CASE NO.:
Appeal (civil) 5003 of 2002

PETITIONER:
Bajaj Auto Ltd.

RESPONDENT:
Bhojane Gopinath D. & Ors.

DATE OF JUDGMENT: 17/12/2003

BENCH:
Y.K.SABHARWAL & B.N.AGRAWAL

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL NOS. 5005, 5025, 5026, 5027 & 5028 OF 2002

B.N. AGRAWAL,J.

These appeals by special leave have been filed by appellant-Company against judgment rendered by Aurangabad Bench of Bombay High Court in writ applications whereby Award made by Industrial Court, Aurangabad, in the individual complaints filed by respondents-workmen has been modified.

The short facts are that the respondents-workmen, 1197 in number, who were in employment of the appellant-Company in its factory at Bajaj Nagar, Waluj, within the District of Aurangabad, filed individual complaints before the Industrial Court at Aurangabad, under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the 1971 Act') complaining thereunder that unfair labour practices enumerated in Item Nos. 5,6,9 and 10 of Schedule IV appended to the 1971 Act were employed by the appellant-Company in the establishment in question. According to the workmen, they were appointed as welder, fitter, turner, mechanic, helper, grinder, etc., and were working since the year 1990 and used to be granted employment in each year for about a period of seven months and after expiry of the said term their services used to be discontinued, which practice went on for a period of seven years till before filing of the complaints by them in the year 1997. It was stated that a rotation system was followed by the appellant-Company whereby different set of workmen came to be appointed by rotation displacing the workmen appointed earlier which was indicative of the fact that work of permanent nature was available with the appellant-Company, but the rotational system was introduced by it with a view to deprive the workmen of rights and privileges of permanent employees so that they may not be entitled to claim benefit of permanency on completion of 240' days uninterrupted service in the aggregate in any establishment during a period of preceding twelve calendar months as envisaged under rule 4C of the Model Standing Orders which was applicable to the establishment in question.

The appellant-Company contested claims of the workmen by stating that conditions of employment of the workmen were governed by the Standing Orders, duly certified on 10th March, 1986 by the Certifying Officer under the provisions of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as 'the 1946 Act') wherein there was no provision akin to rule 4C of the Model Standing Orders. According to the appellant-Company, it had employed 4250 workmen on permanent basis so as to meet the requirement of normal production. However, due to periodical fluctuations of a temporary nature in the quantum of production at the factory from time to time, dictated by the conditions at the national and international market, to which the said establishment is exposed, the work force is increased or decreased. In order to meet the fluctuations, the appellant-Company was required to employ workmen on temporary basis and, so also, as to when production decreased, it was

required to terminate services of the temporary workmen. Further, as, undisputedly, none of the workmen had worked continuously for 240 days, much less during a period of preceding twelve calendar months, they were not entitled to claim any benefit on that count.

In support of their respective cases, both the parties led oral and documentary evidence and the Industrial Court came to the conclusion that no unfair labour practice, as enumerated in Item Nos. 5 and 10 of Schedule IV, could be established, but found that the workmen had succeeded in proving the unfair labour practices enumerated under Item Nos. 6 and 9 of the said Schedule. After recording the aforesaid findings vide Award dated 9.11.2000 the Industrial Court directed the appellant-Company "how many permanent employees are required as per the production norms be fixed and after making the employees permanent from these temporary employees, if there is a need of any temporary workers, they can engage but after absorbing all these complainants in the employment they can engage temporary workers, as per seniority". The appellant-Company was further directed "to prepare a seniority list of all the temporary workers who are in employment and who are not in the employment and give them continuous work and after completion of 240 days of service, make them permanent in the employment".

