CHAPTER – III

RIGHTS

The modern industrial system of India is a legacy of the British. This system is regulated primarily by the Industrial Disputes Act, 1947. In fact, Indian industrial legal system is an outcome of International Labour Organisation (ILO), which prescribes labour standards and is primarily based on the norms laid down by ILO. As one of the founding members of UNO, India has been playing a significant role in the international arena and hence respects the international treaties and conventions by incorporating them in the domestic law.

India has not merely inherited the British industrial system, but also the ills and evils of the imperialistic exploitation of the British. The pre-independent industrial system served as a means for the betterment and prosperity of the British imperialistic and capitalistic system. However, the dawn of independence forced India to adjust its industrial relations with its legal framework. India, the second largest populace country in the world, has committed itself to democracy based on a written constitution. It provides a socialistic system of governance through which justice, liberty, equality and fraternity are aimed at. Basically depending on an agrarian economy, she found it difficult to satisfy the escalating aspirations of an ever increasing population. So the young nation had to strengthen the agrarian base while expanding and widening its industrial activity. It may give an effective solution to meet the demands of the people. Jawaharlal Nehru, the first Indian Prime Minister attempted to develop both these segments through the introduction of Five Year Plans.

Industrial activity is inevitable even in the expansion of agrarian sectors. Transportation and distribution of agricultural produce to the consumers and providing services that are necessary to the agriculturalists are all industrial activities. Thus, industrial system happens to be all pervasive as it intertwines all walks of life including the agrarian sector. So, this sector can be considered as a very essential sector touching all walks of life. For the sustenance and development of this sector, harmony is very essential. Industrial harmony rests on cordial industrial relationship between the
employer and the employee. This harmonious relationship, in turn, depends upon many factors like wages, working conditions, social security, etc.

A cursory observation of the global systems of industrial relations leads one to understand that industrial relations are maintained either by collective bargaining method or by compulsory adjudication method or a combination of both. Some industrial systems may depend predominantly on collective bargaining as a conflict resolution device. Some systems rely on industrial adjudication for conflict resolution. There are few industrial legal systems like the one that prevails in India that provide both collective bargaining as well as compulsory adjudication methods for maintaining industrial harmony.

The present industrial system of India has witnessed both the British imperialism in the past and the socialistic influence of the cold war regime. At present, it is undergoing transition due to the changing trends of liberalization, privatization and globalization and the resultant marketization. But the Indian legal system has been sustaining without undergoing substantial changes. This sustainability is due to the Supreme Court’s interpretation of the Constitution and the labour laws.

Another new dimension that affects industrial relations is the development of environmental jurisprudence. In the year 1972, Mrs. Indira Gandhi, the then Prime Minister of India, who participated in the Stockholm Summit, highlighted the significance of environmental protection for developing countries. The 42nd Constitutional Amendment which, *inter alia* incorporated the environmental provisions in the Constitution was introduced after India’s participation in this summit. Corresponding to the constitutional provisions, various Acts were enacted by the Indian Parliament and State legislatures to deal with pollution including water and air pollutions. The periodical decennial environmental summits had corresponding influence on the Indian industrial legal system leading to enactments and amendments.

The Environment Act, 1986, empowers the Central Government to “issue directions in writing to any person, officer or any authority and such person, officer or
authority shall be bound to comply with such directions.” This power to issue directions includes the power to direct –

“(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) Stoppage or regulation of the supply of electricity or water or any other service”

These provisions of the Act rigidified the adherence of environmental protection measures in the industrial activities. It results in adversely affecting the industrial relations between the employer and employee due to closure of industrial undertaking or retrenchment of workmen or transfer or relocation of industrial undertaking from one place to another.

In industrial jurisprudence workers have several rights. Workers, who are in continuous service for a period of one year, have the right to work. This statutory right is subjected to certain conditions. However, all other rights of workers emanate from it. But employers have a fundamental right to start an industry and employ workers when required and terminate the surplus workers when such workforce is not required. They also have the right to transfer the workers from one industrial establishment to another. Employers as owners of the industry have the right to transfer their ownership rights to other persons. They can also close down the industry, if it is not profitable. In harmonising these conflicting rights of workers and employers, the Industrial Disputes Act, 1947 provides with retrenchment and retrenchment compensation to workers in case of surplussage of workers, and deemed retrenchment compensation in case of transfer, or relocation, or closure of industrial undertakings.

In this chapter, Supreme Court’s approach to right of workers to work in the context of retrenchment, transfer of workers, transfer or relocation of industrial establishment and closure of industries are discussed. From environmental point of view industries may broadly be divided into hazardous industries and non-hazardous industries. In non- hazardous industries the quantum of pollution may be considerably low and within the permissible standards. In hazardous industries the level of pollution may be high and beyond the prescribed limits. Therefore, a comparative analysis is also
made to find out the difference in its approach towards non-hazardous and hazardous industries with reference to rights of workers. Further, it also intends to analyse the changing trend of judicial process of the Supreme Court relating to conflicts of interests in cases between the rights of the workers on the one side and environmental protection on the other side that have come up for adjudication.

**LAW RELATING TO RETRENCHMENT, CLOSURE AND COMPENSATION**

In exploring and formulating the approach of the Supreme Court to protect the rights of workers that are affected due to retrenchment and closure of industrial undertaking, it is essential to understand the provisions of law relating to retrenchment and closure. Industrial jurisprudence elaborately deals with the termination of employment of employees by the employers. It is a sensitive area of industrial harmony. Hence, all industrial legal systems deal with this legal issue elaborately with special care and caution. They attempt to protect the employees from arbitrary and unfair termination of their services and provide provisions for redundancy or retrenchment compensation. The contract of employment of workmen can be terminated in various ways. The employer may terminate the contract of the employment in terms of the stipulation as per the terms of the contract. The employer may also terminate for redundancy or surplussage. According to Malhotra, there are two variants of termination of the contract of employment. One is due to redundancy or termination of the service of the workmen due to transfer of the establishment or the closure of the establishment. Workers may also terminate the contract of employment either by resigning from the job or abandoning the job. At times, it may also be terminated by frustration or impossibility.¹ The preamble of the Industrial Disputes Act stipulates that it is an Act to make provisions for the investigation and settlement of industrial disputes and for certain other purposes. It is evident that this Act aims at settling industrial disputes so as to maintain a harmonious atmosphere in industries. Section 2(k) of the Act defines industrial disputes to mean “any dispute or difference between employers and employers, or between employees and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.”

As per this Section, industrial disputes are mainly connected with “the employment or non-employment or the terms of employment or with the conditions of labour of any person.” This definition predominantly refers to ‘the employment or non-employment’ and the consequential benefits to workers and their conditions of employment. Therefore several of the industrial disputes arise due to retrenchment, closure, transfer and relocation of industrial undertakings. These are such vital aspects of industrial relations that apprehend conditions of employment, non-employment and conditions of labour. The right to employment is available only to workers who are working for a continuous period of not less than one year. This right to work of workers is a regulated right under the Industrial Disputes Act. Accordingly workers right to work is subject to statutory conditions. Parallel to this statutory right of worker’s to work, employers have the fundamental right to have occupation, avocation, trade or business. This fundamental right of employers implies that they have a right to close down their occupation, avocation, trade or business. These conflicting interests of employees and workers are viewed by the Supreme Court through the concepts of retrenchment and retrenchment compensation, closure and deemed retrenchment compensation and transfer or relocation of undertakings and their compensation.

RETRENCHMENT AND COMPENSATION

Section 2(oo) of the Industrial Disputes Act defines retrenchment as “the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.” This definition of retrenchment does not include the following:

“(a) voluntary retirement of the workman; or
(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
(c) termination of the service of the workman on the ground of continued ill-health.”
This concept of retrenchment was not found in the original Industrial Disputes Act, 1947, or in the earlier Trade Dispute Act, 1929. It was introduced in 1953 by an amendment to the Industrial Disputes Act. Sub-Clause (bb) of Section 2(oo) was introduced only in the year 1984. The incorporation of the concept retrenchment empowers the employer to terminate the service of the workman for ‘any reason whatsoever’. However, certain conditions have been stipulated upon the employer at the time of retrenchment. Chapter VA of the Industrial Disputes Act from Section 25A to 25J was introduced in 1953. This chapter is applicable to industrial establishments which are not seasonal in character or work performed is not intermittent, and establishments in which 50 to 100 workmen are working. In 1984 the maximum number of workmen was increased to 300. Chapter V B, from 25K to 25S was introduced in 1976. It is also applicable to industrial establishments which are not seasonal in character or work performed is not intermittent, and establishments in which more than 300 workmen are working.

For the purpose of analysis, it is relevant to understand the conditions precedent to retrenchment of workmen as stipulated in Section 25F. “No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice as expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

It is obvious that the employer may retrench the surplus labour by following the conditions precedent as provided in Section 25F.

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2 Section 25F of the Industrial Dispute Act, 1947
The definition of retrenchment has two parts. The first part has an exhaustive definition to mean the ‘termination by the employer of the service of a workman for any reason whatsoever’. However, this part has an exception i.e., ‘any termination by way of punishment inflicted by way of disciplinary action’. The second part of the definition excludes four types of terminations from retrenchment. They are enumerated from clause (a) to (c) under this Section.

From this analysis it is obvious that employers have a right to terminate the services of the workmen after complying with the conditions prescribed in section 25F. Accordingly workers are entitled to have notice of retrenchment and retrenchment compensation. But, workers whose services are terminated on account of punishment inflicted by way of disciplinary action, or non-renewal of the contract of employment, or on the ground of continued ill health are not entitled to have notice of retrenchment or retrenchment compensation. Similarly, workmen who retired voluntarily or reaching the age of superannuation is not entitled to have these rights.

**TRANSFER AND RELOCATION**

The term ‘transfer’ is not defined in the Industrial Dispute Act. However, the term has two implications namely – transfer of ownership of an industry or industrial undertaking, from one owner to another. Secondly, transfer of an employee from one industry or industrial undertaking of the owner to another industry or industrial undertaking of the same owner. The Industrial Dispute Act did not originally contemplate transfer or relocation of one industrial undertaking from one place to another place, whatsoever is the reason. Starting an industry and running the same was considered as the fundamental right of an employer. But the Environmental Protection Act emphasizes the importance of environmental protection and thereby empowers the competent authorities to direct the employer, whose industry is said to be polluting the environment, either to transfer or relocate the industrial undertaking from the present vicinity to a distant place, where the pollution would not seriously affect the population. Due to this relocation, worker’s right to work in the given location is

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affected. Right to work of workers in the same location and under the same employer is not an explicit fundamental right, but a regulated statutory right, subject to fulfillment of certain conditions provided in the Industrial Dispute Act. Workers right to work may be deprived by providing retrenchment compensation in case of termination of service by the employer. Similarly, an employer may deprive the right to work of workers by providing compensation similar to that of retrenchment compensation at times of transfer or relocation of an industrial undertaking.

It is obvious that the concept of transfer has the following implications. Firstly, transfer of ownership of industry or industrial undertaking from one owner to another. Secondly, transfer of workers from one industrial establishment to another establishment of the same owner. Thirdly, relocation of the industry or industrial undertaking from one place to another place may also happen wherein all the workers are shifted to the relocated place. In the first case, ownership is transferred from one owner to another. In the second case, workplace of the worker is shifted under the same employer and same employment without substantial change of nature of work. In the third case there is the same owner, same workers and the same nature of work, but the industrial activity is in a relocated place.

Transfer of ownership may be due to volition of parties or act of law. The relocation of industries is only due to law in general and environmental law in particular. But in the matter of transfer of workers, it may be due to law or the decision of the employer. In industrial relations, worker’s right may be in question at the time of transfer of ownership of industry or industrial undertaking from one owner to another. As labour legislations are based on social security, the intention of legislations are to protect the right to work of the workers even at the time of transfer of industrial undertaking from one person to another. Evidently, ownership is a right in rem and the owner has the power to enjoy the incidence of his property against the entire world. Right to start a business or trade is a fundamental right and therefore an employer is empowered to run the business. As the owner of the property, he is empowered to alienate his property. However, workers are entitled to protect their interests by getting the deemed retrenchment compensation at times of transfer or relocation of industry.
Section 25FF was introduced in 1956. It provides compensation to workmen in case of transfer of undertakings. It provides as follows:

“Where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer, and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.”.4

Section 25 FF makes it clear that every workman who has been in continuous service for not less than one year in the undertaking shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched.5 This provision of the Industrial Dispute Act attempts to protect only those workmen whose conditions of labour are affected. In case, if the services of workmen have not been interrupted, or their conditions of labour are not affected due to transfer, the deemed retrenchment compensation would not be provided to him. It is evident from the provisions that Industrial Disputes Act attempts to provide social security to the workers in case of transfer of industry from one owner to another.

CLOSURE

In India the Industrial Dispute Act was introduced in 1947, at a time when the world was limping towards normalcy after the devastating II World War. This Act

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4 Section 25 FF of the Industrial Dispute Act, 1947
5 For further details see Sections 25 F and 25 FF
aimed at increasing productivity, so as to satisfy the post-war demands of the world. It was the time when industrial needs were more and environmental awareness of the world was less and hence, there was no intention in dealing with closure. The Republican Constitution of India provided the fundamental right of starting a business with reasonable restrictions.

Right to start an industry is a fundamental right recognized under Article 19(1)(g) of the Indian Constitution. It is subjected to reasonable restrictions. This right is available only to citizens. Similarly, right to close down an industrial undertaking is also an implicit fundamental right of the employer. However, it is also not an absolute fundamental right, but subject to reasonable restrictions. The Apex Court time and again dealt with such reasonable restrictions to the said right. In 1956, the Industrial Dispute Act was amended by inserting Section 25FFF. It provides compensation to workmen in case of closing down of undertakings. It stipulates as follows:

“(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25 F, as if the workman had been retrenched:

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

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

(i) financial difficulties (including financial losses); or
(ii) accumulation of undisposed stocks; or
(iii) the expiry of the period of the lease or license granted to it; or
(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

[(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if—]
the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1B) For the purposes of sub-sections (1) and (1A), the expressions “minerals” and “mining operations” shall have the meanings respectively assigned to them in clauses (a) and (b) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).

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

In 1982, Section 25 O was incorporated, dealing with procedure for closing down an undertaking. Similarly, Sections 25P and 25R were also introduced relating to closure. It is relevant to understand the legislative intention of the provisions of Sections, 25 O and 25 R. They run as follows:

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

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

Section 25 FFF of The Industrial Dispute Act, 1947
(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this
section, shall be entitled to receive compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months.”.7

“(1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer, who contravenes [an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction”.8

The Supreme Court through its judicial process endeavoured to crystallize and settle the legal provisions relating to closure and closure compensation. Closing down of an industrial undertaking may happen either voluntarily, based on the consent of the employer, or involuntarily due to factors beyond his control and against his willingness. In the latter case, even when the industrial undertaking is going on in a prosperous manner and the employer is interested in pursuing the industrial activity, a competent authority may compel the employer to close down the industrial undertaking due to environmental reasons. At such times, the industrial relations between employer and employee are affected.

