e.f. 04.07.2008 is no more available to them. This action u/s 25FFF of the ID Act is nothing but to thwart the benefits of award to the workmen. It is important to note that there is no explanation by HTL as to why notice u/s 25FFF were issued to the workmen on 09.12.2013 i.e. after about 8 years of alleged closure. Obviously, this has been done only to deny/delay the benefits of Award to the workmen.

54. It is noticed that the plea of closure taken by the management in its written arguments in CM(M) No.368/2013 and its inability to reinstate the workmen was declined by this Court by judgment dated 14.09.2015 and paras 21 and 22 read as under:-

> *"21.* ***The management had also contended about its inability to reinstate the workmen as the printing establishment had been closed down and hence it could not be forced to do an act of impossibility;*** *that it is settled law that a tribunal has no power to issue orders for reinstatement if a company or its branch is closed down and if this closure is genuine and real or where the entire establishment or the empire is not closed down but only a unit or undertaking is closed down then the reinstatement cannot be granted in the other units. The Court would note that in both the aforesaid cases, the closure was either with respect to the entire company or with respect to the functional integrity of the other units.* ***In this case, the publication of the newspaper continues albeit through the subsidiary owned company of the Hindustan Times Ltd. The learned trial court has held in its Award that the endeavour to transfer the ownership of printing undertaking to the new***

***Management No.2, i.e. Hindustan Times Media Ltd., the wholly owned subsidiary of Hindustan Times Ltd. was not bona fide. Therefore, the termination of the workmen was illegal and unjustified.*** *In view of the facts of this case, the aforesaid two cases are clearly distinguished. Likewise, reliance of the petitioners on the dicta in Hondaram Ramchandra v. Yeshwant Mahadev Kadam (2007) 14 SCC 277 and the judgment of this Court in Ramjas Foundation v. Dheer Singh are impermissible. This Court would note that the continuity of service was sought against Hindustan Times Ltd. and not against the other establishment, i.e. Hindustan Times Media Ltd. The relief was granted against Hindustan Times Ltd.* ***Therefore, the management was directed to reinstate 272 workmen and treat them in continuity of service under the same terms and conditions as before their alleged termination dated 3.10.2014 (sic)****. Therefore, the relief of reinstatement granted by the Industrial Tribunal cannot be enforced or effectuated.*

*22.* ***This Court is not persuaded by the said contention for the reason that the management has been aware of the relief of reinstatement since the Award was passed and if it felt unable to perform the direction given in the Award, the management ought to have challenged the Award. But it chose not to.*** *This Court cannot, while exercising its supervisory jurisdiction, reconsider the facts and arguments made before the Tribunal as it would amount to this Court acting as an Appellate Court. The Award is based on the facts and materials placed before it.* ***The Industrial Tribunal has awarded the relief of reinstatement after concluding that M/s Hindustan Times Ltd. and M/s Hindustan Times Media Ltd. were one and the same and that the termination of the workmen from M/s Hindustan Times Ltd. was illegal.*** *This Court cannot*

> *sit in appeal and re-appreciate facts when the Tribunal has acted well within its powers. As mentioned above, the High Court's jurisdiction under Article 227 of the Constitution of India is limited and it places a duty on the High Court to adjudicate with great caution. The circumstances when the supervisory jurisdiction of the High Court can be invoked are sufficiently explained through a rich stream of judgments.* ***Therefore, this Court is not inclined to entertain arguments that would reach beyond the supervisory powers of the High Court.****"*

55. The judgment relied upon by the learned senior counsel for the petitioner in **Shri Krishan Pal Singh** ***(supra)*** of this Court supports the cause of the workmen instead of assuring any help to the petitioner. In **Shri Krishan Pal Singh** ***(supra),*** this Court held that the second termination order was issued due to a fresh cause of action which was totally unconnected with the previous dispute and was withdrawn. It was held by this Court in **Shri Krishan Pal Singh's** case (supra) ***"****it can be concluded that* ***second termination order dated 25.10.1994 was a fresh cause of action totally unconnected with the dispute referred relating to first termination which was withdrawn and petitioner reinstated back in service much before initiating action against the petitioner by way of departmental enquiry.*** *For this Labour Court has given liberty to seek fresh reference from the appropriate Government in accordance with law in the impugned award dated 2.3.98 itself. The writ petition is devoid of any merit and is, accordingly, dismissed. There shall be no orders as to costs".* However, in the present case as discussed hereinbefore, action of the

petitioner in issuing the notice to the workmen u/s 25FFF of the ID Act was completely connected with the previous dispute and based on the same plea of transfer/selling of printing undertaking to HTML and consequent closure of the printing unit and its removal from the register of the Factories. Moreover, the argument of learned senior counsel for the respondent that the ongoing print and publication of the newspapers like, The Hindustan Times, Hindustan Dainik and other magazines by HTL and HTML could not be disputed by the learned senior counsel for the petitioner.

56. The Award dated 23.01.2012 has not been complied with by the petitioner as workmen were denied reinstatement w.e.f. 03.10.2004. HTL has also not given the benefits of continuity of service to the workmen as per the terms and conditions of the service which were available to them before 03.10.2004 in terms of the Award. Since, the award of reinstatement has not been complied with, the petitioner has no right to terminate the workmen till they are given reinstatement in letter and spirit of award dated 23.01.2012 as held by the Punjab and Haryana High Court in **Darshan Singh's** case (supra) *"If the order of reinstatement was complied with and he was reinstated, a fresh order of retrenchment made after notice under Section 25F surely constituted a fresh cause of action and that could have been challenged only by means of an independent reference and the Labour Court was bound to adjudicate of whether the termination was valid or not."* Even in **Shri Krishan Pal Singh's** case (supra) the workman

was reinstated back in service much before initiating action against him by the Management. **Shri Krishan Pal Singh's** case (supra) and **Darshan Singh's** case (supra) support the cause of the workmen in the present case.

57. Therefore, I do not find any merit in the petition. The writ petition is accordingly dismissed. Admittedly, HTL has not paid a single penny to the workmen from the year 2004 till date, though some payment of salary after 19.04.2013 till 09.12.2013 has been made without giving them benefits of continuity of service as per terms and conditions of their services. Under the Award dated 23.01.2012, the workmen are to be reinstated w.e.f. 03.10.2004 and the benefits of "continuity of service" under terms and conditions of service as before their termination w.e.f. 03.10.2004 are to be provided to them. To begin with, let the management deposit the wages of all the workmen, who have not yet attained the age of superannuation with benefit of continuity of service as per terms and conditions of service for the period from 01.01.2014 till 31.08.2018 as per the Award with the Executing Court within one month which shall be disbursed by the Executing Court to each workman individually. Petitioner is directed to implement the Award dated 23.01.2012 immediately and reinstate the workmen w.e.f. 03.10.2004 and provide them all the benefit of continuity of service as per terms and conditions of service as available to them before their termination on

03.10.2004 in terms of Award. The Executing Court shall execute the award in accordance with law.

**(VINOD GOEL)**
**JUDGE**

**AUGUST 27, 2018**
***"shailendra/dkb"***