Aggrieved by the aforesaid Award, five writ applications were filed before the High Court on behalf of the workmen challenging the aforesaid directions of the Industrial Court. The appellant-Company also filed a writ application challenging the directions regarding permanency and finding of the Industrial Court whereby it had come to the conclusion that the appellant-Company had employed unfair labour practice in its establishment in relation to matters enumerated in Item Nos. 6 and 9 of Schedule IV. During the pendency of the writ applications, on prayer being made on behalf of the workmen, the High Court by its order dated 30th November, 2000 directed the appellant-Company to continue services of the workmen, although liberty was granted to it to terminate services of any of the workmen after observing legal requirements, but in spite of that order on 9.1.2001 the services of all the respondents-workmen were terminated. By the impugned order passed on 8.9.2001, the High Court dismissed the writ application filed on behalf of the appellant-Company, but, while upholding the finding of unfair labour practice recorded by the Industrial Court, set aside the ultimate direction given by it and found that as the termination of services of the respondents-workmen was in violation of interim order passed by the High Court on 30th November, 2000, they were entitled to restitution. In effect and substance, it was directed that the respondents-workmen shall be reinstated in service with 50% back wages from 10th January, 2001 till the date of High Court judgment. The Court further directed that the services of the respondents-workmen shall be regularised and they be made permanent from the date of filing of the complaints before the Industrial Court. Challenging the aforesaid judgment, the present appeals by special leave have been filed by the appellant-Company.

Shri J.P. Cama, learned Senior Counsel, in support of the appeals submitted that the appellant-Company had not employed any unfair labour practice enumerated under Item No. 6 of the Schedule inasmuch as rule 4C of the Model Standing Orders, whereby a right of permanency could be acquired by a workman upon completion of uninterrupted service of 240 days in the aggregate in an establishment during a period of preceding twelve calendar months, was not applicable in the present case in view of the fact that there was no such rule in the Standing Orders duly certified. On the other hand, Shri K.K. Singhvi, learned Senior Counsel appearing on behalf of the respondents-workmen, submitted that under law rule 4C of the Model Standing Orders which related to matters set out in Item No. 10-C of the Schedule appended to the 1946 Act, as amended by the State Legislature, could not have been deleted while certifying the amendments in the Model Standing Orders by the competent authority and the said Order to that effect being in violation of the mandatory provisions of law is ab initio void and has got to be ignored, meaning thereby rule 4C would be applicable in the case on hand.

Question that falls for our consideration is as to whether rule 4C of the Model Standing Orders would be applicable to the respondents-workmen of the appellant-Company. To appreciate the point involved, it may be useful to refer to the relevant provisions of Industrial Employment (Standing Orders) Act, 1946 enacted by the Parliament, rules framed thereunder by the Central Government

and Model Standing Orders prescribed thereunder vis-‘-vis provisions of the said Act applicable to the State of Maharashtra after incorporating State amendments in the Act, State Rules and Model Standing Orders prescribed thereunder, which run thus:-

Provisions of Industrial Employment (Standing Orders) Act, 1946, Central Rules and Model Standing Orders prescribed thereunder

Provisions of the Industrial Employment (Standing Orders) Act, 1946 applicable in the State of Maharashtra after incorporating State amendments together with State Rules and Model Standing Orders prescribed thereunder

TITLE OF THE ACT

An Act to require employers in industrial establishments formally to define conditions of employment under them

TITLE OF THE ACT

An Act to provide for Rules defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay.

PREAMBLE

Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

PREAMBLE

Whereas it is expedient to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay, and for certain other matters.

Section 2(1-a): Not incorporated

Section 2(1-a): "amendments" means in relation to the model standing orders, any amendments proposed to such orders under Section 3 and includes any alterations, variations or additions proposed thereto.

Section 2(ee): Not incorporated

Section 2(ee): "model standing orders" means standing orders prescribed under section 15.

Section 2A: Not incorporated

Section 2A: Application of model standing order in every industrial establishment.-(1) Where this Act applies to an industrial establishment, the model standing order for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf;

Provided that nothing in this section

shall be deemed to affect any Standing Orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment [Standing Orders (Bombay Amendment) Act, 1957]

(2) Notwithstanding anything contained in the proviso to sub-section (1) model standing orders made in respect of additional matters included in the Schedule after the coming into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen) shall, unless such model standing orders are in the opinion of Certifying Officer less advantageous to them than the corresponding standing orders applicable to them under the said proviso, also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.

Section 3: Submission of draft standing orders.\027(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable in conformity with such model.

(3) The draft standing orders submitted under this Section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

Section 3: Submission of amendments.\027(1) Within six months from the date on which the model

standing orders apply to any industrial establishment under Section 2-A, the employer or any workman employed therein may submit to that Certifying Officer five copies of the draft amendments for adoption in such industrial establishment :

Provided that no amendment which provides for the deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this Section.

(2) Deleted.