A critical analysis of section 25 FFF makes it clear that an employer’s fundamental right to run an industrial establishment also implies that he can close down the industry. However, as this fundamental right is subject to reasonable restriction, the employer is bound to fulfill the conditions prescribed by law. Section 25FFF contemplates exemptions to such conditions. Accordingly, in case of closing down an industry “on account of unavoidable circumstance beyond the control of the employer,

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7 Section 25 O of the Industrial Dispute Act, 1947
8 Section 25R of the Industrial Dispute Act, 1947
the compensation to be paid to the workmen shall not exceed his average pay for three months.”

From the foregoing legal provisions it is understood that the Industrial Disputes Act contemplates to protect the rights of the workers who are in continuous employment for not less than one year. Worker’s right to work is affected on account of retrenchment, transfer and closure of industries. In retrenchment as well as in closure the services of the workmen are terminated and hence compensation is provided in the form of retrenchment compensation and deemed retrenchment compensation. In the case of transfer if the worker’s right to work is affected, they are also provided with compensation as if they are retrenched. Interestingly, it is also found that if any industry is closed due to unavoidable circumstances beyond the control of the employer, then the workmen employed in such industries are entitled to get compensation which shall not exceed his average pay for three months. This provision is applicable to closing down of industrial establishment due to environmental reasons which can be brought under ‘unavoidable circumstances beyond the control of the employer’.

It is evident from the exploration of cases that substantially good number of industrial disputes arose frequently and reached the Supreme Court for its decision mainly on matters related to retrenchment, retrenchment compensation and other related issues. It is also obvious that more industrial disputes due to retrenchment centered on ‘for any reason whatsoever.’ But industrial disputes are very rare in the exclusion clause of ‘voluntary retirement’ and ‘retirement on attaining the age of superannuation’ that are attached to the definition of retrenchment. However there were more cases on account of ‘non-renewal of contract of employment’. There were a few industrial disputes on account of termination due to ‘continued ill-health’. These three types of industrial disputes are taken for analysis here. However, there are several overlapping ones between the two types of terminations viz. termination ‘for any reason whatsoever’ and ‘non-renewal of contract of employment’. The latter termination has been excluded from the purview of retrenchment in 1984 by way of amendment. The set of words, ‘for any reason whatsoever’, according to Justice Krishan Iyer, are the key words. The Supreme Court interprets and constructs the definition and the exclusion clauses widely. The Court’s interpretations are explored and formulated here.
RIGHTS OF WORKERS IN HAZARDOUS INDUSTRIES

Industrial laws deal elaborately with the rights of workers in hazardous industries. They also deal with the liabilities of employers and occupiers of industries and factories handling hazardous things. However, the emergence and growth of environment movement further rigidified the laws. Industrial laws look at things mainly from industrial relations. But environmental laws with a vision deal with higher human relations cutting across national barriers. At the global level the decennial summits, like The Stockholm Summit of 1972, The Nairobi Summit of 1982, The Rio De Janeiro Summit of 1992, and The Johannesburg Summit of 2002, besides other international protocols, conferences and declarations have been attempting to strengthen the global environmental legal system by disseminating seminal concepts like ‘sustainable development, ‘public trust doctrine’, ‘polluter pays principle’, etc. This global awareness and evolving international environmental concepts have an immense influence on the domestic legal system relating to environmental jurisprudence.

There were quite a few environmental laws in India, but they were piecemeal in nature. Therefore, a comprehensive Environmental Protection Act, 1986 was enacted after the Stockholm Summit of 1972, wherein substantial provisions of law that affect industrial relations have also been included. The 93rd and 94th Constitutional Amendments made certain changes to the Indian Constitution, by incorporating what is popularly known as the Panchayat Raj and Nagarpalika Systems. These systems introduced a third tier in the federal system by democratically decentralizing the system of governance in India. A notable feature of these amendments relating to environment is the provision for environmental protection in the system of governance at the grass root level.

The Johannesburg Summit further accelerated the process of rendering environmental justice. It helped in balancing and streamlining various aspects of conflicting industrial interests. The growth and development of environmental laws at the international level, with the concomitant change at the national level, the changing ideologies of the globe and its corresponding impact on the law relating to employer-
employee relationship definitely influenced the judicial process of the Supreme Court over industrial relations and environmental protection.

In industrial relations, as discussed earlier, workers’ rights are affected due to various industrial reasons. Employers, based on their fundamental right to occupation, avocation, trade, business, etc., may attempt to transfer an industrial undertaking from one place to another, or to close down an industrial undertaking permanently, or to retrench the surplus workmen from employment. This fundamental right of employers is not absolute, but is reasonably restricted. Reasonable restrictions also include restrictions that are prescribed under the Industrial Disputes Act. There are also circumstances in which both the employers and employees are interested in pursuing their industrial process, but due to extraneous factors, like environmental protection, the employers may be forced to retrench the workmen or transfer or relocate the industrial undertaking from one place to another place or to close down the entire industrial process. In these circumstances also, the worker’s right to work is affected. In this part of the work, the situations, where right to work of workers working in hazardous industries are affected due to environmental reasons, are analysed.

The Supreme Court has decided several environment cases, in which rights of innumerable workers as well as employers were affected. Such Industrial environmental cases are based on the following jurisdictions.

1. Cases that reach the Supreme Court through the appeal provisions available under the Industrial Disputes Act;
2. Cases that reach the Supreme Court by way of appeal through Article 133, 134 and 136, after being decided by the High Courts under Article 226;
3. Cases decided by the Supreme Court by invoking directly Article 32 to render justice under Fundamental rights; and
4. Cases related to environmental issues where the Magistrate is empowered to cognize the offences committed under the environmental laws. Pollution Control Boards may also pass orders against polluters.
Affected parties may appeal to the higher judiciary for justice. Such cases may reach the Supreme Court by way of appeal.

Even in environmental cases decided by the Supreme Court, some cases may crop up during the functioning of industrial undertaking and others even before the commencement of industrial relations, because the environmental laws have stipulated that prior permission from the appropriate Pollution Control Boards and other authorities is mandatory for the starting of industrial undertaking. In such an atmosphere, few cases come to the Supreme Court even before the commencement of the industrial process. In this part of the analysis, environment cases that relate specifically to industrial relations wherein employers and employees are involved are taken up. Of these, more attention is focused on cases that relate to workers’ right to compensation in case of retrenchment, transfer or relocation, and closure of industrial undertaking, since the Environment Act empowers the appropriate authority to “direct—

(a) the closure, prohibition or regulation of any industry, operation or process;

(b) stoppage or regulation of the supply of electricity or water or any other service.”

*Rural Litigation and Entitlement Kendra v. State of U.P.* 10 [1988 DB] was one of the earliest hazardous industries related environment case that was decided by the division bench of the Supreme Court under Article 32. It is related to the degradation of forests, a renewable resource, and limestone mine quarries, a non-renewable resource. In this case various rights of workers, employers and the society are involved. Interestingly the case was filed in 1983, before the enactment of the Environment Protection Act, 1986. In this case it was contented that the Supreme Court has no jurisdiction when there is a special provision of law under the Forest Act. Rejecting the argument it held that it had the jurisdiction to deal with such cases, though normally the Court would not entertain a dispute for the adjudication of a case for which a special provision has been made by law.

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9 See section 5 of The Environment Act, 1984, for further details
In this case the Supreme Court observed that the lessees of limestone quarries which have been directed to be closed down permanently under this order...would be thrown out of business in which they have invested large sums of money and expanded considerable time and effort. This would undoubtedly cause hardship to them but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological background. This would give hazardless environment to them and their cattle, homes and agricultural land.\textsuperscript{11} The Supreme Court further wanted to decide whether the social safety of the people is important or the mining activity in that area at a cost of pollution. With reference to the interest of various sections of society at large, the Supreme Court held that "the primary duty was to the community and that duty took precedence, in our opinion in these cases. The obligation to the society must predominate over the obligation to the individuals."\textsuperscript{12}

Closing down the industrial activity of mining was dealt elaborately by the Supreme Court. "We had categorically indicated that mining in this area has to be stopped, but instead of outright closing down total mining operations, we were of the view that mining activity may have to be permitted to the extent it was necessary in the interest of defence of the country as also by way of safeguarding of the foreign exchange position."\textsuperscript{13} The Court categorically stated that interest of individual citizens may be overlooked, in the interest of general benefit to the community. The Court wanted this principle to be applied in this case even if it hurts some mine owners very badly. Regarding closure of mines and unemployment of workers, the Supreme Court opined that, "if any of these mines is closed down there would be problem of unemployment. In regard to the mines closed for more than three years, we do not think the labour is sitting idle and the mine owner is paying them. They must have got employed elsewhere or they have lost their service and have taken to alternate engagement. In our opinion therefore, allowing these three ongoing mines to operate for their initial period of lease is the most appropriate direction. That can be given during the switchover from the present position to one of complete closing down of mining operations. We, therefore permit these three mines to continue mining

\textsuperscript{11} Ibid
\textsuperscript{12} Ibid
\textsuperscript{13} Ibid
operations, subject to compliance with all legal requirements and the additional conditions.”

In the case of the displaced mine owners, the Supreme Court accepted the fact that they faced hardships due to displacement. But, at the same time, the Court felt that in the interest of the community, mining operations have to be closed and displaced mine owners must be provided with alternate occupation. The Court wanted a committee to be set up to oversee the rehabilitation of the displaced mine owners within a time frame. In case the committee decided to give alternate mining sites, it should first consider the ecology and environment of that area before doing it.

Various aspects of environment and industrial relations are discussed by the Apex Court in this case. Moved by the plight of the workers thrown out of employment, the Supreme Court suggested that alternate employment should be provided for them and said, “We are conscious that as a result of this order made by us, the workmen employed in the limestone quarries which have been directed to be closed down permanently after consideration of the report of the Bandyopadhyaya Committee will be thrown out of employment and even those workmen who are employed in the limestone quarries which have been directed to be closed down temporarily pending submission of schemes…will be without work for the time being. But limestone quarries which have been or which may be directed to be closed down permanently will have to be reclaimed and afforestation and soil conservation programme will have to be taken up in respect of such limestone quarries and we would, therefore, direct that immediate steps shall be taken for reclamation of the area forming part of such limestone quarries with the help of the already available Eco Task Force of the Department of Environment, Government of India and the workmen who are thrown out of employment in consequence of this order shall, as far as possible and in the shortest possible time, be provided employment in the afforestation and soil conservation programme to be taken up in this area.”

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14 Ibid
15 Ibid
16 Ibid
In 1987, the Supreme Court received another public interest litigation filed by M.C.Mehta. This case centered on the pollution of Ganga by municipalities and industries that involved in tanneries. No doubt municipalities and its functions come under the definition of industry, but when the municipalities pollute the environment due to their negligence and dereliction, the rights of workers working in such municipalities are not affected, because such municipalities may not be closed or relocated. Therefore the industrial relation of employers and employees may not be affected. As such municipalities would definitely affect the interest of society at large. Earlier in another landmark case, *Ratlam Municipal Corporation v. Vardi Chand,*[17]  [1980 DB] Justice Krishna Iyer severely criticized the ineffective and apathetic functioning of municipalities towards environment.

In *Kanpur Tanneries* case, the Supreme Court made it clear that, “just like an industry which cannot pay minimum wages cannot be permitted to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to be in existence for the adverse effect on the public at large which is likely to ensure by the discharging of the trade effluents from the tannery to the river Ganga….We feel that the tanneries at Jajmaw, Kanpur cannot be allowed to continue to carry on the industrial activity unless they take steps to establish primary treatment plants.”[18]

In *Calcutta Tanneries* case, the Supreme Court elaborately discussed the transfer of tanneries and the closure of tanneries and the corresponding consequence of workers right to compensation. This case was filed by M.C.Mehta by way of public interest litigation under Article 32, in consequence of *Kanpur Tanneries* case. In addition to the order already issued by the Supreme Court, further directions were sought for in this case.

The National Environmental Engineering Research Institute (NEERI) reported in the Calcutta Tanneries case that out of about 550 tanneries, 90% used chrome-based tanning process. The waste water is left untreated, which flows through open drains

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18 *M.C.Mehta v. Union of India,* op.cit.
causing serious environmental, health and hygiene problems. Based on the shocking reports of NEERI, the Supreme Court ordered for the monitoring of the tanneries. Criticising the tanneries for hurting the environment continuously the Supreme Court pointed out that the Calcutta tanneries have been extended all possible help to relocate themselves to the new complex. But the tanneries have been discharging highly noxious effluents and are polluting the land and the river. “This court did not order the closure of the tanneries because they agreed before this court and had given clear undertaking that they would relocate to the new complex.”\textsuperscript{19} However, after reviewing elaborately the measures taken by the tanneries, the Court was firm in its view of relocating Calcutta tanneries from the present location and gave the following directions: (1) the Calcutta tanneries shall relocate themselves from their present location and shift to the new leather complex; (2) they shall deposit 25\% of the price of the land; and (3) if they fail to deposit the said price of the land, the tanneries shall be closed.

More significantly, the Supreme Court gave elaborate directions relating to the rights of workmen employed with the Calcutta tanneries. Accordingly, “the workmen employed by the Calcutta tanneries shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new place where the tannery is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the tannery at the present site and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the tanneries shall be given, one year’s wages as ‘shifting bonus’ to help them settle at the new location.

(d) The workmen employed in the tanneries which fail to relocate shall be deemed to have been retrenched provided they were in continuous service for a period of one year as defined in section 25-B of the

\textsuperscript{19} Ibid
Industrial Disputes Act, 1947. These workmen shall also be paid in addition six year’s wages as additional compensation.

(e) The workmen who are not willing to shift along with the relocated industries shall be deemed to have been retrenched under similar circumstances as the workmen in (d) above but they shall be paid only one year’s wages as additional compensation.

(f) The shifting bonus and the compensation payable to the workmen in terms of this judgement shall be paid within the stipulated time.

(g) The gratuity amount payable to any workman shall be paid in addition to all the above. 20

The Court clearly laid down that those tanneries which are refused consent or which fail to obtain consent shall be closed and directed the Superintendent of Police, the Collector or District Magistrate or Deputy Commissioner of the concerned district to close all the tanneries which did not get the Board’s consent. It further stipulated that the concerned authorities alone could either allow the tanneries to be reopened or to close the tanneries permanently or direct their relocation. 21

Indian Council for Enviro-Legal Action v. Union of India, 22 is a case decided by the Supreme Court based on public interest litigation under Article 32 of the Constitution. In this case, several ‘rogue industries’ were pulled up for manufacturing ‘H acid’ without a no objection certificate. After a detailed hearing, they determined the amount required for carrying the remedial measures including (1) the removal of the sludge lying in and around the factory premises; (2) on account of the industries continuous, persistent and insolent violation of law for its own profit, it was inflicting untold misery upon the poor villages, spoiling their land, water resources and the entire environment. The Supreme Court slammed the industries saying that, “they have forfeited all claims for any consideration by this court. Accordingly, we herewith order the closure of all plants and factories.” (3) Villages and organizations on their behalf were directed to institute suits in the appropriate civil court to claim for damages. If they file the suit or suits informa pauperis, the State Government shall not oppose their

20 Ibid
21 Ibid
22 Indian Council for Enviro-Legal Action v. Union of India, op.cit.
application. So, the Supreme Court in this case directed all rogue industries to close down since they blatantly violated environmental laws, causing serious damage to the environment.

