IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9900 OF 2025

L. G Balakrishnan & Bros Ltd.
Through its IR Mnager-HRD,
Plot No. A7, Additional Jalna Phase-III,
Industrial Area MIDC, Jalna,
Jalna District-431213 ...PETITIONER
(Original Respondent)

Versus

1. Aurangabad Mazdoor Union (CITU),
Through its Secretary
CITU Bhavan, Shivaji High School,
Ajabnagar, Aurangabad.

2. Shivaji s/o Babanrao Karhale
R/o Mali Galli, Tal. Badnapur
Dist. Jalna

3. Sharad s/o Badrinarayan Kolhe
R/o Dhopteshwar, Tal. Badnapur,
Dist. Jalna.

4. Uddhav s/o Haribhau Raut
R/o. Pankheda, Tal. Badnapur,
Dist. Jalna.

5. Vithal s/o Ashok Dabhade
R/o. Dhopteshwar, Tal. Badnapur,
Dist. Jalna.

6. Dyaneshwar s/o Babasaheb Mhatre
R/o. Halda, Tal. Badnapur,
Dist. Jalna.

7. Prakash s/o Pandharinath Shirsath,
R/o. Padali, Tal. Badnapur,
Dist. Jalna.

8. Yogesh s/o Bhausaheb Garkhede
R/o. Javasgaon, Tal. Badnapur,
Dist. Jalna.

9. Rameshwar s/o Rakhmaji Shirsath
R/o. Padali, Tal. Badnapur,
Dist. Jalna.

10. Krushna s/o Raosaheb Edke

R/o. Kelighavan, Tal. Badnapur,
Dist. Jalna.

11. Mahendra s/o Madhikar Bagul
R/o. Chandanzira, Tal & Dist. Jalna.

12. Shivraj s/o Vasantrao Shinde
R/o. Udvad, Tal & Dist. Jalna.

13. Sanjay s/o Bhikaji Mhaske
R/o. Chandanzira, Tal & Dist. Jalna.

14. Ramprasad s/o Dynaneshwar Dhemre
R/o. Sundar nagar, Tal & Dist. Jalna.

15. Siddeshwar s/o Madhukar Dabhade
R/o. Dhopteshwar, Tal. Badnapur,
Dist. Jalna

16. Rushikesh B. Shirsat
R/o. Padali, Tal. Badnapur,
Dist. Jalna

17. Yogesh s/o Siddhnath Garbade
R/o. Kelighavan, Tal. Badnapur,
Dist. Jalna

18. Sandeep s/o Kashinath Bhalerao
R/o. Malewadi, Tal. Badnapur,
Dist. Jalna

19. Vikas s/o Dadarao Shirsat
R/o. Padali, Tal. Badnapur,
Dist. Jalna

20. Vikas s/o Baban Khajekar
R/o. Dhopteshwar, Tal. Badnapur,
Dist. Jalna

21. Laxman s/o Namdeo Kolhe
R/o. Padali, Tal. Badnapur,
Dist. Jalna

...RESPONDENTS
(Original Complainants)

...

Mr. S.V. Dankh, Advocate for the petitioner.
Mr. T.K. Prabhakaran, Advocate for respondents.

...

CORAM : ARUN R. PEDNEKER, J.
Reserved on : 29.09.2025
Pronounced on : 17.10.2025

JUDGMENT :-

1) By the present writ petition, the petitioner challenges the judgment and order dated 28/02/2025 passed by the learned Member, Industrial Court Maharashtra Bench at Jalna in Complaint U.L.P. No. 225/2019 filed under section 28 r/w Item Nos. 1(a), 1(b), 4(a) and 5 of Schedule I and Items 2, 5, 6, 9 and 10 Schedule-IV of the Maharashtra Recognition Trade Union and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the 'MRTU & PULP Act' for short). By the impugned order the Industrial Court declared that the petitioners herein indulged in unfair labour practices under section 28 r/w Item Nos. 1(a), 1(b), 4(a) and 5 of Schedule I and Items 2, 5, 6 and 9 Schedule-IV of the MRTU & PULP Act and directed the petitioner to desist from committing such unfair labour practices. The Industrial Court has also quashed and set aside the termination orders dated 31.1.2020 and 1.2.2020 issued to the complainants/workmen by the petitioner and directed the petitioner to reinstate the complainants within two months of the passing of the order. Petitioner is further directed to pay the balance of 50% of backwages to the complainants from the date of their termination till the date of reinstatement within two months of the passing of the order.