(3) The draft amendments submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of amendments under this section.

Section 4: Conditions for certification of standing orders.\027 Standing orders shall be certifiable under this Act if\027

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment; and

(b) the standing orders are otherwise in conformity with the provisions of this Act;

and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Section 4: Deleted.

Section 5: Certification of standing orders.\027(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be substituted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of

being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Section 5: Certification of amendments.\027 (1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed or the employer, as the case may be, together with a notice in the prescribed form requiring objections, if any, which the workmen, or employer may desire to make to the draft amendments to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer, the workmen submitting the amendment and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard the Certifying Officer shall decide whether or not any modification of the draft submitted under sub-section (1) of Section 3 is necessary, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft amendments after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the model standing orders together with copies of the certified amendments thereof, authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Section 6: Appeals.\027 Any employer, workman, trade union or other prescribed representatives of the workman aggrieved by the order of the Certifying Officer under sub-section (2)

of section 5 may, within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

Section 6: Appeals.\027(1) Any employer, workman, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under sub-section (2) of Section 5 may, within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision, shall be final, shall by order in writing confirm the amendments either in the form certified by the certifying officer or after further modifying the same as the appellate authority thinks necessary.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen accompanied unless it has confirmed without further modifications the amendments as certified by the Certifying Officer by copies of the model standing orders together with the amendments as certified by it and authenticated in the prescribed manner.

Section 7. Date of operation of standing orders.- Standing Orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as

aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

Section 7. Date of operation of standing orders or amendments.

Standing Order or amendments shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6.

Section 10: Duration and modification of standing orders.\027 (1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workman or a trade union or other representative body of the workmen a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

Section 10: Duration and modification of standing orders.\027 (1) Standing Orders or the amendments finally certified under this Act shall not, except on agreement between the employer and the

workmen or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the amendments or the last modifications thereof came into operation and where model standing orders have not been amended as aforesaid, the model Standing Orders shall not be liable to such modification until the expiry of one year from the date on which they were applied under Section 2-A.

(2) Subject to the provisions of sub-section (1), an employer, workman or a trade union or other representative body of the workmen or any prescribed representatives of workmen desiring to modify the standing orders or the model standing orders together with the amendments, as finally certified under this Act, or the model standing orders applied under Section 2-A, as the case may be, shall make an application to the Certifying Officer in that behalf, and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employer and workmen or a trade union or other representative body of the workmen a certified copy of the agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first amendments.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat.

Section 13(1): Penalties and procedure.\027(1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, an in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

Section 13(1): Penalties and procedure.\027(1) An employer who modifies the standing orders, model

standing orders or amendments, otherwise than in accordance with the provisions of this Act shall, on conviction, be punished with fine which may extend to five thousand rupees, an in the case of continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

THE SCHEDULE

Matters to be provided in standing orders under this Act.

10-C: Not incorporated

THE SCHEDULE

Matters to be provided in Standing Orders (Model Standing Orders and Amendments) under this Act.

10-C: Employment or re-employment for probationers or badlis or temporary or casual workmen, and their conditions of service.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946

SCHEDULE I

Model Standing Orders

Rule 4C: Not incorporated

BOMBAYINDUSTRIAL EMPLOYMENT (STANDING ORDERS) RULES, 1959

SCHEDULE 1

Model Standing Orders

Rule 4C: A badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days "uninterrupted service" in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.

Explanation.- For purposes of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned, shall not be counted for the purpose of computing 190 days or 240 days, or, as the case may be, for making a badli or temporary workman permanent.