**S. Jagannath v. Union of India** is another leading case that involved modern shrimp industry. This case too was filed under Article 32, by way of public interest litigation. Shrimp culture industry grew rapidly in the coastal districts. For ages fishermen used only traditional shrimp culture, where shrimps were cultured in the paddy field. By this method, only 140kgs of shrimp per hectare could be produced. Problems cropped up when this farming sector was deliberately converted into an industry by big companies, national and international. They adopted semi-intensive and intensive methods which led to huge production of shrimps, leading to exports. These modern technologies adopted in shrimp culture polluted the environment very badly and it was brought to the notice of the Supreme Court. The shrimp culture industries are covered by the Coastal Regulation Zone Notification. Accordingly “no shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the Coastal Regulation Zone Notification. This shall be applicable on all seas, bays, estuaries, creeks, rivers and back waters. This direction shall not apply to traditional and improved traditional types of technologies…which are practiced in the coastal low lying areas”. The Court directed that all aqua culture industries, shrimp culture industries and shrimp culture ponds set up in the Coastal Regulation Zone shall be demolished and removed from the said area. However, the farmers who are operating traditional and improved traditional systems of aqua culture may adopt improved technology for increased production, after obtaining the prior approval of the appropriate authority.

As far as the workmen employed in the shrimp culture industry were concerned, the Supreme Court ordered and directed as follows: “The workmen employed in the shrimp culture industries which are to be closed in terms of this order, shall be deemed to have been retrenched…provided they have been in continuous service (as defined in section 25B of the Industrial Disputes Act 1947) for not less than one year in the

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23 S. Jagannath v. Union of India, op.cit.
24 Ibid
industry concerned before the said date. They shall be paid compensation in terms of section 25B of the Industrial Disputes Act 1947. These workmen shall also be paid, in addition, 6 years wages as additional compensation. The compensation shall be paid….The gratuity amount payable to the workmen shall be paid in addition.”

In M.C. Mehta v. Union of India, the popular Taj Trapezium case, the Supreme Court inter-alia decided the rights of workers who are affected due to industrial air pollution. In this case industries like refineries, brick kilns, vehicular traffic and generator sets are polluting one of the seven wonders of the world, the Taj Mahal. The petitioner who invoked Article 32 by way of public interest litigation states that, “the white marble has yellowed and blackened in places. It is inside the Taj that the decay is more apparent. Yellow pallor pervades the entire marble. In places, the yellow hue is magnified by ugly brown and black spots.” This pollution is due to the industries that are situated in and around the Taj Mahal. There were around 507 pollution industries and many of them did not have air pollution control devices. Some industries did not even respond to the notices served to them. In this situation, direction was sought to close down the industries in and around Taj Mahal. After studying the entire situation, the Supreme Court directed that 292 industries out of 511 shall change over to natural gas as an industrial fuel. Those industries which were not in a position to obtain gas connections shall stop functioning with the aid of coke/coal in the TTZ and may relocate themselves as per the directions of the Supreme Court. It is further directed as follows:

1. The 292 industries shall approach the GAIL for grant of industrial gas connection;
2. The industries which are not in a position to obtain gas connection may approach the appropriate authority for allotment of alternative plots for their industrial activity outside TTZ;
3. Those industries which neither applies for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal in the TTZ.

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25 Ibid
26 M.C.Mehta v. Union of India, op.cit.
27 Ibid
The following directions were also issued by the Supreme Court regarding the protection of workers in such industries. “The workmen employed in the above mentioned 292 industries shall be entitled to the rights and benefits as indicated here under:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year’s wages as ‘shifting bonus’ to help them settle at the new location. The said bonus shall be paid….

(d) The workmen employed in the industries who do not intend to relocate or obtain Natural Gas and opt for closure shall be deemed to have been retrenched...provided they have been in continuous service (as defined in section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of section 25-F (b) of the Industrial Disputes Act. These workmen shall also be paid in addition 6 year’s wages as additional compensation.

(e) The compensation payable to the workmen in terms of this judgement shall be paid by the management within two months of the retrenchment.

(f) The gratuity amount payable to any workman shall be paid in addition.”

T.N. Godavarman v. Union of India [2005 FB] is a case decided by the Supreme Court based on Forest (Conservation) Act, 1980. This case came to the Supreme Court by way of public interest litigation. In the words of Shyam Divan and Armin Rosen Cranz, “this case has no parallel, even by the expansive standards of India’s pro-active judiciary….The court assumes the role of a super-administrator, regulating the felling, use and movement of timber across the country in the hope of preserving the nation’s forest.” In this case, several timber based industries were

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28 Ibid
29 Shyam Divan & Armin Rosencranz, op.cit., p.294
involved and the Supreme Court in a bid to regulate the saw mills and timber industries indirectly affected the worker’s right to work.

With reference to the relocation of wood based industries or its closure, the Supreme Court issued below quoted orders:

1. Licenses given to all wood based industries shall stand suspended;
2. Wood based industries given a clearance by a High Power Committee without any penalty shall have the option to shift industrial estates;
3. Industries which have been penalized will have a right to approach the committee for obtaining a fresh license;
4. Industries which do not want to shift to the industrial estates shall be allowed to wind up as per law.

The Supreme Court in a bid to mitigate the sufferings of the workers directed that, “not withstanding the closure of any saw mill or other wood based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.”

The Supreme Court decided an important question in a matter related to mining activity in areas up to 5 kilometers from the Delhi-Haryana border on the Haryana side of the ridge of the Aravalli hills. Plying of vehicles from the mines to the main roads caused pollution to the Badkal Lake and Surajkund, which are ecologically sensitive areas. The matter was referred to the NEERI for its recommendation. NEERI recommended among other things that the mine-lease owners need to undertake the mining operations in a prescribed manner so that it will help in reclamation of land in areas where mining operations were completed. The environmental management plans should include land rejuvenation and afforestation programmes. The question of lifting the ban on mining operations is subject to the condition of implementation of stringent pollution control, land reclamation, green belt and other environmental management measures. NEERI also recommends all these keeping into consideration of the

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30 T.N.Godavarman Thirumulpad v. Union of India, op.cit.
“employment opportunities for the workers along with the protection of environment and public health”. 31

The Supreme Court came to the conclusion that the mining activity in the vicinity of tourist resorts was sure to cause serious damage on the local ecology. However, it was directed that in order to preserve environment and control pollution within the vicinity of two tourist resorts, it is necessary to stop mining activity within 2 kilometers radius of the tourist resorts of Badkal lake and Surajkund. Further, it was directed that failing to comply with the recommendations may result in the closure of the mining operations and that mining leases within the area from 2 kilometers to 5 kilometers radius shall not be renewed without obtaining prior no objection certificates from pollution control Boards. Unless both Boards grant no-objection certificates, the mining leases in the said area shall not be renewed.

M.C. Mehta v. Shriram Fertilizers Corporation case, popularly known as Oleum Gas Leak case came to the Supreme Court by way of public interest litigation. Due to leakage of Oleum gas, a person died and several persons were injured in and around the industry located in Delhi. The question before the court was whether the caustic chlorine plant should be allowed to function even after this tragedy or whether it is to be shifted and relocated at some other place. In this case, the worker’s union representing 4000 workers of that industry intervened and was against the closure of the unit. It also contended that if the plant was not allowed to be restarted, 4000 workers would be thrown out of employment. The Supreme Court after hearing all the arguments ordered the continuation of the plant, but with many safety stipulations. With reference to workers, it directed that “every worker in the caustic chlorine plant should be properly trained and instructed in regard to the functioning of the specific plant... The most effective way of giving such training and instruction would be through audio-visual programmes to be specially prepared by the management.... Loudspeakers shall be installed all around the factory premises for giving timely

31 M.C. Mehta v. Union of India, AIR 2004, Supreme Court p.4016
warning and adequate instructions to the people residing in the vicinity in case of leakage of chlorine gas. The management shall maintain proper vigilance with a view to ensuring that workers working in the caustic chlorine plant wear helmets, gas masks or safety belts. The management of Shriram will also furnish a bank guarantee to the satisfaction of the Registrar of this court for a sum of Rs.15 lakhs which bank guarantee shall be encashed by the Registrar, wholly or in part, in case there is any escape of chlorine gas resulting in death or injury to any workman or to any person or persons living in the vicinity.32

In Tharun Bharat Sangh v. Union of India,33 a non-governmental organisation, by availing public interest litigation approached the Supreme Court seeking protection of the environment which is affected due to widespread illegal mining activity in an area declared as tiger reserve forest in Alwar district of Rajasthan. It argued that in the interest of ecology, environment and rule of law, the mining activity should be stopped. There were 215 mines operating within the protected forest zone and 47 mines fall partly inside and partly outside the areas declared as protected forests. In these mines workers are employed in large numbers. The Supreme Court in this case, popularly called as Sariska Tiger sanctuary case, ruled that mining activity situated outside the protected forest areas, but within the tiger reserve may continue for a period of 4 months. Within this period, it shall be open to the concerned mine owners to approach the department of forest and environment. They can continue the mining operations in these mines only if the Central Government permits them. If no permission is obtained, the mining activity in the entire area declared as tiger reserve shall stop and cease to operate.34

From the above cross case analysis, the following findings are deduced with reference to the right of workers working in hazardous industries. The Supreme Court directly took cognizance of the matter under Article 32, notwithstanding the prevalence of special and comprehensive Acts that provides machineries under the Industrial Disputes Act, 1947 or the Environment Protection Act, 1986, but, the Apex Court refers the provisions of the Industrial Disputes Act relating to the concepts, ‘continuous

32 Ibid
33 Tharun Bharat Sangh v. Union of India, op.cit.
34 Ibid
employment’, ‘retrenchment compensation’, etc. The Court invented several new concepts like, ‘active employment’, ‘shifting bonus’, ‘additional compensation’ and so on.

The innovative concept ‘active employment’ implies that when an industry is shifted from one place to another place or temporarily closed down and reopened after some time due to environmental reasons, even if the employer is unable to give employment to the workmen working in such industries, those workmen are deemed to be in employment continuously and are entitled to receive full wages with continuity of services. Interestingly, such a situation is analogous to lay-off as provided in section 2(kkk) of the Industrial Disputes Act. But, for such lay-off the ‘compensation shall be equal to fifty percent of the total of the basic wages and dearness allowances’.

The Supreme Court ordered that all those workmen who agree to shift with the industry shall be given one year’s wages as ‘shifting bonus’ to help them to settle at the new location. Such provisions are not contemplated either in the Payment of Bonus Act or in the Industrial Disputes Act. There are provisions relating to transfer of industrial undertaking from one owner to another and in such cases if workmen are terminated from service, section 25 FF contemplates to provide only retrenchment compensation. If the services of the workmen are not affected, they are allowed to continue in service. Therefore, this ‘shifting bonus’ is an innovative and beneficial provision provided by the Supreme Court to workmen who are working in hazardous industries.

Apart from that benefit, the Supreme Court also ordered that workmen working in hazardous industries shall be paid six year’s wages as ‘additional compensation’ in case of closure of such industries, besides regular retrenchment compensation. In case of relocation of such industries workmen are allowed to continue to work in the relocated sites. Further it is ordered that those workmen who are not willing to shift along with the relocated industries shall be deemed to have been retrenched and retrenchment compensation shall be paid as per the Industrial Disputes Act. Besides, they shall be paid one year’s wages as additional compensation. It is interesting to

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35 For further details see Sections 25 C and 25 M of the Industrial Disputes Act.
observe that these additional compensations are not known to traditional industrial jurisprudence.

The Supreme Court has adopted different approaches with reference to rights of workers working in various hazardous industries. As discussed earlier, hazardous industries are divided into industries using renewable resources and industries using non-renewable resources. Further, such industries are divided into ‘rogue industries’ and licensed industries. The Court ordered to close down such ‘rogue industries’ which are functioning without proper license and permission and workers working in such ‘rogue industries’ must lose their employment and its attendant benefits because such industries are not treated as industries and such workers are not considered as workers in the eye of law.

The Supreme Court adopted a strict approach in relation to mining industries, as mines are not renewable resources. Therefore the Supreme Court strictly adhered to the provisions for giving permission or license to such mining industries. The Court ordered the closure of such industries even in case of minor aberrations from the provisions of law relating to permission and license. Workers working in such industries are ordered to be provided with ‘alternate employment’ like employment in re-afforestation and reclamation of the areas where industries were located in case of closure of such mines. The Court maintained silence or was evasive in relation to case of deemed retrenchment compensation for closure and retrenchment compensation in case of termination of workmen due to surplussage. The Supreme Court heavily relied on the term ‘non-forest purpose’ under the Forest Act and ordered to close down such mining industries which are functioning in the forest area.

Forest is a renewable resource. The Forest Act empowered the Supreme Court to conserve the forests by interpreting the phrase ‘non-forest purpose’. The Court by interpretation extended the operation of Forest Act even to private forest. In its endeavour to conserve forest, the Supreme Court marginalized rights of workers who are working in timber industries. However, the Supreme Court ordered that the workers employed in saw mills and other wood based industries will continue to be paid their full emolument due and shall not be retrenched or removed from service due to closure.
of such timber industries. This led to severe hardship to labour in such defunct industries.

A comparative analysis of the Supreme Court’s approach reveals that worker’s right are better protected in industries which are functioning with proper license and permission than in ‘rogue industries’ which are functioning without license and permission. Even in licensed industries, workers rights are better protected in industries which are polluting the renewable resources than industries which are depleting the non-renewable resources. But in case of conservation of forests, workers who were in the employment in such industries are ordered to provide alternative employment or ordered to be paid their full wages notwithstanding the closure of such industries.

**RIGHTS OF WORKERS IN NON-HAZARDOUS INDUSTRIES**

Approaching the Apex Court is the ultimate resort to resolve the industrial disputes when the workers or employers or both are not satisfied with the awards awarded by the authorities created under the Industrial Disputes Act or the judgement pronounced by the High Courts. From the exploration of the cases with reference to retrenchment, transfer and closure of industrial undertaking and retrenchment compensation and deemed retrenchment compensation, it is found that almost all the cases related to non-hazardous industries that affect the workers’ right to work, reached the Supreme Court only by way of appeal from the High Courts.