2) Brief facts, giving rise to the present writ petition, can be summarised as under :-

It is the case of the complainants'/workmen that petitioner is a company that manufactures chain kits that are supplied to M/s. Bajaj Auto Limited in Aurangabad under the brand name Roll-on. The petitioner employed in the factory about 550 employees, out of which 50 are managerial staff and the rest are all workers. The complainants are

permanent workers.

3) The complainants had approached Industrial Court earlier by filing Complaint ULP No. 125/2019 and Complaint ULP No. 130/2019 and by interim orders dated 11.6.2019 and 25.6.2019 the Industrial Court had restrained the petitioner from making any changes in service conditions of the complainants. The petitioner had also filed Complaint ULP No. 129/2019 against complainant No. 1 and the ad-interim order was passed on 25.6.2019 in this complaint. It is the case of the complainants that the complainants raised demand for wage rise on 18.7.2019 which has resulted in a certain proceedings and the same is subjudice in which the petitioner had grudge against the complainants for forming a union and the petitioners were threatening the complainants with dismissal from service for joining the respondent No. 1/Union. On 9.11.2019 the then complainant No. 20 Sachin Pawar had some dispute/altercation with the canteen contractor and he was called upon by the management to give an undertaking and tender apology, but he declined to obey. Thereafter, the petitioner kept Sachin Pawar and others idle and did not allot any work. The complainants were asked to sign and execute a good conduct bond/undertaking. The complainants refused to give such undertaking. The respondent No. 1/Union reported the acts of the management to the Deputy Commissioner of Labour Office, Aurangabad, who had visited the factory and settled the matter. The Deputy Commissioner had suggested that Sachin Pawar should tender an apology and both parties accepted the suggestion and assured normalcy. However, the petitioner again insisted on the undertaking and refused to give work to the complainants. It is stated that the complainants assembled at a place beyond 500 mtrs. by informing the petitioner that

complainants were willing to work if the pre-condition for signing the undertaking was withdrawn. However, the petitioner did not take any steps to allow the workers to resume their work. On 17.11.2019 and 18.11.2019, nearabout 100 workers were brought by the petitioner from Tamil Nadu and the work was sought to be performed by the workers who were not on the muster roll of the petitioner.

4) It is the case of complainants that the petitioner also discouraged the complainants from continuing the membership or being affiliated with the respondent No. 1/Union for the purpose of collective bargaining. Thereafter, the complainants/workmen approached the Industrial Court by filing Complaint ULP No.225/2019 wherein on 11.12.2019 an order was passed by the Industrial Court directing the complainants to join their respective work with the petitioner unconditionally and petitioner was directed not to change the service conditions of the complainants without following due process of law. After the Industrial Court passed the order dated 11.12.2019, the petitioner directed the workmen to assemble in the hall instead of allotting them their regular work. Petitioner installed a projector and screen and under the guise of training, made the complainants watch useless material. On 31.1.2020, the petitioner terminated 29 workers, and on 1.2.2020, 08 workmen, alleging failure on their part to produce their original copy of their certificate of educational qualifications. The ULP complaint was accordingly amended and the termination orders were also challenged.