From a bare perusal of the relevant provisions of the 1946 Act,

promulgated by the Parliament, it would appear that the very title of the Act requires the employers in industrial establishments formally to define conditions of employment under them. Preamble to the Act shows that it was found expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen employed by them. This shows that the conditions of employment of workmen in an industrial establishment are required to be defined by the employer in accordance with the procedure prescribed under the 1946 Act and the rules framed thereunder. Under Section 3, within a period of six months from the date on which the Act becomes applicable to an industrial establishment, every employer has no option but to submit to the Certifying Officer draft standing orders proposed by him for adoption in his industrial establishment. Sub-section (2) of Section 3 lays down that provisions shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, as far as is practicable, in conformity with model standing orders. Under Section 4 draft standing orders shall be certifiable if provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment and the same are otherwise in conformity with the provisions of the Act inasmuch a duty has been cast upon the certifying officer or the appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any draft standing orders. Under Section 5 the certifying officer is required to give notice to the parties concerned inviting their objections. Upon receipt of the objection, if any, the certifying officer is required to pass an order certifying the draft standing orders as it is or with any modification or addition. Section 6 provides for an appeal against the order of certifying officer. Section 7 lays down that the standing orders so certified shall become operative on the expiry of 30 days from the date on which authenticated copies of the certified standing orders are sent to the employer and to the trade union or other prescribed representatives of the workmen and in case an appeal is preferred, within 7 days from the date on which copies of appellate order are sent to the aforesaid persons. According to Section 10, the standing order so certified shall not be liable to modification unless agreed to by the parties by making an application to that effect before the certifying officer any time after the expiry of period of six months from the date the certified standing orders came into operation, which shows that once standing orders are certified, no modification whatsoever is permissible unless both the parties consent to the same. Under Section 13(1), if an employer fails to submit draft standing orders for certification, he shall be liable to be prosecuted.

So far as the State of Maharashtra is concerned, drastic amendments in the 1946 Act have been made by the State Legislature by virtue of Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957 and Industrial Employment (Standing Orders) (Maharashtra Amendment) Act, 1974. The State Legislature amended the title of the 1946 Act to provide rules defining with sufficient precision certain conditions of employment in industrial establishments in the State of Maharashtra. It also amended Preamble of the 1946 Act as it was found expedient to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Maharashtra and certain other matters. By Section 2(1-a) the expression ‘amendments’ has been defined in relation to model standing orders to mean any amendments proposed to such orders under Section 3 and includes any alterations, variations or additions proposed thereto. Under Section 2(ee), as inserted by State amendment, the expression ‘model standing orders’ was defined to mean standing orders prescribed by Rules framed under Section 15. Section 2A(1) lays down that where the Act applies to an industrial establishment, the model standing orders for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf and the State Government has appointed 15th of January, 1959 to be the date for the purposes of the said sub-section. This shows that model standing orders, prescribed by Bombay Industrial Employment (Standing Orders) Rules, 1959 framed under Section 15 by the Government of Maharashtra, ipso facto would be applicable with effect from 15th January, 1959. In Section 3 of the 1946 Act, as amended by the State Legislature, a complete departure has been made vis-‘-vis Section 3 of the 1946 Act. Under the 1946 Act, as stated above, there is a

compulsion upon the employer to submit draft standing orders for certification failing which he entails penalty of prosecution under Section 13(1) whereas under Section 3, as amended by the State Legislature, there is no such requirement and consequently no penalty provided under Section 13(1) in view of the fact that by virtue of sub-section (1) of Section 2A the model standing orders ipso facto apply to the industrial establishment from the date enumerated in the notification issued by the State Government. However, under Section 3, if the employer or any workman employed in an establishment intends any amendment in the model standing orders, in that eventuality alone any of them may submit to the Certifying Officer such draft amendments for adoption in such industrial establishment within six months from the date on which the model sanding orders applied to the industrial establishment under sub section (1) of Section 2A. This shows that it is not imperative either on the employer or the workmen to apply for amendments in the model standing orders, but it is optional. However, even this step on their part is controlled by the proviso to Section 3(1) which lays down that no amendment which provides for deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this Section. Proviso mandates the employer as well as the workmen not to seek any amendment which has the effect of deleting or omitting any rule in the model standing orders relating to any matter set out in the Schedule. If there is a mandate upon a party not to apply for such amendment, the certifying officer in the purported exercise of power under Section 5 cannot assume jurisdiction to grant such an amendment as the same will be in flagrant violation of legislative mandate which is in the form of a negative command.