**RETRENCHMENT AND COMPENSATION**

In this part of the analysis, the Supreme Court’s approach to the rights of the workers working in non-hazardous industries is explored and formulated with reference to the concept retrenchment. Industrial cases related to retrenchment reached the Supreme Court after adhering all the provisions prescribed under the Industrial Disputes Act.
1) TERMINATION FOR ANY REASON WHATSOEVER

In *Barsi Light Railway Co. Ltd. v. K.N. Joglekar*,[36][1957 DB] a Constitutional Bench interpreted these words in the following language. “what after all is the meaning of the expression ‘for any reason whatsoever,’ when a portion of the staff or labour force is discharged as surplussage in a running or continuing industry for economic reasons or rationalisation in industry, installation of a new labour–saving machinery, etc.” The legislature in using the expression ‘any reason whatsoever’ says in effect: “It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment…what is being defined is retrenched, and that is the content of the definition…. For the reasons given above… retrenchment as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the word. It means the discharge of the surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide cause of business…or where the services of all workmen have been terminated by the employer on the business undertaking being taken over by another employer. On our interpretation, in no case is there any retrenchment unless as there is discharge of surplus labour or staff in a continuing or running industry.”[37]

The definition of retrenchment was once again taken up for discussion by a Five Judges Constitutional Bench in *Anakappalla Co-operative Agriculture and Industrial Society v. Its Workmen*.[38][1962 CB]. It reiterated the ratio adopted by the Supreme Court in *Barsi Light Railway Co.* Accordingly, retrenchment postulates the termination by employers of the services of the workmen on the ground that there is a surplus of employees. In 1976, in *State Bank of India v. N. Sundara Money*,[39][1976 DB] a Division bench of the Supreme Court gave a go by to the doctrine of redundancy implicit in the very concept of retrenchment. It was held that the words ‘for

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36 Barsi Light Railway Co. Ltd. v. K.N.Joglekar in AIR 1957 SC C.121
37 Ibid. This judgment of the Supreme Court forced the Parliament to introduce in 1956 Sections 25 FF and 25 FFF which respectively stipulate compensation to workmen in case of transfer of undertakings and compensation to workmen in case of closing down of undertakings. However, the definition of retrenchment was not amended.
38 Anakappalla Co-operative Agriculture and Industrial Society v. Its Workmen in AIR 1963 SC p.1489
39 State Bank of India v. N.Sundara Money in AIR 1976, SC p.1111
any reason whatsoever’ are ‘very wide’, admitting almost no exception. By this construction, every termination of service was brought within the scope of retrenchment.

The facts of the Sundara Money’s case are that the employer, the Bank, employed some workmen for short periods and terminated their services at the end of such period. This process continued for about a decade. Sundara Money disputed the validity of such terminations. The Bank justified its action on the ground that the termination of service was by efflux of time.

The Supreme Court held that the termination of service was retrenchment and the retrenchment was invalidated for non-compliance of the requirements of Section 25F. In this case, two approaches were taken to bring the termination within the ambit of retrenchment. One was by giving wide meaning to the words ‘for any reason whatsoever’ and to bring the termination in terms of the expression ‘termination by the employer.’ It was justified on the ground that the employer would otherwise frustrate the protection, which the Act was designed to create. The other approach was that, the termination of a fixed term contract could be treated as a termination of an employee. In the second approach, the termination was contemplated when the contract was created and was free from controversy. Justice Krishna Iyer, explained it as follows: “An employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.”

Commenting on this ruling, Malhotra observed that the Court turned a Nelson’s eye to the concept of surplussage or redundancy implicit in the scheme of the provision of the Act relating to retrenchment. It was held that the Supreme Court destroyed the concept of redundancy implicit in the definition of retrenchment by deviating from the

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40 Anakappalla Co-operative Agriculture and Industrial Society v. Its Workmen in AIR 1963 SC p.1489
precedent and pressing into service ‘the interpretative technology’ unknown to the law of interpretation of statute.\footnote{O.P.Malhotra, “Labour Law 1,” 1986, op.cit, p.559}

In the \textit{Hindustan Steel Ltd. v. Labour Court}, [1971 DB] the employees were employed for fixed–term contracts, which the employer chose, not to renew after their expiry. In this case, there was no order terminating their services and the employer took the stand that the termination of their service was automatic on the expiry of the contractual period of service by efflux of time. Based on the ratio of Sundara Money, the Court held that the termination was retrenchment which was invalidated for non-compliance of the provisions.

The question whether the termination of service during probation period amounts to retrenchment was discussed by the Supreme Court in \textit{M.Venugopal v. Divisional Manager, Life Insurance Corporation, Machilipatnam\footnote{M.Venugopal v. Divisional Manager, Life Insurance Corporation, Machilipatnam in SCC, 1994(2), p.323}} [1994 DB]. It was held that it does not amount to retrenchment. In this case, a development officer in LIC was terminated before the expiry of the period of probation. The probation was extended up to the maximum period of two years as per the LIC staff regulations. These LIC regulations also empower the appointing authority at its discretion to dispense with, reduce or extend the probationary period up to two years. Moreover, an employee was liable to be discharged from service without notice during the period of probation. The Court held that this regulation is a statutory term of the contract of employment and hence the management has power to terminate his service during that period. Such termination therefore does not amount to retrenchment since it falls within the exception to Section 2(oo) under Sub-Clause (bb). So the Court held that, “in the present case the termination of service of appellant is as a result of contract of employment. Having been terminated under stipulations specifically provided under...the order of appointment of the appellant. In this background, the non-compliance of the requirements of Section 25F shall not vitiate or nullify the order of termination of the appellant.”\footnote{Ibid}
[1994 DB] the Supreme Court upheld the termination in the event of loss of lien over the post as it was considered as retrenchment. In this case, the management based on the standing orders which provides for loss of lien on the post, in case of a workman outstaying leave beyond 10 days without explanation, terminated the services of the said workman. The Supreme Court held that such termination too amounts to retrenchment and the non-compliance with Section 25F rendered the termination bad in law.\(^{45}\)

Another leading case related to retrenchment came to the Supreme Court. Here there was a slight twist as the case came to the Court, 30 years after termination from service. In *Municipal Corporation of Delhi v. Premchand Gupta*, [2000 DB] the question before the Apex Court was whether termination of services of an employee in 1966, amounts to retrenchment. The Court held that the termination of services of a workman, which was not admitted by way of punishment, clearly amounted to retrenchment attracting section 25F of the Act. It is to be noted that clause (bb) of Section 2(oo) was introduced only in the year 1984 and it excluded fixed term appointments. Though the termination had taken place in 1966, the termination by way of efflux of time was covered by the definition of retrenchment. Therefore non-compliance with Section 25F rendered the action of management null and void. The Court further opined that the logical consequence would be that he would be entitled to reinstatement in service with continuity and in the normal course would be entitled to full back wages for the period of delay. The Supreme Court reiterated the legal position and held that the order of dismissal is challenged belatedly, the dispute will still continue for adjudication. If the workman succeeds on merit, the only disability where the workman will suffer in consequence will be denial of back-wages for the period of delay.

An interesting question, whether the industrial tribunal could direct reinstatement of the unregistered nurse with full back wages as a relief for violation of Section 25F of the Act was decided by the Supreme Court in *R.B. Sewak Ram*

\(^{45}\) Ibid  
Maternity Hospital, Jalandhar v. Presiding Officer, Labour Court\textsuperscript{47}[2000 DB]. The Court held that the employment of nurses who are not registered as nurse would not be given reinstatement till they obtain such registration. The Court also opined that in the circumstances, back wages would not be awarded to the nurses as their appointment de-force. Therefore, the order of the lower court was set aside on the ground that their reinstatement would run counter to the express provision of the relevant Act.\textsuperscript{48}

The question whether long term absence of an employee and subsequent striking off the name of the workman from the rolls amounts to retrenchment was discussed in Baba Saheb Deve Gonda Palit v. Managing Director, Shri Panch Gonda Sahakari Sakha, Kharkhana Ltd\textsuperscript{49} [1988 DB]. In this case the workman was absent for 3 long years and his name was struck off from the rolls. On the question whether this amounted to retrenchment, the Supreme Court held the view that Section 25F was not applicable in this case and said that “though every striking of the name from the roll would not amount to retrenchment, such striking off without anything more would constitute retrenchment.”\textsuperscript{50}

Another related issue of whether automatic termination of services on account of over stay of leave amounts to retrenchment was discussed in Ms. Abbo-Backer v. HMT Ltd\textsuperscript{51} [1988 DB]. The Court held that the Act does not contemplate two classes of retrenchment, some of which are covered by Section 25F and 25N and others to which Section 25F and 25N do not apply. The employer has to fulfill the above statutory conditions imposed by these sections. The conduct of the workmen too can result in retrenchment. But the retrenchment gets statutory validity only when the duty imposed on the employer is discharged and where the statutory conditions are fulfilled.\textsuperscript{52}

The issue whether, termination of service of a trainee or probationer amounts to retrenchment or not was decided in M/s. Kalyani Sharp India Ltd. v. Labour Court\textsuperscript{53}

\begin{footnotesize}
\textsuperscript{47} R.B.Sewak Ram Maternity Hospital, Jalandhar v. Presiding Officer, Labour Court, in SCC 2000 (10) p.490
\textsuperscript{48} Ibid
\textsuperscript{49} Baba Saheb Deve Gonda Palit v. Managing Director, Shri Panch Gonda Sahakari Sakha, Kharkhana Ltd. in LLJ II, 1988, p.413
\textsuperscript{50} Ibid
\textsuperscript{51} Ms.Abbo-Backer v. HMT Ltd. in LLJ II, 1988, p.323
\textsuperscript{52} Ibid
\textsuperscript{53} M/s.Kalyani Sharp India Ltd v. Labour Court in Lab IC, 2000, p.138
\end{footnotesize}
[2000 DB]. The Supreme Court decided these questions: (i) whether the management can validly terminate the services of a probationer/trainee, before the expiry of the training/probationary period; and (ii) whether the said termination would amount to retrenchment. In this case, the workman was appointed as a trainee technician and was required to undergo training for a period of one year. The terms of employment provided that the facilities could be withdrawn at any time and he would be regularised only on satisfactory completion of his training. Based on these facts, the Supreme Court held that the termination before the expiry of probation was permissible under the terms of employment. It also held that such termination of service would not amount to retrenchment.54

From the above discussion it is very clear that the Supreme Court very liberally interpreted the set of words ‘any reason whatsoever’ in such a manner to bring all types of terminations of workmen who are qualified and who have completed their probations, except the terminations which are inflicted by way of punishment and those that are provided in the exemption clauses. It is evident that the Court attempted to maintain the harmony of the industrial relation, by protecting the interests of workers by considering such terminations as retrenchment.

2) TERMINATION DUE TO CONTRACT OF EMPLOYMENT

Clause (bb) of the sub-section 29(oo) was inserted by way of amendment in the year 1984. This clause excludes the ‘termination of the service of the workman as a result of the non-renewal of the contract of the employment’ from the definition of retrenchment. Obviously this clause excludes all terminations of services of workmen on the expiry of the terms and conditions contained in the contract of employment. The overall effect of this amendment is that the law was restored to the pre-Sundara Money period by the legislature.

The amended clause (bb) of Section 2(oo) came before the Supreme Court for its interpretation in S.Govindaraju v. KSRTC55 [1986 DB]. In this case the service of the workman was terminated in terms of the contract of employment, which was

54 Ibid
55 S.Govindaraju v. KSRTC, in LLJ I 1986, p.351
challenged by the workman. The High Court rejected the application and it was taken to the Supreme Court in appeal. The Court made the observation that this clause would enable unscrupulous employers to provide a stipulation in the contract of service for terminating the employment of employees to escape the rigours of the provisions of Sections 25 F and 25 N and it would also confer arbitrary powers on the employers, which would hurt the protection given to the employees by the Act. But the Court did not consider it necessary to express any opinion on this question. It allowed the appeal on the ground that the termination of contract was a violation of the principles of natural justice.56

In Central Inland Water Transport Corporation Ltd. v. Brajo Nath Ganguly,57 [1986 DB] the Court scoffed at the mutuality clause due to the grossly unequal position of the employers and of the employees. In this case, there was a provision stipulating that the service of an employer was subject to termination on ‘three months notice’ in writing on either side or paying three months basic wages in lieu of such notice. The Court struck down this provision as it was arbitrary and discriminatory, as provided in Article 14 of the Constitution. It was also considered as being void under Section 23 of the Indian Contract Act as being unrecognizable and opposed to public policy.58

The Division Bench in O.P. Bhandari v. Indian Tourism Development Corporation59 [1987 DB] struck down a similar rule as was found in Central Inland Water Transport Corporation case. The Court strongly felt that such a clause should be banished completely from the employer – employee relationship. The net result of these dicta is that such a stipulation in the contract of employment providing for the termination of service by giving notice for the specified period of time or paying wages in lieu of the notice is not valid. This verdict, a priori, would apply to the non-renewal of the contract of employment as well.60

56 Ibid  
57 Central Inland Water Transport Corporation Ltd v. Brajonath Ganguly in Labour IC, 1986, p.1312  
58 Ibid  
59 O.P.Bhandari v. Indian Tourism Development Corporation, Lab.IC, IC, 1987, p.25  
60 Ibid
In State of Rajasthan v. Ramesh Lal Gahlot\textsuperscript{61} [1996 DB] the Apex Court affirmed its earlier decision that once an appointment is for a fixed period, Section 25F does not apply as it is covered by clause (bb) of Section 2(oo). In this case, it was further held that unless this Section was misused or vitiated by its nullified exercise, it cannot be held that the termination is illegal. The facts of the case are that the respondent was appointed for a period of three months or till the regularly selected candidates assumed office. His services were terminated after nearly 10 months. He challenged this termination in the High Court. The High Court held that since he had completed service for more than 240 days, the termination was in violation of section 25F and therefore ordered for the fresh appointment of the respondent. Though the management did not challenge the order of the single judge, the workman preferred an appeal against the latter part of the order that is order for fresh appointment. The Court further directed that the respondent would continue in service till the regular incumbent assumed office. It also held that the division bench of the High Court was incorrect in directing payment of back wages.\textsuperscript{62}

In M/s. Haryana State F.C.C.W. Stores Ltd. v. Ram Nivas\textsuperscript{63} [2002 DB] workmen were appointed on contract basis on payment of daily wages. The appointment was till “the stock of grain stored in the open area at Mandi was disposed off or for a period of three months.” The management terminated their services after the stock lying in the open area was cleared. The workmen raised an industrial dispute in the labour court, but their plea was turned down. On appeal, the High Court set aside the order and directed reinstatement with full back wages. Aggrieved by this order, the employer appealed to the Supreme Court, which held that the termination of service did not amount to retrenchment as it fell under clause (bb) of Section 2(oo) and therefore the workmen were not entitled to any relief.\textsuperscript{64} However, in Executive Engineer, CPWD, Indore v. Madhukar Purushottam Kolharkar,\textsuperscript{65} [2002 DB] the Supreme Court held that in the absence of any fixed term mentioned in the letter of appointment, the workman would not be covered under Section 2(oo) (bb). In this case, the workman was appointed purely on a temporary basis, on daily wages. In the order of