5) It is the case of the petitioner before the Industrial Court that in the Jalna factory, there are sophisticated VNC and CNC machines, and there is a requirement for qualified and trained manpower. The Jalna industrial

establishment was established in November 2014. The petitioner initiated the recruitment process and called candidates from Employment Exchange, conducted campus interviews, and also, persons interested were recruited after verifying educational qualifications/technical qualifications. The minimum qualification required to be considered for recruitment is a Diploma in Technical Education in the concerned trade. Without technical qualifications, a person cannot work in a factory. The complainants were employed strictly based on their qualifications and documents submitted. In spite of the fact that complainants were being imparted training and supported well, there were continuous complaints of rejection of the products by the clients and one of the major clients of the respondent, M/s Bajaj Auto Limited, was reluctant to continue further relationship with the petitioner, in the month of January-2019. Meanwhile, the complainant union claimed the status of a collective bargaining agent for some of the workmen to which the petitioner has resisted.

6) On account of complaints of clients and as a routine verification process, the petitioner displayed a notice dated 17/12/2019 and 02/01/2020 on the notice board in the company, advising all the permanent workers to produce their original educational qualification certificates (EQC). The complainants did not come with their original EQC. The petitioner checked with the educational institutions of the complainants based on the copy of EQC submitted when they joined the petitioner. The educational institutions confirmed that 38 certificates were not genuine and were not issued by them. The petitioner displayed the names of said 38 workers, calling upon them to produce EQC within three days, and also sent letters by RPAD. The complainants were provided ample opportunity to produce the

documents, but they failed to do so. The complainants were not qualified as ITI as submitted and the certificates produced by them were forged. The complainants were terminated with effect from 31/01/2020 and 01/01/2020 and were paid three months' notice pay. One of the complainants secured his educational qualification certificate, and it was found that the academic institution had erred, and the said complainant was reinstated in service. The petitioner has submitted that the complainants were terminated due to loss of confidence, and there was no unfair labour practice committed by the petitioner. Hence, the complaint filed by the complainants before Industrial Court is liable to be dismissed.

7) After hearing the parties, the Tribunal has formulated following issues and has given findings against them as under :-

SR. NO.	ISSUES	FINDINGS
1-a)	Whether the complaint is maintainable ?	Yes
1-b)	Did the respondent prove that the termination of the complainants is legal for the reasons of loss of loss of confidence	No
1)	Do the complainants prove that the respondent has engaged in and has been engaging in unfair labour practice contemplated under Section 28 r/w Item Nos. 1(a), 1(b), 4(a) and 5 of Schedule I and Items 2, 5, 6 and 9 of Schedule-IV of MRTU and PULP Act ?	Yes
2)	Are the complainants entitled to the reliefs as sought ?	Yes
3)	What order ?	As per the final order, the complaint is partly allowed.

8) As the findings are made against the petitioner in the above issues, the present writ petition is filed by the petitioner/company.

9) The submissions of **Mr. S.V. Dankh,** learned counsel for the the

petitioner before this Court are as under :-

a) The impugned order is erroneous and suffers from illegality as the Industrial Court has curtailed the right of the petitioner to cross examination of the remaining respondents (except Mr. Khajekar) when the said respondents sought to have relied on the evidence adduced by Mr. Khajekar. The right of cross examination of witness cannot be curtailed by the court and the same is against the principles of natural justice. It is stated that Mr. Khajekar, witness of the Union has deposed that he does not possess any authority to depose for other respondents and therefore, prayer is made to remand the matter back to the Industrial Court so as to enable the petitioner to avail the opportunity of cross examination of other complainants. It is alternatively submitted that the Industrial Court ought to have held that the complainants have not lead any evidence.

b) The learned counsel for the petitioner raises issue of jurisdiction and submits that the Industrial Court had no jurisdiction to proceed with the complaint of the complainants. The learned counsel relied upon the judgment of **Prakash Kashiram Sawant and Ors. Vs. Motherson Advance Tooling Ltd. Aurangabad reported in 2020 (1) Mh.L.J. 561** to contend that even if the termination is subsequent to filing of the complaint before the Industrial Court under Schedule IV of the MRTU & PULP Act, 1971, the jurisdiction to decide the legality of the termination would be with the Labour Court under section 7 of the Act of 1971. In the instant case, complaint is filed on 7.12.2019 and the respondents cease to be in employment in the month of January 2020 and as such, the present respondents/workmen have failed to demonstrate any commission of unfair labour practice under Schedule II in as much as the respondents could not

be seen terminated as a counter blast to organizing the union. The learned counsel further submits that even otherwise the respondents have admitted the factum of termination and therefore, the complaint filed before the Industrial Court had been rendered infructous and the said complaint ought to have been filed before the Labour Court. The learned counsel therefore submits that the case of the complainants does not fall in any of the Items under Schedule II of the Act of 1971 and as such, is not amenable to the jurisdiction of the Industrial Court. On the point of jurisdiction, the learned counsel has placed reliance on the following judgments :-