It would be relevant to state that Item No. 10-C has been incorporated in the Schedule of 1946 Act by the State Legislature in the year 1974 with effect from 2nd October, 1977 which enumerates matters to be provided in the model standing orders in relation to "employment or re-employment of probationers or badlis or temporary or casual workmen, and their conditions of service". By virtue of Bombay Industrial Employment (Standing Order) (Amendment) Rules, 1977, which were published in the Bombay Gazette on 28th September, 1977 and came into force with immediate effect, rule 4C was incorporated in the model standing orders which lays down that a temporary workman, who has put in 240' days uninterrupted service in the aggregate in any establishment during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the manager or any person authorised in that behalf by the manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of said twelve calendar months. Rule 4C in the model standing orders has been incorporated relating to the matter set out in Item No. 10-C of the Schedule, as such deletion of the said rule by the certifying officer, being in the teeth of legislative command incorporated in proviso to Section 3(1), was wholly without jurisdiction and would make the order of certifying officer to that effect null and void and liable to be disregarded as it is well settled that if an order is null and void, the same can be disregarded in collateral proceeding or otherwise. Reference in this connection may be made to decision of this Court in the case of Dhurandhar Prasad Singh v. Jai Prakash University and Ors. JT 2001(5) SC 578.

By Section 4 of the 1946 Act, as amended in 1956 by the Parliament, which is not applicable to the State of Maharashtra, as would appear from the State amendment, a duty has been cast upon the certifying officer and appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any draft standing orders which have been submitted before the certifying officer. Thus the provision in the 1946 Act being much more wider, the question of fairness or reasonableness of the draft standing orders submitted for certification is required to be considered by the aforesaid authorities. So far as the State of Maharashtra is concerned, no such discretion has been at all given either to the certifying officer or the appellate authority in view of the fact that Section 4 has been deleted by State Amendment. This shows that provisions of the 1946 Act as are applicable to the State of Maharashtra are more stringent as the model standing orders are ipso facto made applicable to industrial establishments within the State of Maharashtra from 15th of January, 1959 as notified by the State Government and no such amendment can be made in the model standing orders which may have the effect of deleting or omitting any of the rules therefrom in relation to matters enumerated in the Schedule.

In support of the submission that wherever there are certified standing orders of an industrial establishment, the rules thereof shall govern service conditions of the workmen in that establishment and not the rules in the model standing orders, learned counsel appearing on behalf of the appellant placed reliance upon the decision of this Court in the case of Dunlop India Ltd. v. Their workmen (1972) 3 SCC 616 wherein it has been laid down that upon certification, it is rules in the certified standing orders which shall be binding on the employer as well as the workmen which would obviously mean that the workmen will not be bound by rules in the model standing orders. Reliance has been also placed upon another decision of this Court in the case of The United Provinces Electric Supply Co. Ltd. v. T.N.Chatterjee & Ors. AIR 1972 SC 1201 wherein it has been laid down that the certifying officer and the appellate authority are duty bound to examine the question of fairness or reasonableness of the provisions of draft standing orders at the time of considering the same for its certification. In our view, ratio decided in none of the two decisions, is applicable in the present case as the first case related to industrial establishment which was within the State of West Bengal and the other one Uttar Pradesh where no drastic amendments were made by the State Legislature as were made by the State Legislature in Maharashtra. Learned counsel next relied upon the decision of this Court in the case of Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Ors. (1999) 1 SCC 626 which was a case brought to this Court from Maharashtra where before this Court on behalf of the workmen, argument was advanced that in the certified standing orders, no departure could be made either in principle or policy, from the model standing orders. There, according to model standing orders, an employee of the corporation could be represented in the disciplinary proceeding by an employee of another establishment with the only restriction that he should be an office bearer of a trade union but in the certified standing orders, provision was made that an employee of the corporation could be represented in the disciplinary proceeding only by another employee of that very corporation. The prayer for certification was refused by the Certifying Officer but granted by the appellate authority. When the matter was taken to the Bombay High Court in writ, order passed by the appellate authority was set aside and the order of rejection of Certifying Officer restored. Thereafter, on appeal being preferred before this Court by the management, the order of appellate authority granting certification was restored holding that such an amendment in the model standing orders was permissible. In the said case, what was proposed was variation of the rule in the model standing orders by suitably amending the same and not the deletion or omission of any rule from the model standing orders. What is barred under Section 3 of the 1946 Act is deletion or omission of any rule from the model standing orders relating to any matter set out in the Schedule. In the case on hand, the amendment allowed was not for suitably modifying the rules of the model standing orders but for deleting the same which is impermissible. Thus the ratio, laid down in the case of Bharat Petroleum Corporation Ltd. (supra) does not run counter to the submission of learned counsel appearing on behalf of the workmen.