\textsuperscript{61} State of Rajasthan v. Ramesh Lal Gahlot, SC 1996, (1), P.595
\textsuperscript{62} Ibid
\textsuperscript{63} M/s. Haryana State F.C.C.W. Stores Ltd. v. Ram Nivas in Lab IC, 2002, p.2624
\textsuperscript{64} Ibid
\textsuperscript{65} Executive Engineer (PWD, Indore v. Madhukar Purushottam Kolharkar in SCC 2002 (9), p.622
appointment, it was mentioned that his services could be terminated at any time without giving notice to him. When the management terminated his service, it was challenged by the workman.66

The concept ‘retrenchment’ received a wider interpretation in S.M. Nilajkar and others v. Telecom District Manager, Karnataka.67 [2003 DB] Worker’s appointment for particular projects was discussed in this landmark case. The facts of the case are that the Telecom department employed certain casual labour on a project for extension of Telecom facilities. Their services were utilised for digging, laying of coaxial cables and other sundry works. The project was completed sometime in 1986 – 87 and the workmen were terminated sometime in 1987. After a lapse of few years, they raised an industrial dispute and the same was referred to the industrial tribunal. The tribunal directed reinstatement of all the workmen with the benefit of continuity of service and with 50% back wages. Aggrieved by this order, the employer challenged it in the High Court. When the case came up in the High Court, a single judge held that the workers were not project employees as the appointment was not for any particular project. Hence, they would not be governed by sub-clause (bb) of 2(oo). An appeal against the order was taken to the Supreme Court. The question to be decided by the Supreme Court was whether the workmen recruited for discharging temporary job under a project can insist on compliance under Section 25F of the Act, if services were dispensed with on the project coming to an end. The Court observed that “it is also well settled that Parliament has employed the expression ‘the termination by the employer of the service of a workman for any reason whatsoever’, while defining the term ‘retrenchment’ which is suggestive of the legislative intent to assign the term ‘retrenchment’ as meaning wider than what it is understood to have in common parlance.”68

The Supreme Court then referred to the four exceptions of Section 2(oo) and said that in order to be excluded from retrenchment, the termination of service must fall within one of the four exempted categories. Termination of service which does not fall within these categories would fall within the meaning of retrenchment. Applying these

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66 Ibid
67 S.M.Nilajkar and others v. Telecom District Manager, Karnataka, SCC 2003, (4) p.27
68 Ibid

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principles the Court pointed out that it may not amount to retrenchment if, (i) the workman was employed in a project or scheme of temporary duration, (ii) the employment was on a contract and not as a daily wager simpliciter, which provided \textit{inter alia}, that the employment shall come to an end on the expiry of the scheme or project; (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of contract; and (iv) the workman was apprised or made aware of the above said terms by the employer at the commencement of employment.\footnote{Ibid}

\textbf{Surendra Kumar Sharma v. Vikas Adhikari} [2003 DB] is another case related to project employment.\footnote{Surendra Kumar Sharma v. Vikas Adhikari, LLR, 2003, p.625} Relying on \textit{Nilajkar} case, the Supreme Court ruled that those employed under a scheme could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularization is to frustrate the scheme itself. “No court can be a party to such an exercise. It is wrong to approach the court with the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing with equal pay for equal work.”\footnote{Ibid}

In this case, a junior engineer was employed on daily wages for a period of 100 days in a scheme known as ‘Rural Employment Programme’. On completion of 100 days, he was terminated. But the workman was offered another scheme known as ‘Jeevan Dhara’, which was extended from time to time. However, the last order of appointment was made for a period of seven days. Along with other workmen, the junior engineer filed writ petition in the High Court and the High Court held that as the posts have been abolished, the question of their regularization did not arise. Aggrieved by the order, workers filed writ appeal, which was also dismissed by the division bench. The court observed that, “if the workmen employed for fulfilling the need of such passing phase projects or schemes were to become a liability on the employer-state by too liberal an interpretation of the labour laws in favour of the workmen, then the same may well act as a disincentive to the state for flouting such schemes and the state may opt to keep away from initiating such schemes even in times of dire need,
because they may feel that by opening the gates of welfare, it would be letting in onerous obligations entailed upon it by extended application of the labour laws.”72 Thereupon, an appeal was preferred in the Supreme Court.

The Apex Court also concurred with the views held by the High Court and also cited the case of Rajendra v. State of Rajasthan73 wherein it was held that when posts are temporarily created for fulfilling the needs of a particular project or scheme, limited in its duration and when they come to an end because the need for that project is over either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the services of employees may be terminated. It was also observed that workers who were employed as daily wages in such schemes knew pretty well that their employment was co-terminus with the scheme.

In Regional Manager, SBI v. Raja Ram,74[2004 DB] important legal principles emerged from out of the judicial process. In this case it was held that “short term appointments per se are not illegal or unfair labour practice, but can become one when an employee is appointed temporarily of successive fixed terms with artificial breaks in between so as to deny the employee the right to claim permanent appointment.”75

In this case, an employee was appointed as a messenger on a fixed term of 91 days. On termination, he raised an industrial dispute and was referred to the Labour Court. He contented that (i) the management had been engaging staff earlier to him on similar basis on fixed term appointments, which amounted to unfair labour practice; (ii) his services were not continued beyond 91 days because had he continued for another 3 months, he would have acquired the status of a permanent employee after working for 6 months in that post.

The Labour Court held that termination was unjustified and ordered for reinstatement with full back wages since the act of the management in terminating the worker was an unfair labour practice. The High Court also concurred with the view of

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72 Ibid
73 Ibid
74 Regional Manager, SBI v. Raja Ram in SCC, 2004 (8), p.164
75 Ibid
the labour court, but in appeal the Supreme Court held that it did not amount to unfair labour practice within the provisions of Section 2(ra), read with clause 10 of the V Schedule of the Act, which deals with unfair labour practice.

**ONUS OF PROOF**

Worker’s right to work is a statutory right subject to certain conditions. However as per the scheme of the Industrial Dispute Act, employer has the right to retrench the workmen by following certain prescribed conditions. To retrench workmen, persons should have been employed by the employer as a workman as defined in Section 2(s) and such workman has been in service for a continuous period of not less than one year as explained in Section 25B. However, the Supreme Court time and again held that if a workman worked for 240 days in the preceding 12 calendar months before the date of retrenchment he is deemed to be in service for a continuous period of one year. The onus of proof of continuous service for a period of one year is a crux for the eligibility to claim compensation under retrenchment. The Apex Court has repeatedly emphasized that the ‘burden of proof’ is on the workman to show that he worked for 240 days in the preceding 12 calendar months prior to the alleged retrenchment.

In **Baba Saheb Deve Gonda Palit** case76 it was held by Supreme Court that in case of long term absence “intention to abandon is normally not to be easily attributed to an employee. In the end, everything would ultimately depend on the established facts and circumstances of each case. It is just not possible to lay down a rigid proposition of universal application.”77

The issue of ‘onus of proof’ was elaborately discussed in **Municipal Corporation, Faridabad v. Sri Nivas.**78 In this case, the workman alleged that he worked for 240 days in a year and his retrenchment was illegal for non-compliance of the provisions and the employer contended that the worker worked only for 136 days during the preceding 12 months. Based on these claims, the tribunal came to the conclusion that the workman worked only for 184 days. The workman challenged the

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76 Baba Saheb Deve Gonda Palit, op. cit.
77 Ibid
78 Municipal corporation, Faridabad v. Sri Nivas
award in the High Court which held that the documents being in the possession of the management, it was not necessary for the workman to call upon the management to produce documents. But in case of non-production of documents an adverse inference could be drawn against the management and therefore the High Court presumed that the workman had worked for 240 days. On appeal to the Supreme Court, it was held that although the provisions of Evidence Act, 1872, per se, are not applicable to industrial adjudication, the general principles of it are however applicable. It was imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the workman to show that he had worked for 240 days in the preceding 12 calendar months prior to his alleged retrenchment.

Making an observation of this verdict of the Supreme Court, Bhushan Tilak Kaul says, “it is common knowledge...that no appointment letters are issued by the employers to daily wagers or casual or badli workers even when one is asked for. Therefore, it is too much to expect poor worker to produce his appointment letter to prove the terms and conditions of his employment or to produce a copy of his muster roll to prove that he has put in 240 days of service to be eligible to claim retrenchment compensation as was required by the Court. The Court ought to have adopted a pragmatic view in the matter by making it incumbent on the employer as to a rule to produce muster roll before the industrial adjudicator for its perusal in every case where any evidence is produced by the worker, establishing employer – employee relationship, failing which it would be in the realm of the industrial adjudicator to draw an adverse inference against the management in such cases.79

In S. M. Nilajkar’s case the Supreme Court held that in case of employment of employees in projects, it is for the employer to prove that the employee was employed in a project so as to attract the applicability of sub-clause(bb). In this case the employer had failed to do the same. All that the employer was able to prove was that the workers were engaged as casual workers or daily wages in a project. Therefore, for want of proof attracting applicability of sub-clause (bb), the Supreme Court held that the termination of services of the appellants amounted to retrenchment. Regarding the delay in raising the dispute, it would be fatal if the delay resulted in material evidence

relevant to adjudication being lost and not available. But it was not so in this case.\textsuperscript{80} In \textit{Nicks (India) Tools v. Ram Surat},\textsuperscript{81} the Supreme Court held that in case of a worker leaving the institution voluntarily after serving for a number of years, the burden of proof was on the management to prove that he has left the services of the management voluntarily.

3) TERMINATIONS ON THE GROUND OF CONTINUED ILL-HEALTH

In \textit{Anand Bihari v. RSRT Corporation, Jaipur},\textsuperscript{82} [1991 DB] clause (c) of sub-section 2(oo) was interpreted. This clause excludes ‘termination of the service of a workman on the ground of continued ill-health’ from the purview of retrenchment. The Supreme Court held that where the services of the drivers in the State Transport Corporation were terminated on the grounds that they had developed defective eyesight and lacked the required vision for driving heavy motor vehicles like buses for which work the corporation engaged them, such termination would be covered by sub-clause (c) of clause 2 (oo) and hence such termination would not amount to retrenchment. In this case, the Court interpreted the word ‘ill-health’ thus: “ill-health included any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning. The phrase ‘ill-health’ must also be looked at from the point of the consumers of the concerned products and services.”\textsuperscript{83}

The Supreme Court further pointed out that this disability of the workers not only affects the system they are working in, but also the consumers at large. This case related to the provision of transport services to the public and disability in functioning will endanger the health, life and property of the consumer. Therefore this can also be constructed as ill-health and the purpose of production for which the service of workman is engaged will be frustrated. The Supreme Court’s interpretation of the provisions was hailed as being realistic and not based on technicalities. Therefore the phrase “ill-health” included cases of drivers of buses who have developed defective or sub-normal vision, which hurt their work as drivers. The Court held that ‘termination of

\textsuperscript{80} Ibid
\textsuperscript{81} Nicks (India) Tools v. Ram Surat in SCC, 2004 (8), p.222
\textsuperscript{82} Anand Bihari v. RSRT Corporation, Jaipur, Lab &. I,G p.494
\textsuperscript{83} Ibid
their services’ did not amount to retrenchment and so they were not entitled to retrenchment compensation. At the same time, the court pointed out that the termination of services of these drivers was not proper as they were above 40 years and have put in long years of service. Though the Corporation was not legally obliged to provide them alternate employment, there was a moral obligation on its part to do so, as the impairment of their vision was caused due to the occupational hazards. Rain or shine, the drivers have to drive their vehicles and in that process, they are constantly exposed to the glaring and blazing sunlight and also the beaming and blinding lights of the vehicles on the opposite direction. Hence, the drivers with such disabilities cannot be treated like other workmen. It cannot be justified. The Court observed that injustice, inequity and discrimination, which was writ large in such cases was indefensible. 

The issue whether termination of service on the ground of medical unfitness amounted to retrenchment was decided in *Hindal Co. Industries Limited v. Labour Court, Varanasi*. In this case, Section 2(s) of the U.P. Industrial Disputes Act, 1947, which also defined retrenchment was taken into consideration. The employee was a driver of a motor vehicle and his service was terminated on the basis of medical opinion that his eyesight was found defective. The order of termination was challenged, but was rejected. In appeal, the High Court accepted the finding of the fact that the employee suffered from the disability of medical unfitness to function as a driver, but placed reliance on the definition of retrenchment contained in Section 2(s) of the U.P. Industrial Disputes Act, 1947, In so doing, the High Court held that such termination amounted to retrenchment and granted relief of reinstatement with full wages.

An appeal was filed in the Supreme Court against this order. The counsel for respondent did not dispute the fact that the provisions of the Central Industrial Disputes Act were overlooked by the High Court and the case was decided according to the provisions of the State law. Therefore, the definition of retrenchment contained in the Central Act was to be the basis for deciding the controversy in the present case. The definition of retrenchment in Section 2(oo) of the Industrial Disputes Act unlike

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84 Ibid
Section 2(s) of the U.P. Industrial Disputes Act, 1947, takes out termination of service on the ground of continued ill-health from the definition of retrenchment. Therefore, the Apex Court said, it could not be disputed that the unfitness of the respondent on medical ground to function as a driver on account of failing eyesight could not be treated as retrenchment.86

**REASONABLE RESTRICTIONS**

Section 25N was introduced by way of amendment, in the Industrial Disputes Act, in the year 1984. It introduced certain condition precedents to be followed by the employers before the retrenchment of the workmen. It was challenged in the Supreme Court. A Constitution Bench of the Court in *Workmen v. Meenakshi Mills Ltd.* [1992 CB] upheld the constitutional validity of Section 25N of the Act, as originally enacted, holding the restrictions envisaged therein on the right of the employer to retrench his workmen as reasonable, under Article 19(6) of the Constitution. Before this judgment, there were conflicting opinions about the validity of Section 25N as held by various High Courts. One set of High Courts like Andhra Pradesh High Court, upheld its validity, whereas the Madras High Court and the Rajasthan High Court, held Section 25N as invalid. Therefore the Supreme Court thought it fit to decide the constitutionality of Section 25N in this case.

There were two main questions that came up for consideration: (i) Is the right to retrench his workmen, an integral part of the right of the employer to carry on his business guaranteed under Article 19(1) (g) of the Constitution? (ii) If so, are the restrictions imposed by Section 25N on the said right of the employer to retrench the workmen saved under clause (6) of Article 19 as reasonable restrictions in public interest? In this case, the ratio of *Excel Wear* [1978 DB] and *Tikaram* [1960 DB] were discussed. The Court proceeded on the assumption that the right to retrench the workmen is an integral part of the fundamental right of the employer and held as follows: “In view of the fact that some of the grounds for challenging the validity of Section 25N on the ground of violation of Article 19 can also be made the basis for challenging the ground of violation of Article 14.... We are not inclined to rule out the

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86 Ibid
challenge to the validity of Section 25N on the ground that a company incorporated under the Company’s Act, being not a citizen, cannot invoke the fundamental right under Article 19 and shareholders of the companies seeking to challenge the validity of Section 25N in this group of cases cannot comply of infringement of their fundamental right under Article 19. “87

The Court upheld the validity of Section 25N since it satisfies the reasonableness of the restrictions. At that time the Court examined the object behind these restrictions. They were done primarily to introduce prior scrutiny of reasons of retrenchment, to prevent avoidable hardship to the employees resulting from retrenchment by protecting the existing employment. These steps also check the growth of unemployment. These restrictions on the employers are intended to maintain the smooth and harmonious industrial atmosphere. It also attempts to give effect to the directive principles of the Constitution and therefore, it can be presumed to be a reasonable restriction in public interest.