(i) Rajneesh Khajuria Vs. Wockhard Ltd. and Anr., (2020) 3 SCC 86

(ii) Delux Theatres Pvt. Ltd. Vs. Bombay Labour Union, (1992) 1 CLR 256

(iii) Sudarshan Steel Mfg. Co. Mumbai Vs. Mumbai Labour Union and Anr., (2004) 2 CLR 425

(iv) Vidyut Metallics Pvt. Ltd. Vs. Dinesh Chandra Tiwari, (2008) 2 CLR 292

(v) Prakash Kashiram sawant and Ors. Vs. Motherson Advance Tooling Ltd., Aurangabad, 2020 (1) Mh.L.J. 561.

c) The next submission of the learned counsel for the petitioner is that complainants have given false information in their employment application as well as given forged certificates. The learned counsel submits that the respondent Nos. 2 to 21 were taken in the employment of the petitioner during the initial period strictly based on their qualification, declarations about their being ITI's and photocopies of the certificates thereof submitted by the respondents along with the joining report. The learned counsel submits that at the time of recruitment, the petitioner believed the

declarations and educational qualifications submitted by the above respondents/workmen and issued them appointment orders of which terms and conditions were accepted by the respondents/workmen. Clause 17 of the appointment letter issued to the respondents/workmen particularly provides for automatic cancellation with immediate effect, if it is found that the qualification etc. produced by the respondents/workmen is found to be not genuine or any suppression of any material information while seeking employment. The learned counsel submits that the workmen in their pleadings in Complaint ULP/125/2019 and Complaint ULP/130/2019 have averred that they are technically qualified and their qualification has been given by themselves in Annexure A attached to the complainants. It is submitted that the employment applications submitted by the respondents/employees coupled with the pleadings in Complaint ULP/125/2019 and Complaint ULP/130/2019 as well as the admission of mistake before this Hon'ble Court in Writ Petition No. 7441/2023 is itself sufficient to establish that the respondents/employees had given wrong information in their applications for employment submitted to the petitioner at the time of seeking employment and the said is the reason for the petitioner's loss of confidence and their termination. On the aspect of suppression of facts, the petitioner has placed reliance on the following judgments :-

(i) K.D. Sharma Vs. Steel Authority of India Ltd. (2008), 12 SCC 481

(ii) Badami Vs. Bhali, (2012) 11 SCC 574

d) The submission of the learned counsel for the petitioner is that the petitioner is not estopped from taking action after lapse of five years of the

employment as the contract i.e. the letter of appointment issued to the respondents/employees become void-ab-initio and Mr. R. Rameshkumar has been examined to prove the application of employment of the respondents and its enclosures submitted by the respondent/employee and the same are detailed in the examination in chief and has withstood the cross examination.

e) The next submission of the learned counsel for the petitioner is in respect of misconduct/loss of confidence and relief of reinstatement in employment of the respondents. It is stated that the illegal strike continued for 20 days and as such, the petitioners were constrained to give fresh training to the complainants/workmen as per the standard operating procedure and the workmen were paid full wages for this period and the respondents/workmen were averse towards the training and were not able to answer the question sheets given during training. Considering these facts the petitioner therefore decided to verify the certificates submitted by the respondents and other workmen from the concerned institute. The petitioner therefore send a request to the concerned education boards and colleges and reports were received that the certificates were not issued by the concerned boards and colleges and as such, the petitioner displayed notices calling upon the respondents/ workmen to get the original certificates verified. The complainants failed to submit their documents and as such, the petitioners were constrained to dismiss the employees. The learned counsel submits that even today the petitioner maintain that the workmen may verify their certificates and the petitioner would grant them reinstatement without backwages. On the aspect of loss of confidence, the learned counsel for the petitioner has placed reliance on the following