Learned counsel appearing on behalf of the appellant-Company made an in vain attempt to challenge finding recorded by the Industrial Court to the effect that the workmen succeeded in proving that the appellant-Company had employed unfair labour practice in its establishment in relation to the matters enumerated in item No. 6 of Schedule IV of the 1971 Act. We have been taken through the Award of the Industrial Court in extenso from which it appears that the Court recorded the said finding after threadbare discussion of evidence adduced on behalf of the parties and there being no infirmity therein, the High Court was quite justified in not interfering with the same, accordingly, it is not possible for this Court to disturb the same in view of the fact that the said finding is a pure finding of fact and no interference therewith is called for. Learned counsel next submitted that the High Court was not justified in affirming finding of the industrial court that the appellant-company had employed unfair labour practice as enumerated in item No. 9 of Schedule IV of the 1971 Act. From a bare perusal of item No. 9 of the said Schedule, it would appear that the unfair labour practice on the part of the employer enumerated thereunder is "failure to implement award, settlement or agreement". In the present case, undisputedly, there is neither any averment nor evidence to show that there was failure on the part of the employer to implement any settlement or agreement.

The only point raised was that in the writ application arising out of order passed by the Industrial Court in the present proceeding , an interim order was passed by the High Court permitting the employer to terminate services of workmen in accordance with the procedure prescribed under the law and there was failure on the part of the employer to carry out the said direction. Thus, the only question that arises is as to whether the aforesaid order of High Court in writ application can be treated to be an award. The expression "award" has not been defined in the 1971 Act. Sub-section (18) of Section 3 lays down that where words and expressions used in the 1971 Act are not defined therein, the same shall have the meaning assigned to them by the Central Act which would obviously mean Industrial Disputes Act, 1947 enacted by the Parliament, Section 2(b) whereof defines "award" to "mean an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10(A)." The interim order passed by the High Court in the writ application cannot be treated to be an award, as determination interim or final by labour court and tribunals, alone would come within the sweep of the said definition. Thus, in our view, it cannot be said that the appellant company was in any manner employing unfair labour practice enumerated under item No. 9 of Schedule IV, as such the High Court was not justified in confirming finding of the Industrial Court on that score.

Learned counsel appearing on behalf of the appellant-Company then submitted that the High Court was not justified in holding that principle of restitution would apply as restitution cannot be resorted to if any action has been taken in violation of interim order passed by a court. On the other hand, learned counsel appearing on behalf of the respondent submitted that the said principle shall have application in the present case. In our view, in the case on hand, it is not necessary to go into this question in view of the nature of order which we propose to pass. According to Section 30 of the 1971 Act, if an Industrial Court or Labour Court, as the case may be, comes to the conclusion that the employer has employed or is employing any unfair labour practice, it may pass a declaratory order to that effect and direct such employer to cease and desist from such unfair labour practice. Apart from that, further, in such an eventuality, such courts could pass any of the consequential orders enumerated under Sections 30(1)(b) of the 1971 Act, namely, reinstatement of the employees with or without back wages or the payment of reasonable compensation to the employees affected by the unfair labour practice. In the facts and circumstances of the present case, we are of the view that it was not a fit case in which the High Court should have directed reinstatement of the workmen. It was also not justified in directing payment of 50% back wages to them as, in our view, they were entitled to payment of reasonable amount of compensation in terms of Section 30(1)(b) of the 1971 Act.