The Apex Court, in this case, opined that the powers to grant or refuse permission for retrenchment conferred under sub-section 2, has to be exercised on an objective consideration of the relevant facts after affording an opportunity to the parties having an interest in the matters and the reasons have to be recorded in the order. Further, this power is based on guided one, since it is to be passed based on objective consideration of relevant facts and after affording an opportunity of being heard to the concerned parties. The Court also held that the remedy of judicial review under Article 226 is an adequate protection against arbitrary action in the matter of exercise of powers by the appropriate Government or the authority under this Section.88

Article 21 was also invoked to protect the interests of the workers in Mayurakshi Cotton Mills v. Panchra Mayurakshi Cotton Mills Employees Union89 [2000 DB]. In this case, the mills of appellant were purchased by the State of West Bengal in the course of liquidation proceedings. Once the mills were opened again employment was provided to most of the workmen who were working under the

87 Ibid
88 Ibid, pp.354-355
previous employer. The new management found it difficult to manage the mills financially. After sometime, a notice of lock out was issued when things deteriorated. The validity of lock out was challenged by the workers. However, during the pendency of the writ petition, a memorandum of settlement was arrived at between the workmen and the employer. Consequently, the lock-out was withdrawn and this fact was brought to the notice of the High Court. Incidentally the validity of the settlement between the employer and employee was also challenged. The single judge felt that the nature of the dispute was of the character of industrial dispute and disposed the matter. On appeal, the division bench of the court went on to examine the provisions of Sections 25F and 25G. It concluded that termination of service of workmen who had been in service for more than one year was in contravention of Sections 25F and 25G and hence this act was illegal. It proceeded on to hold that the livelihood of the workman was involved, which is part of Article 21 of the Constitution. Hence they could not have been compelled to enter into the said settlement of termination of service and accept temporary service for a period of 59 days, which is arbitrary and unlawful. The Court allowed the appeal directing the Company not to compel the workmen to enter into agreement in contravention of the law and not to terminate their services on the ground and accordingly treat them as employees under the employment of the company. The Company appealed to the Supreme Court against this order of the High Court.90

The fairness or unfairness, validity or invalidity of a settlement, the Supreme Court held, was difficult to examine in the absence of factual background. If the mills were really starving financially, retrenchment in some form or the other has to take place. In such an eventuality, it was fair to work out a solution by negotiating between management and the workmen. A management in financial doldrums has choice either to close the mill or to work with lesser number of workmen by way of retrenchment. In this factual situation, it is not easy to state whether such a settlement is fair or it amounts to an act of victimization. Commenting on the difficulty of deciding such issues, Bhushan Tilak Kaul says that, “sometimes hard choices have to be made and sacrifices are expected to be made by either side. These aspects have to be kept in mind while deciding the question of fairness or otherwise of a settlement.”91

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90 Ibid
The Supreme Court further held that it could not in the abstract state that a High Court could have come to the conclusion one way or the other and particularly based on the theoretical approach to Sections 25F and 25G or Article 21 of the Constitution. In these circumstances, the Supreme Court set aside the order of the division bench and restored the order of the single judge with the modification that a reference shall be made in respect of all matters arising in this case as to the employment, non-employment, validity of settlement and all other allied issues and relief to be granted to the parties, to an appropriate industrial tribunal for its adjudication.92

REINSTATEMENT AND BACK WAGES

In industrial jurisprudence, it is recognized that workers who are in continuous employment for a period of one year are entitled to work. It is only a regulated statutory right. But employers have a fundamental right to pursue their business profitably. To harmonise these conflicting interests of employers and workmen, industrial laws provide the concept of retrenchment compensation. Section 2(oo) defines retrenchment and Section 25F provides condition precedent to be followed before the retrenchment of the workmen. Therefore termination of workmen in violation of the provisions of law is illegal. In case of illegal termination workers have a remedial right of reinstatement and back wages during the period of illegal termination. These are the concepts that received wide interpretation by the Supreme Court.

In Sundara Money’s case, Malhotra felt that there was more thunder and fury than rain and though reinstatement of the employer was ordered by the Court, it did not give him the benefit of back-wages. Even the other benefits which a person on reinstatement is entitled to get was not given to him. Hence, Malhotra concluded that, “the approach of the Court has been more populous than judicial or jurisprudential. It has a glaring case of unfair labour practice, which was a sufficient ground for invalidating the termination of service of the workman. It was also a case where

92 Ibid and see also Mayurakshi Cotton Mills, op.cit.
reinstatement should essentially have been followed by wages and all other attendant benefits.”

The illegal termination of a workman was questioned by the Supreme Court in *Sharad Hari Deshpande v. Indian Security Press* [1988 DB]. The Court held that once the service of a workman was illegally terminated, it amounted to retrenchment. This was also held to be illegal as the procedure given under Section 25F was not followed and hence the Court ordered that the workman be granted the relief of reinstatement with full back wages and continuity of service.

In *Anand Bihari’s* case, the Supreme Court found the termination of the service of a workman on the ground of continued ill-health as valid and does not amount to retrenchment. But a driver who worked for 40 years and lost the required vision due to occupational hazards cannot be treated like other workman. Therefore the Supreme Court proposed a scheme for the purpose of giving remedy to such workers by directing the management to give employment to such workers as helpers. In the light of this interpretation, the Court held that these drivers were entitled to reinstatement with back wages as helpers. Not only that, they were also entitled to retrenchment benefits as drivers, as if they had retired from service as drivers from the date of employment as helpers. The management was pulled up for treating this case on par with the case of drivers whose services were terminated.

Summing up the approach of the Court in *Anand Bihari* case, Bhushan Tilak Kaul says that it is a case of judicial activism. The court has risen to meet the needs of the working class people, who contracted incapacities due to occupational hazards and where no legislative provisions exist, to provide succor to these suffering employers during that transition stage where they lose jobs and scout for jobs. Sensing the urgent need to take care of such classes of workers, a judicial scheme was formulated by the Court.

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95 Ibid
96 Anand Bihari v. RSRT Corporation, Jaipur, op.cit, p.494
In Rolson John's case the Supreme Court held the termination of the workman who overstayed leave beyond 10 days without explanation as retrenchment. But, instead of granting normal relief of reinstatement with back wages, it directed the management to pay to the workman Rs.50,000 in lieu of reinstatement.

In Anil Kumar v. Presiding Officer, Labour Court, Chandigarh, [2000 DB] the Court adopted an equitable via media in the matter and directed the management to pay him 50% of the back wages from the date of his termination till the date when he was actually reinstated. In this case, the workman challenged the termination order issued by the management in the Central Administrative Tribunal. After five years, the application was dismissed on the ground that it lacked the jurisdiction. The workman then raised an industrial dispute and the matter was referred to the Labour Court. The Labour Court set aside the order of termination as it was in breach of Section 25F. It however awarded reinstatement but denied back wages on the ground that he had raised an industrial dispute after a period of more than five years. The denial of back wages was challenged in the High Court, but the High Court upheld the award of the Labour Court. Finally, it came to the Supreme Court and the workman submitted that he had promptly approached the Central Administrative Tribunal and so it could not be said that there was a delay on his part in raising an industrial dispute. The Supreme Court while agreeing with his submission held that, “since the management was also not responsible for this delay, it could not be burdened with full back wages and therefore, payment of 50% of back wages was proper”.

S.M.Nilajkar case is related to termination of workmen in particular projects. The Supreme Court held that the termination of workmen amounts to retrenchment. Therefore, the Supreme Court held that the workmen must be reinstated but without back wages. It is pertinent to note that the Supreme Court made it clear that all such similarly situated cases in the subordinate court or adjudicative machinery, “shall be heard and decided in accordance with the law laid down in this case.”

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98 Anil Kumar v. Presiding Officer, Labour Court, Chandigarh in SCC, 2000 (9), p.129
99 Ibid
100 S.M.Nilajkar and others v. Telecom District Manager, Karnataka, op.cit, p.27
101 Ibid
The Supreme Court adopted a new approach of back wages in Allahabad Jal Sansthan v. Daya Shankar Roy. In this case, the question that came up for decision was whether the respondent who had been working on temporary basis and whose services were terminated in violation of mandatory provisions was entitled to be granted full back wages along with reinstatement. “The Court agreed that earlier in the event of an order of retrenchment, or dismissal being set aside, reinstatement with full back wages was the usual relief. But with passage of time, there is a perceptible change in judicial approach in such cases. It is now being realized by the courts that industry cannot be compelled to pay the workman for a period during which he apparently contributed little or nothing at all or for a period that was spent unproductively. Further, it has also come to be realized that by granting reinstatement, the workman is being compelled to go back to a situation that prevailed many years ago when he was retrenched or dismissed. This new approach in its opinion is a pragmatic approach to problems dogging industrial relations. However, no one solution can be offered but the golden mean can be arrived at. No law can be laid down as to in which cases, and under what circumstances full back wages can be granted or denied.

It is found from the above exploration and analysis of cases that the Supreme Court of India was liberal in interpreting the clause ‘termination of the service of the workman as a result of the non-renewal of the contract of the employment’. In its interpretation it invokes the principle of natural justice and Articles 14 and 21 of the Constitution. It also invokes the Directive Principles of the Constitution to protect and advance the interest of the workers. Similarly, it is held that any arbitrary terms and conditions of service contract dealing with termination of the service of the workman would be against Section 23 of the Indian Contract Act. With reference to termination due to ill-health of workers in hazardous occupation, the Court held it as valid and it does not amount to retrenchment. But the Court ordered for reappointment in some other suitable job taking into consideration the length of service and their contribution to the industry. It is also found that the Court upheld the constitutionality of the conditions imposed on the employers by way of amendments to the provisions of the Industrial Disputes Act 1947. Such conditions are held to be reasonable restrictions and

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103 Ibid
therefore valid. However, since the onset of liberalisation, privatisation and globalization it is found that there is a changing trend in the approach of the Supreme Court. Earlier it attempted to protect the interests of workers by holding that the constitutional provisions will prevail over the exemption clauses of retrenchment. Similarly, it is also held that any arbitrary terms and conditions of service contract dealing with the termination of the service of the workman would be against Section 23 of the Indian Contract Act. But now the Court began to view them strictly and differently. This changing trend is more apparent in cases of reinstatement and back wages. Often the Court has ordered a consolidated amount in lieu of reinstatement. At times reinstatement is ordered without back wages or with 50% of back wages. These are against the interest of the workers and quite different from its earlier liberal approach.

TRANSFER, RELOCATION AND COMPENSATION

Workers right to work is also affected by transfer of industrial undertaking from one owner to another and from one place to another place. In this part, cases related to transfer of industrial establishment and their relocation are explored and analysed. From such analysis the Supreme Court’s approach to the interests of workers working in non-hazardous industries is formulated.

In Gurmail Singh v. State of Punjab,\(^{104}\) [1991 DB] an important question that came up for consideration of the Supreme Court was whether there can be situations in which the Court or industrial adjudicator should in the interest of justice, fair play and industrial peace, hold the employee entitled to continuity with the successor, without being compelled to be satisfied with compensation from the predecessor. In this case, the State of Punjab took a decision to transfer all the tube wells in the irrigation branch of the Public Works Department to the State Tube Well Corporation, a company owned by the State of Punjab. In consequence of the decision, the State Government terminated the services of the employees in the Tube Well Section of the irrigation department after complying with Section 25F. The notification of transfer was challenged on the ground that the notification was *mala fide* because the only object of

transfer being to frustrate the claims of the workers. Further, the State Corporation being an instrumentality of the State, workers are entitled to be protected with continuity of service and under the same terms and conditions.

The Supreme Court held that the principle of compensation has application only in genuine transfer of undertaking. It has no application in the case of transfer which is fictitious or benami because in such transfer there has been no change of ownership and similarly, in case of succession where the management continues to be in the same hand. Further, where the transferor and transferee is a state, it has no application. In this case, it appeared that the State Government had acted arbitrarily towards the workers. It had abridged the rights of workers by purporting to transfer only the tube wells and retrenched the worker working in the tube wells and service as a consequence. Therefore, the Court viewed seriously the conduct of the Government as it deprived the workers of substantial benefits, which had accrued to them as a result of long service with the Government. This conduct of the Government was held to be grossly unfair and inequitable. The Supreme Court directed the corporation to ensure that none of the workers were retrenched as surplus on account of closure of tube wells or other like reason until they retire or leave the service of the corporation voluntarily for any reason. The Court directed that the workers will have for the purpose of computation of their salary, length of service and retirement benefits and the advantage of counting the period of their service with the State Government.105

In NTCC (South Maharashtra) Ltd. v. Rashtriya Mill Mazdoor Sangh,106 [1993 DB] an important question arose in which the workmen ceased to be workmen after the management of the mills was taken over by the NTC under an Act. The Supreme Court held that the workmen continued to be workmen even after the taking over of the mill by NTC. In this case, workmen of textile mills in Bombay went on strike, which was declared illegal. The above Act was introduced in consequence to that, leading to the management of 13 mills being taken over by NTC. On the date of the strike, 54,338 employees were working in all these mills. But, on the date of take over, there were only 40,039 employees left. The NTC admitted that it had paid

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105 Ibid
gratuity to 10,002 employees, who had voluntarily resigned at the time of take over. When the mills started working, it took over only 20,394 workmen leaving 9,643 without employment, from among the 30,000 and odd employees left.

In this background, the Supreme Court observed that there is nothing to indicate in Section 25FF that puts an end to the contract of employment on the transfer of the ownership of the undertaking to the new employer. It only provides for compensation. Whether the transfer results in the termination of contract of employment or not will depend upon either the terms of agreement of transfer or on the provisions of the law which effect the transfer. There are three conditions envisaged in Section 25FF under which the workmen become ineligible to the notice and deemed retrenchment compensation. In spite of that, it was abundantly clear that neither Section 25FF nor the transfer of the undertaking puts an end to the contract of employment. Therefore, it implies continuation of employment and compensation to be provided only if the transfer results in the termination of the contract of employment. In this case, the Supreme Court held that one of the principle objects of the Act was to protect the interest of the workmen, who were already employed in the textile mills as the Act nowhere referred to the termination of the contract of service of workmen.\textsuperscript{107}

The true scope of Section 25FF was explained in \textit{Bholonath Mukerji’s case}\textsuperscript{108} [1997 DB]. Section 25FF stipulates that the liability to pay the deemed retrenchment compensation is on the transferor except in certain circumstances. They are: (a) the service of the workman has not been interrupted by such transfer; (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and (c) the new employer is under the terms of such transfer legally liable to pay to the workman in the event of his retrenchment.