judgments :-

(i) Hindustan Steels Ltd. Rourkela Vs. A.K. Roy and Ors. (1969) 3 SCC 513

(ii) L. Michale Vs. Jonson Pumps, (1975) 1 SCC 574

(iii) Siddhanath Krishnaji Kadam Vs. Dadajee Dhackjee and Company Pvt. Ltd., 1976 SCC Online Bom. 157

(iv) Pfizer Ltd. Vs. Mazdoor Congress & Ors., (1996) 5 SCC 609

(v) Supreme and Company Vs. Netai Bhaduri & Ors., 2022 SCC Online Cal 3638

(vi) Madhukar Mahadik Vs. Indian Express Newspaper Pvt. Ltd., 1992 LLR 632

(vii) Sanjiv Kumar Mahapatra Vs. A.L. Alaspurkar & Ors., 2003 LLR 204

(viii) D. Seeralan Vs. Management of Facit Aisa Ltd. and Ors., MANU/TN/0131/1989

(ix) Maruti Suzuki Ltd. Vs. Presiding Officer, MANU/PH/2934/2009.

f) The next submission of the learned counsel for the petitioners is regarding requirement of qualification. It is stated that the employment exchange and other Government authorities have prescribed qualification for recruitment of the employees in the interest of sustainable operation of the factory and the Industrial Court could not have fastened the burden to prove the requirement of qualification on the petitioner without specific issue being framed in this regard and it has caused grave prejudice to the petitioner.

g) The learned counsel further submitted that the reinstatement of the

respondents is not warranted due to loss of trust and confidence and which is valid ground for termination of the workmen. It is stated that once the confidence is eroded due to act of dishonesty, misconduct or breach of duty, reinstatement is no longer feasible as it would be inimical to the interests of the employer and the integrity of the workplace. The learned counsel for the petitioner further states that reinstatement of the employees whose actions have resulted in a justifiable loss of confidence would compromise operational efficiency, damage workplace morale and set a dangerous precedent for accountability. The trust in the employees has been irrevocably broken and thus making reinstatement impossible. The learned counsel submits that in the present case the loss of confidence stemmed from the respondents' submission of falsified qualification certificates to gain employment with the petitioner company. As such, reinstatement order ought not have to be passed. It is stated that at the highest some compensation may be granted. The learned counsel for the petitioner states that reinstatement with entire backwages ought not to have been granted as there is no clear evidence that the workmen were not working during the period of termination. The learned counsel for the petitioner submits that he has produced provident fund slips of some of the respondents to indicate that they were not entitled for the reinstatement and backwages.

10) Per contra, responding to the issue raised of jurisdiction of the Industrial Court, Mr. T.K. Prabhakaran, learned counsel appearing for the respondents union submits the complaint is maintainable before the Industrial Court as the termination is in violation of interim orders in pending ULP's before the Industrial Court and also the termination is on account of the complainants joining the respondent No. 1/Union as is

demonstrated in the pleadings of the amended complaint. He further submits that most of the respondents engaged in various pre-production activities followed by trial production for which no employment records were available. All workmen were hired through walk-in interview. They were shown to be trainees from 2015. However, the Model Standing Orders prescribe a maximum training period of one year. In two years the workmen are necessarily permanent by operation of law. However, they were subsequently placed under probation for two to three years. The maximum limit under Model Standing Orders is three months. After three months, the workmen attained the status of permanent by operation of law. Although no relief is sought in the complaint for securing permanency retrospectively. The cause of action for complaint is related with the union formation and refusal of work and termination of services on the teeth of restraining orders of the Court. It is submitted that the workmen received lower wages compared to similar industries and therefore, for collective bargaining purposes 125 workers joined Aurangabad Mazdoor Union in May 2019. The management became aware of the workers forming a union and started threatening them with actions such as discharge, dismissal or termination. The union approached the Industrial Court, Jalna, by filing two complaints under item 1(a), (b), 4(a) of Schedule II and Item 5 and 9 of Scheduled IV of the MRTU and PULP Act. These are Complaint (ULP) No. 125/2019 and Complaint (ULP) No. 130/2019. By orders dated 11.6.2019 and 25.6.2019, the Industrial Court restrained the petitioner company from making any changes in the service conditions of the workers and also directed not to terminate, discharge, dismiss or transfer any of the workers without following due process of law. Both the orders remained in effect until