At this stage it may be stated that during the course of hearing, learned counsel appearing on behalf of the parties stated that disputes between the appellant -Company and 1006 workmen, who are respondent Nos. 4, 5, 7-10, 13-15, 17, 21-33, 35-36, 38, 40, 42, 44-49, 51-67, 69-74, 76-87, 89-90, 92, 94-106, 108-123, 125-129, 131, 133-135, 137-145, 147-184, 186-187, 190-198, 202-205, 207-208, 210-219, 221-223, 227-228, 230-233, 235, 237-244, 247-250, 252-258, 260-268, 270-276, 278-297, 299-302, 304-308, 310, 312, 315,316, 318-321, 323, 325-345, 347-351, 353-354, 356-359, 361-364, 367-377, 379-380, 382-394, 397-399, 402-403, 405, 407-424, 426-428, 431, 433, 435, 436-437, 439-441, 443-458, 460, 463-464, 471-478, 480-481, 483-484, 488, 490, 491-492, 496-502, 504-507, 509-522, 524-527, 529-533, 535-537, 539-540, 542-548, 550, 552, 554-576, 578-622, 624, 626-628, 630-633, 635-641, 645-646, 648-654, 656-657, 659-661, 663-671, 673-674, 676-685, 689-707, 710, 712-715, 717-718, 720, 722-750, 752-753, 755-760, 762-763, 766-768, 770-773, 775, 777, 779-791, 793-794, 796-803, 805-808, 810-813, 815-820, 822, 824-847, 849-850, 852-866, 870-872, 873-882, 884, 886-896, 898-902, 904, 906, 908-909, 911-915, 918, 920-935, 937, 939-942, 945-950, 952-958, 961-965,967-1002, 1004, 1006-1009, 1011-1012, 1014-1035, 1037-1038, 1040-1048, 1050-1051, 1053-1057, 1059-1063, 1065-1073, 1075-1078, 1080-1081, 1083-1130, 1132-1137, 1139-1142, 1144-1148, 1150-1160, 1163-1165, 1167, 1169-1182, 1184-1192, 1194, 1196 and 1197 in Civil Appeal No. 5003 of 2002, have been settled and entire compensation amount has been paid to them as was paid to other workmen in terms of order dated 11th September, 2003 passed in Civil Appeal No. 5002 of

2002 and a prayer has been made that the appeal in relation thereto may be disposed of on the terms enumerated in the said order. In our view, prayer is justified and must be granted.

In Civil Appeal No. 5003 of 2002, the total number of respondents is 1197 out of which 1006 have compromised the matter as stated above. Now, so far as the remaining workmen are concerned, we are of the view that it would be just and expedient that they are paid a reasonable amount of compensation under Section 30 of the 1971 Act which would be calculated in the manner indicated hereinafter. Each of the remaining workmen shall be paid a lump-sum amount calculated at 85 days' salary, inclusive of all allowances, for the number of years each workman had actually worked irrespective of the days a workman may have put in in a year. The calculation would be made on the basis of work during a calendar year and that the calendar year in which a workman may not have worked at all would be kept out of consideration while calculating the amount. In calculating the salary for each workman, the minimum salary that would be taken into account would be Rs. 8,000/- per month subject to the condition that if on the date of termination, the salary of any particular workman was more, then the calculation would be made on actual last drawn salary. The calculation in the above said manner would be made for the period up to the date of termination in the year 1997-98. For the period after termination till date, the basis of calculation would be lump-sum three years of service on the basis aforesaid, namely, 85 days for each calendar year i.e. salary for 255 days.

In view of the aforesaid order which we intend to pass, it would be expedient that the following directions, given by the Industrial Court and the High Court in the impugned orders should not be allowed to continue.

"It is hereby directed to respondent Company to prepare a seniority list of all the temporary workers who are in employment and who are not in the employment and give them continuous work and after completion 240 days of services, make them permanent in the employment. How many permanent employees are required as per the production norms be fixed and after making the employees permanent from these temporary employees, if there is a need of any temporary workers, they can engage but after absorbing all these complainants in the employment, they can engage temporary workers, as per seniority. "

"The petitioners/complainants shall be regularized in service and be made permanent as and from the date of filing of the complaints before the Industrial Court. The respondent/Company shall pay fifty percent of the amount of back wages (pay and allowances) to the petitioners/complainants, for the period commencing from 10th January, 2001 till today, within a period of one month from today."

For the foregoing reasons, Civil Appeal No. 5003 of 2002 in relation to 1006 respondents enumerated above is disposed of on the terms indicated in consent order dated 11th September, 2003 passed by this Court in Civil Appeal No. 5002 of 2002. The finding of the industrial court as well as the High Court in relation to unfair labour practice employed, as enumerated in item No. 9 of Schedule IV of the 1971 Act and the aforesaid directions given by the Industrial Court as well as the High Court in operative portion of their orders are set aside and the Management is directed to pay compensation to the remaining workmen within a period of three months after calculating the same in the aforesaid manner. The said appeal is thus disposed of. In view of the order passed in Civil Appeal No. 5003 of 2002, no further order need to be passed in other appeals which are accordingly disposed of. In the facts and circumstances of the case, we direct that the parties shall bear their own costs.