In this case, Asanson Electricity Co., Ltd. was a licensee under the Indian Electricity Act, 1910. It was engaged in the business of generation and distribution of electricity. The Government of West Bengal revoked the licensee of the Company and

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\item \textsuperscript{107} Ibid
\item \textsuperscript{108} Bholonath Mukharji v. Government of West Bengal in SCC 1997 (1), p.562
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\end{footnotesize}
directed it to sell its undertaking to the West Bengal State Electricity Board. This decision was taken because the company had gone into liquidation. The Board took over the Company and paid to the official liquidator purchase price, which was more than adequate for making full payment of deemed retrenchment compensation to the employees. After taking over, the company allowed the employees to continue their services. However, sometime later, the Board introduced new terms and conditions of service. Such conditions for all practical purposes amounted to fresh appointments which treated the employees as fresh appointees. The employees challenged it in the High Court and the single judge of the High Court held that the employees were entitled to continue in service. It also directed that retrenchment benefits be given to those who were treated as retrenched. On appeal to the division bench, it was held that there could be no continuity of service after taking over the company. It was also held that the service of the employees were terminated by operation of Section 25FF, and they were entitled to deemed retrenchment benefit.

An appeal against the order was taken to the Supreme Court. After examining the provisions of the Electricity Act, 1910, the Court came to the conclusion that the aim of Section 7B of the Electricity Act is to protect the dues on account of salary, wages, bonus, gratuity, retrenchment compensation, contribution to general Provident Funds, etc., as a debt due to employees. Such debt shall attach to the purchase money paid by the Board for the undertaking of the Company. But under Section 7 of the Electricity Act, the undertaking was to vest in the board free from any debt, mortgage or similar obligation. The net effect of these two provisions was that if the purchase price paid by the Board was sufficient to pay the claim of the workmen, then the dues of the workmen should be paid out of the purchase money. But in this case it was not so. Therefore, the Board did not have any liability to pay to the workmen any money on account of the deemed retrenchment compensation. It is noticed that the employees had no right to claim any compensation from the Board, nor did they have any right to claim continuance of employment on the same terms and conditions. The Supreme Court held the appeal court was right in holding that the employees were entitled to retrenchment compensation under the provisions of Section 25FF. At the same time, it pointed out that the appeal court erred when it held that the Board even after payment of the purchase price to the transferee company, which was sufficient to meet the
liabilities of the employees, was held liable to pay retrenchment compensation also. So it was held that the Board is not liable to pay retrenchment compensation as it had paid the purchase price.\textsuperscript{109}

Property jurisprudence implies that right to property is the right in rem and the owner of the property has every right to alienate his property. But in industrial jurisprudence as revealed from the foregoing analysis, the employer of the industrial establishment has a fundamental right to run an industry or transfer the ownership to any other person subject to reasonable restrictions. The transferor of the industry must pay the deemed compensation to the workers who would be terminated due to the transfer of the industry. However, if the conditions of the workers are not altered and if the workers are allowed to continue to work in the same industry then the transferor is not bound to pay compensation to the workers. It is found from the analysis that Supreme Court preferred to continue the workers to work in the industry. If their continuity is not possible then the Court ordered the transferor to pay the deemed retrenchment compensation.

**CLOSURE AND COMPENSATION**

Closure is a pivotal aspect of industrial jurisprudence. Closure of an industry put an end to the employer workmen relationship. However, the Industrial Disputes Act has imposed conditions precedents that are to be followed by the employer before the closure of the industry. The approach of the Supreme Court to these provisions is herein analysed.

**National Textiles Workers Union v. P.R.Ramakrishnan, [1983 DB]** is a leading case relating to winding up of a company and the right to work of workers.\textsuperscript{110} This decision has been hailed as a landmark one because “in a road undistinguished by any sign-post, even a scare crow has to be hailed as a landmark.”\textsuperscript{111} It was pointed out that this decision would turn out to be a ‘monumental landmark than a scare crow if future justices handle its potential with a becoming socialist sensitivity.’

\textsuperscript{109} Ibid
\textsuperscript{110} Upendra Baxi, “Pre-Marxist Socialism and the Supreme Court of India,” SCC 1983 (4), P.4
\textsuperscript{111} Ibid
In this case, it was held that a winding up order would involve not merely a change of management or paying of creditors and shareholders, but also a disintegration of the enterprises so that even workers have to be thrown out. In such case, workers also become an interested party and they should not only be given an opportunity to have their say, but their stand point must be taken into account while considering the winding up of the company. This decision was significant because it granted locus to labour in winding up proceedings having bearing upon the future of the workers, their right to work and the right to earn their livelihood.112

In **Workers of Rohtas Industries**,113 [1987 DB] the Supreme Court while recognizing that the stock of goods was pledged with the bank, which had a priority of claim emphasized that, “these stocks were products of this industry before its closure and therefore the workers also contributed their labour and it is the result of their hard work that these stocks could be produced.” The Court also emphasized that the workers subsistence and living is also perhaps of paramount importance and has to rank with the highest priority and therefore the Court ordered that the workers who had not been paid their wages be paid out of the sale proceeds of the stocks hypothecated with the bank.114

In **Hindustan Steel Workers Construction Ltd. v. Hindustan Steel Works Construction Ltd. Employee’s Union**,115 [1995 DB] the Supreme Court decided the question whether the units of a company at Hyderabad were independent establishments or parts of a larger establishment of the company. In this case, the Supreme Court held that each of the works or construction projects undertaken by the employer is the single establishment. The mere fact that the management reserved to itself the liberty of transferring the employees from one place to another did not mean that all the units of the appellant constituted one single establishment. Therefore, it was held that the workmen of one unit had no right to demand absorption in another unit on completing their job.

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112 National Textiles Workers Union v. P.R. Ramakrishnan in AIR 1983, p.75
113 Workers of Rohtas Industries v. M/s. Rohtas Industries Ltd., SCC, 1987 (2) p.588
114 Ibid
115 Hindusthan Steel Workers Construction Ltd. v. Hindusthan Steel Works Construction Ltd. Employees Union in SCC, 1995 (3), p.474
In this case, the question was whether the employees, employed at Hyderabad had a right to employment at Vishakapatnam on closure of the company. The High Court held that the Company’s units at Vishakapatnam and Hyderabad were not separate establishments, but components of single establishment and hence ordered for absorption. On appeal, the Supreme Court considered it as a distinct unit and so the workers were not entitled for absorption.116

Wazir Glass Works Ltd. v. Maharashtra General Kamgarh Union [1996 DB] is a leading case that emphasized harmonious construction of various provisions in case of closure.117 In this case, the company made an application under Section 25 O (1) to the State Government for closure of a unit alleging that the said unit had become a heavy losing business for reasons beyond the control of the company. The State Government rejected the application. However, within one year the company made another application for review of the said order of the Government under Section 25 O (5). While the review petition was pending, the Government made a reference to the industrial tribunal under Section 25 O (5) read with Section 10(1) for adjudication of the case of closure.

The trade union challenged the legality and validity of the order of reference in the High Court. A single judge rejected the petition and on appeal, the division bench held that in terms of Section 25 O(4), the order passed by the Government for closure remains operative for one year from the date of such order, the power of review of the order automatically comes to an end. It was further held that the appropriate Government is not empowered to pass an order under Section 25 O (5) at any time during the pendency of the review application, even if one year has elapsed from the date of the order passed under this Section. The State Government disposed off the review application by making the said reference under Section 25 O (5), after the expiry of one year from the date of the order, rejecting the application for permission to close. The order of reference to the industrial tribunal was considered as invalid and having been passed without any jurisdiction.

116 Ibid
117 Wazir Glass Works Ltd. v. Maharashtra General Kamgarh Union in AIR 1996, p.1282
The Supreme Court on appeal rejected such construction of the provision of Section 25 O and opined that “it is quite clear from the various sub-sections of Section 25 O of the Act that whenever an employer made an application of an industrial unit to the appropriate Government, such application should be disposed off quickly and within 60 days from the making of application, decision has to be communicated to the employer. This has to be done to see that the employer does not suffer any hardship due to delay. Failure to communicate within the stipulated time would mean that permission is granted since the decision on the application for permission for closure is to be taken by the executive authority, namely the State Government and since no provision for statutory review before other authority has been provided, the legislature has incorporated the provision of review of the appropriate Government of its decision either on its own motion or on the basis of the application to be made by the aggrieved party. The legislature being aware of the fact that the decision entails serious consequences, affecting productivity, employment opportunities etc., has made the decision to keep it operative for one year only. After that period, if an employer still desires that the industrial unit should be closed, it may make a fresh application for permission indicating other factors emerging with the passage of time. Further, in order to evade any hardship to the aggrieved party on account of improper or incorrect decision made by the State Government that even during the period of one year when the decision remains operative, the review application may be made by the aggrieved party. The State Government too can initiate *suo moto* proceedings to review its decisions. If it passes any order on such review application, such order will supersede the initial order made on the application for permission to close.”\(^{118}\)

In view of the distinct facts and circumstances of the case, the Supreme Court directed the State Government to treat the application for review as a fresh application for closure and to treat the order of the reference to industrial tribunal on such fresh application so that the entire exercise before the tribunal were not rendered abortive.\(^{119}\)

\(^{118}\) Ibid

\(^{119}\) Ibid
**Dayakar Reddy v. M.D.Allwyn Auto Ltd**\(^\text{120}\) [2000 DB] is another leading case related to closure of a company that affects worker’s right. Hyderabad Allwyn Ltd. became a sick company. The company’s auto division was transferred to Alwyn Auto Ltd, a creation of the state government. The government to improve the condition of the company introduced a scheme and allotted a fund. Voltas Ltd. was allowed to occupy the premises on the basis of lease for a period of five years. However, there was no improvement and the loss was heavy. Therefore, it was decided to close down company. Worker’s union challenged the closure on the ground that the state could not act in dual capacity in as much as it was the state that suggested that the company should be closed down on the one side and it was the same state which granted permission to close down. The Court held that the government was justified in granting permission for the closure. However in order to give complete justice all the workmen were given benefits of scheme by extending the time of giving option.\(^\text{121}\)

**Inland Steam Navigation Workers Union v. Union of India,**\(^\text{122}\) [2001 DB] is another leading case that dealt with various aspects of closure. In this case, the Supreme Court held that, “In the eyes of law, when an undertaking is closed down on account of unaccountable circumstances beyond the control of the employer, every workman who had been in service for more than one year in that undertaking immediately before its closure is entitled to notice and compensation in accordance with Section 25F as if he had been retrenched. In case where an undertaking is closed down by reason of financial difficulties as was the position in the present case, it could not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer.”\(^\text{123}\)

The employer in this case, is a limited company in which about 8,000 employers were employed. Due to heavy losses, a large number of workers were retrenched in spite of the interest of the Government to prevent its liquidation. However, the company and the employees union arrived at a settlement. In spite of various efforts, the business could not be profitably carried out. Hence, petitions were filed to wind up the company in the High Court. Meanwhile, a scheme of arrangement

\(^{120}\) Dayakar Reddy v. M.D.Allwyn Auto Ltd. SCC (9) 2000, p.247

\(^{121}\) Ibid


\(^{123}\) Ibid
and a compromise between the company and the Central Inland Water Transport Corporation Ltd. was arrived at. At this stage, the trade union approached the High Court to protect the interest of the workmen. The single judge of the High Court sanctioned the scheme. Worker’s Union filed an appeal in the division bench where the appeal was dismissed, but upheld the sanctioning of the scheme. The scheme provided that all the properties and assets and some of the liabilities of the company would vest in the corporation. It agreed that the corporation would take over as many members of the staff and the workforce of the company as was possible under the circumstances based on its discretion. The employees who were not taken over by the Corporation would be paid by the Government of India as was agreed by it. Upon the approval of the scheme, the company would be closed and on payment of all creditors it would stand dissolved without winding up.

Questions which are to be answered are: (i) Was the settlement a closure of the company? (ii) Was the settlement capable of enforcement? (iii) Were workers entitled to prefer any claim? And, (iv) Could the transferor company or transferee corporation assert that there has been closure? In this case, only 5, 173 workers were issued fresh letters of appointment out of 8,000 employees and the rest were rendered without employment. The appropriate Government meanwhile issued an order of reference under Section 33 (c) (2) of the Industrial Disputes Act to compile the benefits covered by the settlement. This order of reference was successfully challenged in the High Court. Thereafter another order of reference was also referred to the labour court on various claims preferred by the Union, which was also challenged in the High Court. The division bench dismissed the appeal and thereafter the matter came to the Supreme Court. On appeal, it explained the scope of Section 33(c) (2) as limited and those powers are akin to the executive proceedings. The Court also made it clear that, “right to receive compensation under Section 25FF is available only against the owner of the undertaking that is the transferor and not against the transferee.” The Apex Court opined that it would have been proper for the Labour Court to examine the claims of each of these workmen under Section 25FFF and award compensation accordingly, which shall be paid by the Union of India.

124 Ibid
125 Ibid
A very important issue relating to constitutional validity of Section 25 O was decided by the Supreme Court in *M/s. Orissa Textile & Steel Co. Ltd. v. State of Orissa and others*\(^{126}\) In this case, the Supreme Court upheld the constitutionality of Section 25 O. This decision settled several controversial decisions earlier decided by various High Courts. The Apex Court after analyzing Section 25 O held that “(i) the appropriate Government before passing an order is bound to make an enquiry to...(ii) be in writing and contain reasons; (iii) the employer has to give notice by filling up a form in which he has to give details and information; (iv) opportunity to be heard to the employer, workmen and all interested persons.” The appropriate Government must ascertain the information furnished. The enquiry affording opportunity and the necessity to pass a written order containing reasons are quasi-judicial in nature.\(^{127}\)

The prescription of one year period, the Supreme Court held, makes the restriction reasonable. Moreover, as per the section, there is a deemed permission if the appropriate Government does not communicate the order within a period of 60 days from the date on which the application is made. Besides the newly amended provision enables the reviewability of the order of granting or refusing permission.\(^{128}\) Summing up the observation of the Court, Suresh Srivatsava says: “The Supreme Court in the case...has drawn an analogous case and generally extended the principles laid down therein while considering the constitutional validity of Section 25 O. However, the Court was cautious in interpreting the words ‘the appropriate Government, after making enquiry as it thinks fit”, to mean that the appropriate Government has a discretion about the nature of enquiry it is to make at its discretion.

While dealing with the nature of the functions performed by the appropriate Government in exercising powers of review, the Court ruled that it performs judicial functions. Being aware of the financial hardship in running the establishment, the Court pointed out that in such a situation, the employer must prove that it had become impossible for him to continue to run the establishment. Justifying the constitutional validity of the amended Section 25 O, the Court pointed out that “in the interest of the general public”, is a phrase of definite connotation and a known concept. This phrase as

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\(^{127}\) Ibid
\(^{128}\) Ibid
used in the amended Section 25 O, has been bodily lifted from Article 19(6) of the Constitution of India.129

In Gordon Woodrofe Agencies (P) Ltd. v. Presiding Officer, Principal Labour Court,130 [2004 DB] the Supreme Court held that, “the principles of social justice cannot be invoked for giving to the workers additional closure compensation over and above the closure compensation payable under the Industrial Dispute Act since the legislature would have already taken note of the said principle while fixing the closure compensation payable under the Act which is a complete code in itself.”131

The following are the factual matrix of the case. The management had in its employment 50 employees and it had to order closure of its establishment because of heavy loss. It paid closure compensation and other legal entitlements to its employees. While many of the workmen received compensation, the respondent workmen did not receive it and contented to have an alternate employment in a sister concern of the employer. The management disputed this claim on the ground that the other company was a separate and distinct company and therefore the question of alternate employment did not arise.