3.12.2022. The union withdrew these two complaints on 3.12.2022, having lost its membership of the workmen.

11) The learned counsel for the respondents submits that in retaliation for forming the union and securing protection orders in Complaint (ULP) No. 125/2019 and 130/2019, the petitioner refused to allot work/entry in the factory to the workers from 14.11.2019. They asked the workmen to sign and execute a good conduct bond/undertaking on the format. The workmen refused to oblige. Therefore, the Union and workmen approached the Industrial Court by filing Complaint (ULP) No. 225/2019. After hearing the parties, the Industrial Court passed interim orders on 11.12.2019. After an ad-interim order passed by the Industrial Court, the petitioner engaged various forms and degrees of intimidation, harassment and unfair labour practices. The workers were allowed to enter the Factory from 14.12.2019. The petitioner directed them to assemble in a hall above the canteen, thereby violating the Court's interim directions, which instructed them to allow workers to resume their respective work. For the first time, the petitioner installed a projector and a screen, displaying all useless materials with no academic, technical or educational value and the petitioner termed such activities as 'training'.

12) The learned counsel for the respondents submits that on 31.1.2020 and 01.02.2020, the petitioner terminated the respondents, citing their failure to produce the original certificates or educational qualifications of ITI-fitters. They were dismissed without inquiry, hearing or obtaining permission from the Industrial Court and without vacating the restraining orders. It is stated that thereafter the respondents took immediate steps to challenge the termination order by getting the complaint amended. The

period from 2020 to 2023, during which the hearing took place was utilised by the Company to the detriment of the Union, causing most members to withdraw their claims and subsequently leave the Union.

13) The learned counsel for the respondents submits that the petitioner acted 'in vengeance' with the aim of destroying the unity of the complainant-Union and workmen. The petitioner has undermined the dignity of the Industrial Court by disobeying the interim orders passed in Complaint (ULP) Nos. 125 and 130 of 2019 and the ad-interim orders in the original complaint. It is stated that the petitioner ought to have obtained permission from the Hon'ble Court before terminating the services of the workmen. Instead, the petitioner terminated the services of the workmen just one day before the scheduled date of the hearing of the application. By issuing such termination order, the company nullified the effect of the order issued by the Industrial Court. The learned counsel therefore submits that in view thereof the defence of the petitioner needs to be struck down for violating the orders of the court.

14) The learned counsel for the respondents submits that the workers were neither employed through an employment exchange nor through any public advertisement. There was no pre-requisite for a technical qualification for their initial employment. They were appointed simply as 'trainees'. The learned counsel submits that educational qualification played no role in their initial appointment. The necessary skills for work were learned on the job as employees in the company's factory. It is admitted that optimal skills for both quality and quantity of work were achieved within one month and in no case did not take more than one months. It is stated that the complainants have been providing optimal output since then. Consequently, due to their

outstanding performance, the workers were made permanent employees. Therefore, it is stated that for employment confirmation successful completion of training is relevant and not the formal qualification. It is stated that prior knowledge and experience were never pre-requisites for employment. Additionally, the workers were employed after a thorough interview. The petitioner is estopped from changing its position and claiming non-eligibility based on the ITI-fitter trade. It is stated that the petitioner is barred from revisiting the past to terminate the respondents on the ground of 'loss of confidence' after five years of effective service. It is stated that the workmen were simply appointed as '**TECHNICAL ASSISTANTS**' for various activities, not based on particular trade.