An industrial dispute as to whether the action of the management was a ‘closure’ or ‘lock out’ and what relief these workmen were entitled to, came to be referred to the labour court. The labour court held that closure was genuine and justified. However, it also held that there was a substantial ground for awarding enhanced compensation to the workmen on compassionate ground by applying the principle of social justice. Therefore, it directed the management apart from closure compensation and other legally payable amounts to pay an ex-gratia amount. Aggrieved by this order, it was appealed to the High Court which also upheld the award and thereby an appeal was preferred to the Supreme Court. The Supreme Court set aside the payment of ex-gratia compensation under the solatium awarded by the tribunal.132

130 Gordon Woodrofe Agencies (P) Ltd. v. Presiding Officer, Principal Labour Court, SCC 2004 (8), p.90
131 Ibid
132 Ibid
In *Engineering Kamgar Union v. Electro Steels Castings Ltd.*[^133] [2004 DB] an important question was decided as to whether the State law has overriding effect over Central law in case of conflict, provided Presidential assent is obtained.

The Supreme Court affirmed the question and upheld the constitutional validity of a State law. Chapter 13-B of the ID Act deals with closure. Whereas, Section 6W read with Section 6 V of the U.P. Industrial Dispute Act 1947, prescribe provisions similar to that, wherein prior permission for closure of industrial establishment employing 300 or more workmen will be applicable. This case raised the question of the applicability or otherwise of Article 254(2) of the Constitution in the facts and circumstances of the present case. The above sections of the U.P Industrial Dispute Act were inserted in 1983 after receiving the assent of the President in 1983. The Parliament in the year 1982 amended the Industrial Dispute Act and this Central amendment came into force in 1984.[^134]

The Electro Steel Castings Co. employed more than 100 workers and issued a notice declaring its intention to close down. The trade union questioned the validity of the notice on various grounds. The management pleaded that there was no need to obtain prior permission for closure under the U.P. Industrial Dispute Act The Allahabad High Court held that having regard to the fact that Chapter VB of the Central Act was inserted on or about 20.01.1984, the State Act having been enacted in 1983, whereby Sections 6-V to 6-X were inserted. The latter shall, having regard to Article 254(2) of the Constitution, prevail over the former. The High Court said that though chapter VB came into force in the year 1984, yet in view of the phraseology used in Article 254, the repugnancy has to be decided in terms of the date of enactment of the legislation in preference to the date of coming into force. Assailing the view taken by the High Court, the appellant Union raised it in the Supreme Court by way of appeal. The Supreme Court held that Chapter V B of the Central Act does not have an overriding effect over the State Act and the provisions of the Constitution which is the Supreme law should prevail over a statute. A non-obstinate clause contained in a statute cannot override the provisions of the Constitution. In view of the aforesaid constitutional and legal position, the Court held that the management does not require prior permission for closure of the

[^133]: Engineering Kamgar Union v. Electro Steel Castings Ltd. in SCC, 2004 (6), p.36
[^134]: Ibid
establishment under the Central Act as the establishment in question was governed by the State law under which no prior permission was required if the employees working there was less than 300.

**Bombay Dyeing and Manufacturing Co. v. Bombay Environmental Action Group**[^135] [2006 DB] is an important industrial case based on non-hazardous industry. It involves few important issues related to several sick mills and its closure or relocation, town planning, creation of parks for improving environment, and contradicting interests of industrial workers, mill owners and the society at large. The seminal question involved in this case is whether there is any synthesis between environmental aspects and building regulation vis-à-vis the scheme floated by the Board of Industrial and Financial Reconstruction (BIFR) in terms of the provisions of the Sick Industrial Companies Act (SICA). In this case different and contradictory interest groups were involved. One major group that represents the governmental interest is represented by the Bombay Town Planning, another group represents the mill owners, and yet another group workers of the sick and closed mills of Bombay.

This case came to the Supreme Court by way of an appeal against the Division Bench orders of the High Court under Article 136. One of the respondents in appeal is a charitable trust interested in the protection of the environment. This trust challenged the validity of Development Control Regulation No.58 (hereinafter mentioned as DCR 58) framed under the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). The DCR 58 deals with the situation arising out of closure and inviability of various cotton textile mills occasioned by reason of a strike resorted to by the workers. The rights of 200,000 workers were in question. The mills occupied lands measuring about 600 acres. Interest of owners of such mills was also in question. The DCR 58 intended to deal with all the interests of such parties in a comprehensive and balanced manner. The DCR 58 stipulates as follows:

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“58. Development or redevelopment of lands of cotton textile mills:

(1) Lands of sick and/or closed cotton textile mills: With the previous approval of the commissioner to a layout prepared for development or redevelopment of the entire open land built up area of the premises of a
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sick and/closed cotton textile mill, and on such conditions deemed appropriate and specified by him, and as a part of a package of measures recommended by the Financial Institutions and commissionerate of industries for the revival/rehabilitation of a potentially viable sick and/or closed mill.” This Regulation 58(1) consists of 6 notes that explain this provision in detail. Accordingly the commission may allow the following: (a) The existing built up areas to be utilized – (i) For the same cotton textile or related user subject to observance of all other Regulations; (ii) for diversified industrial users in accordance with the industrial location policy, with office space only ancillary to and required for such users, subject to and observance of all other Regulations; (iii) For commercial purposes, as permitted under these regulations; (b) open lands and balance FSI shall be used as in the table given under this section.

DCR 58(2) deals with lands of cotton textile mills for purpose of modernization. It runs as follows: "With the previous approval of the commissioner to a layout prepared for development or redevelopment of the entire open land and/or built up area of the premises of the cotton textile mill which is not sick or closed but requiring modernization on the same land as approved by the competent authorities, such development or redevelopment shall be permitted by the commissioner subject to the condition that it shall also be in accordance with scheme approved by Government provided that with regard to the utilization of built up area, the provisions of clause (a) of sub-regulation (1) of this regulation shall apply and, if the development of open lands and balance FSI exceeds 30% of the open land and balance FSI, the provisions of clause (b) of sub-regulation (1) of this Regulation shall apply."136 This sub-regulation 58(2) contains two notes.137

Sub-regulation (3) of 58 deals with lands of cotton textile mills after shifting. Accordingly, if a part of the textile mill is to be shifted outside greater Bombay, but within the state, with due permission of the competent authorities, and in accordance with a scheme approved by Government, the provisions of sub-clauses (a) and (b) of sub-regulation (1) of this regulation shall also apply in regard to the development or redevelopment of its land after shifting.”

Sub-Regulation 58(7) is also relevant for the purpose of the present study. It is mentioned hereunder:

“(7) Notwithstanding anything contained above--

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136 Ibid
137 See sub-regulation 58(2) for further details
(a) if and when the built up areas of cotton textile mill occupied for residential purposes as on the 1st of January 2000 developed or redeveloped, it shall be obligatory on the part of the land-owner to provide to the occupations in lieu of each tenement covered by the development or redevelopment scheme, free of cost, an alternative tenement of the size of 225 sq.ft. Carpet area;

(b) if and when a cotton textile mill is shifted or the mill owner establishes a diversified industry, he shall offer on priority in the re-located mill or the diversified industry, as the case may be, employment to the worker or at least one member of a family of the worker in the employ of the mill on the 1st January 2000 who possesses the requisite qualification or skills for the job.”

This Regulation also contains other incidental provisions. From the Regulations, it is obvious that a scheme has been drafted by the DCR. This scheme directs the distribution of lands of the mills on the basis of extent of area of land occupied by the mills. Accordingly, irrespective of the extent of the area of the mills, land shall be earmarked for recreation, ground/garden, playground or any other open user. As per this scheme from 27% to 37% of the mills’ lands shall be earmarked and handed over for development by MHADA (Maharashtra Housing and Area Development Authority) for public housing/for mill workers housing as per guidelines approved by Government and they are to be shared equally.

Ranging from 30% to 40% of the lands shall be earmarked for the purpose of development of residential and commercial uses. This extent of land subject to the other regulations and conditions are earmarked for the owners of the textile mills. From this Regulation DCR58 it is understood that from 60% to 70% of the lands of the textile mills are to be earmarked either for housing and town planning purposes. Only 30% to 40% of land is earmarked for the owners.

After elaborate hearing of all the parties the Supreme Court held that inter alia the DCR 58 is valid in law. It is not contrary to the principles governing environmental aspects including the principles of sustainable and planned development vis-a-vis Article 21 of the Constitution of India. The sale of sick mills was not contrary to the BIFR scheme. With reference to workers’ dues it was held that, "it is not necessary for us to go into the question as to whether workers dues have been paid and also as to whether the committee had been applying the fund in terms of DCR 58 or not.
However, all such contentions shall remain open. The Supreme Court while making an observation with reference to industrial relations said, “The spirit of making DCR 58 was to revival and/or rehabilitation of the cotton textile mills. Revival of closed mill was also thus a component part of the scheme behind framing of DCR 58. It may be true that in terms of sub-regulations (1) of DCR 58 recommendation of the BIFR is contemplated but recommendation of BIFR would be necessary where it is otherwise available. It is insisted that the recommendation by the BIFR was mandatory even for closed mill, much of the significance for using the words ‘and/or closed’ after the word sick is lost. A closed mill would mean a mill in respect whereof closure has been effected in accordance with law. Such closure can be effected in accordance with law in terms of the provisions of the Industrial Disputes Act. Before effecting a closure under the Industrial Disputes Act, notice has to be given to the state and in certain cases its prior permission is also required to be obtained. Thus, all cases which entail closure of an industry would be within the knowledge of the state. The state through its machinery can further more verify the genuineness or otherwise of such closure. In such a case, even in terms of the provisions of the Industrial Disputes Act having regard to the purport and object for which the same had been enacted, the authorities hereunder and also for the state a duty is passed to restore back the industrial peace.138

It is obvious from the above analysis of cases related to closure of non-hazardous industries that the Supreme Court upheld the constitutional validity of amended provisions related to closure of industries. However, it also upheld the conditional precedents to be adopted by the employer as reasonable restrictions. Accordingly, at the time of closure of industries workers are to be given notice and compensation similar to that of retrenchment compensation. The Apex Court held that the workers are also to be given locus standi in case of companies which were running the industries and which are now wound up as per company law. The interest of workers, particularly their wages were also given priority in discharging the liabilities of the winding up companies. In case if the industries are run by the Government the Supreme Court inclined the absorption of workers in another unit of the Government.

138 Ibid pp.1525-26
In all cases of the termination of workmen due to closure, the Supreme Court ordered for deemed retrenchment compensation.

It is clear that the judicial process of construing and interpreting the Constitution and other provisions of law relating to industrial relations are based not only on the political ideologies prevailing in the domestic system, but also on the then prevailing international political system. When ideologies of communism and socialism dominated the world, the judgments delivered by the Supreme Court naturally leaned towards the workers. With the breakdown of communist Russia and the transformation of a bipolar world into a unipolar world, the approach of the Supreme Court tilted more towards the industrialists and employers. This neo-laissez faire tilt became more prominent with the ongoing globalization. Thus, there is an apparent changing trend in the approach of the Supreme Court to industrial relations with particular reference to the rights of the workers who are working in non-hazardous industries.

In a memorandum submitted to the Chief Justice of India in November 2007, the Labour Law Practitioners’ Association listed out the judgements of the Supreme Court that “emboldened employers and strengthened the coffers, leaving working people in a state of distress”. It further lamented that “it is unfortunate that recently the Supreme Court has directed the formation of a larger Bench to reconsider the famous Bangalore Water Supply Board case rendered in 1978, which every right thinking citizen thought had settled what is an ‘industry’ under the Industrial Disputes Act.” The Memorandum further observed that “these observations of the Supreme Court had a debilitating effect on the minds of the workers. These observations are not in tune with the Constitution, but in tune with the economic policy of Liberalisation, Privatisation and Globalisation, shortly known as LPG”. Under the heading “Populist Judgements on Labour Issues Declining” the Special Correspondent of The Hindu reported citing the views of the Labour Law Practitioners Association that “the recent judgements of the Supreme Court (in labour/service law matters) indicate that the pendulum of law that had gone to one extreme some time ago is slowly swinging to the

139 Special correspondent. “Recent Supreme Court verdicts militate against interest of working class – Memorandum submitted to Chief Justice”, The Hindu dated 08.11.2007, p.17
140 Ibid
141 Ibid
middle”. Further it quotes the Association’s Vice-Presidents views as follows: “Laws in Labour jurisprudence are frequently crafted by those judges, who wish to leave on the judiciary an imprint of their political ideology, irrespective of whether there is justification (or not). When one who has represented the working class is made a judge, he/she freely gives expression to his/her philosophy in the judgements pronounced by them. Populist judges, who readily lean in favour of the working class, are interpreting laws as to what they should be rather (than) what they are.”

The observation of the Labour Law practitioners in relation to the approach of the Supreme Court with reference to industrial relations may be valid when it is applied to industries whose industrial disputes between workers and employers are resolved through the machinery created by the Industrial Disputes Act. Whereas, workers who are working in hazardous industries and whose rights are affected due to relocation or closure of such hazardous industries on grounds of environmental protection or conservation, are better protected. The Supreme Court ordered the employers of hazardous industries to give ‘shifting bonus’ of one year’s wage in case of relocation of hazardous industries and helped them to settle themselves in the new location. If the workers declined to shift along with the relocation of industries, they are paid one year’s wage as ‘additional compensation’, besides the regular retrenchment compensation as provided in the Industrial Disputes Act. Further, the non-employment of the workers during the period of shifting of industries from one place to another is considered as ‘active employment’.

When industries are closed down due to environmental reasons, they may be considered as closure due to unavoidable circumstances beyond the control of the employer for which the workers shall be paid not more than three months wages as retrenchment compensation. But, the Supreme Court ordered the employers to pay in addition to the regular retrenchment compensation, ‘6 year’s wages’ as additional compensation. In certain cases alternate employment is ordered. These concepts like ‘active employment’, ‘shifting bonus’, ‘additional compensation’, to mention a few are not contemplated in industrial jurisprudence. What ought to be treated as ‘lay off’ is converted into ‘active employment’.

143 Ibid
The findings of this research on the rights of the affected workers reveal that the so called tilt of the Supreme Court from a pro-labour towards a pro-employer approach is true only in industrial disputes in non-hazardous industries. But with regard to the rights of workers in hazardous industries, the Supreme Court is definitely pro-labour. In fact, it is reaching out to those workers beyond the scope of the existing industrial laws as a social security measure. Thus the approach of the Supreme Court towards the rights of workers working in hazardous industries is innovative, liberal and beneficial.