15) The learned counsel for the respondents submits that the company has targeted only the respondents and the members of Aurangabad Mazdoor Union for the so-called qualification requirement. No other workers were affected. No workmen, other than the respondents who were members of respondent No. 1/Union members, were terminated. Many workmen are similarly situated, however, they are not terminated. The learned counsel submits that the termination orders are passed in violation of provisions of the Model Standing Orders and without compliance with Section 25-F and 25-N of the Industrial Disputes Act.

16) The learned counsel for the respondents has placed reliance on the following judgments to substantial his arguments :-

> (i) Judgment of Hon'ble Supreme Court in the case of Municipal Corp. of Greater Mumbai & Ors. Vs. Vivek Gawde etc. dated 13.12.2024
>
> (ii) Judgment of this court passed in Writ Petition No. 12119/2016 in the case of Prakash Kashiram Sawant and others Vs. M/s. Motherson Advanced Tooling Solutions

Limited dated 03/07/2019

(iii) Shree Mahavir Ispat Ltd. & Anr. Vs. Mohammed Ismail Siddiqui, (1997) III LLJ 779 BOM

(iv) Suresh Kachalia Vs. Shakti Insulated Wires Ltd. 2005 (3) CPMH65

(v) Walchand Industries Ltd. Vs. Dattusingh Pardeshi & Ors. 2005(6) BOM CR 733.

(vi) Gannon Dunkerley & Co. Ltd. Vs. Mr. G.S. Baj, Member Industrial Court 2006 (2) MHLJ 845.

(vii) Municipal Council Pulgaon Vs. Manu Manik 2007 (5) CPMH 7.

17) Having considered the above submissions, the first question that arise for my consideration is as under :-

(1) Whether the Industrial Court or the Labour Court has the jurisdiction to deal with the amended ULPs filed by the complainant for termination of the respondents/employees ?

18) Before dealing with the factual aspect of the case, relevant provisions of law are required to be noted in this regard. The Complaint U.L.P. No. 225/2019 is filed under section 28 r/w Item Nos. 1(a), 1(b), 4(a) and 5 of Schedule I and Items 2, 5, 6 and 9 of Schedule-IV of the MRTU & PULP Act. Section 5 and 7 define the jurisdiction of the Industrial Court and Labour Court.

"5. Duties of Industrial Court.

It shall be the duty of the Industrial Court:-

(a) ….

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;"

"7. Duties of Labour Court

It shall be the duty of the Laour Court to decide complaints relating to unfair labour practices described in Item I of Schedule IV and to try offences punishable under this Act."

19) Schedule II under the said Act reads as under :-

"*SCHEDULE II*

Unfair Labour Practices on the part of employers

1. To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in concerned activities for the purposes of collective bargaining or other mutual aid or protection, that is to say—

(a) threatening employees with discharge or dismissal, if they join a union ;
(b) threatening a lock-out or closure, if a union should be organised;
(c) granting wage increase to employees of crucial periods of union organisation, with a view to undermining the efforts of the union at organisation.

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

(a) an employer taking an active interest in organising a union of his employees ; and
(b) an employer showing partiality or granting favour to one of several unions attempting to organise his employees or to its members, where such a union is not a recognised union.

3. To establish employer sponsored unions.

4. To encourage or discourage membership in any union by discriminating against any employee, that is to say—
(a) discharging or punishing an employee because he urged other employees to join or organise a union;
(b) discharging or dismissing an employee for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);
(c) changing seniority rating of employees because of union activities;
(d) refusing to promote employees to higher posts on account of their union activities;
(e) giving unmerited promotions to certain employees, with a view to sow discord amongst the other employees,

or to undermine the strength of their union;

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

5. To refuse to bargain collectively, in good faith, with the recognised union.

6. Proposing or continuing a lock-out deemed to be illegal under this Act."

20) Item 1(a to g) of Schedule IV reads as under :-

"SCHEDULE IV

General Unfair Labour Practices on the part of employers

1. To discharge or dismiss employees—
(a) by way of victimisation;
(b) not in good faith, but in colourable exercise of the employer's rights;
(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;
(d) for patently false reasons;
(e) on untrue or trumped up allegation of absence without leave;
(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

21) Items 2 to 10 of Schedule IV read as under :-

"*2. To abolish the work of a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.*
3. To transfer an employee mala fide from one place to another, under the guise of following management policy.
4. To insist upon individual employees, who were on legal strike, to sign a good conduct-bond, as a pre-condition to allowing them to resume work.
5. To show favouritism or partiality to one set of workers, regardless of merits.
6. To employ employee as "badlis", casuals or

temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

7. *To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.*
8. *To recruit employees during a strike which is not an illegal strike.*
9. *Failure to implement award, settlement or agreement.*
10. *To indulge in act of force or violence."*

22) This court while considering the issue of jurisdiction of the Labour Court vis-a-vis the Industrial Court to deal with the complaint under the MRTU & PULP Act, in the case of **Prakash Kashiram Sawant and others Vs. Motherson Advanced Tooling Solutions Ltd., Aurangabad, 2020 (1) Mh.L.J. 561** has observed that for a cause of action to fall under Items 1 or 4 of Schedule II or under Item 1 of Schedule IV, would depend upon background in which Management has initiated action against an employee. If the concerned worker or a union leader has resorted to a gross behavioral misdemeanor as a part of his union activities and he is charge sheeted for the same and dismissed from service after conducting a domestic enquiry, such a case would not fall under Item 1 or 4 of Schedule II and will have to be considered as one falling under Item 1 of Schedule IV. Moreover, it neither causes any prejudice nor injustice to him by filing a case under Item 1, Schedule IV since it enables him to avail of an additional remedy u/s 44 of the 1971 Act. Item 1 of Schedule II is exclusively with regard to a management adopting an intimidating attitude in order to curb or subdue the workers in the formation of a union. The language used in Item 1 of Schedule II is in connection with such formation or indulging in collective bargaining. However, sub clause (a) is exclusively connected with the act of

joining of a union. Similarly, the clauses under Item 4 of Schedule II are also in connection with the joining or formation of a Union. This court in the case of **Motherson** (supra) having considering the law on the aspect of jurisdiction of Labour Court and Industrial Court has held as under:

> *"**56.** Considering the above, this petition is disposed off. While answering the issues framed, I conclude as under:-*
>
> *[a] An employee, who claims to have suffered unfair labour practices at the hands of an employer under Item 1(a) or 4(a), (b) or (f) of Schedule IV, would have the option of preferring the complaint for challenging such acts, either before the Industrial Court or under Item 1(a), (b), (d) and (g) of Schedule IV of the 1971 Act before the Labour Court.*
>
> *[b] If such an employee prefers a complaint before the Industrial Court, the same shall be considered on the facts and circumstances emerging from each case and in view of the Law laid down in the matter of Delux Theatres Pvt. Ltd. (supra) and the observations in this order. Needless to state, the issue of whether the respondent is an employer and whether there is an employer employee relationship, will not be maintainable before the Labour Court or the Industrial Court in view of the Law laid down in Vividh Kamgar Sabha vs. Kalyani Steels Ltd., (supra), Cipla Limited (supra) and Steel Authority of India (supra).*
>
> *[c] In the event of a complaint being preferred before the Labour Court or the Industrial Court, in view of the above, the complainant will have to amend his complaint based upon the subsequent events that have occurred during the pendency of the complaint, in the sense that if a complaint is filed under Item 1(a) of Schedule II before the Industrial Court or the same cause of action is raised under Item 1 of Schedule IV, the complainant would amend the complaint to bring on record the subsequent event of actual discharge or dismissal, which would fall under Item 4(a) or (b) or (f) of Schedule II or under Item 1(a), (b), (d), (g) of Schedule IV."*

Thus, this court in **Motherson** (supra) has observed that if a complaint is made by an employee who have suffered unfair labour practice at the hands of the employer under Item 1(a) or 4(a), (b) or (f) of Schedule IV, would have the option of preferring the complaint for challenging such acts,

either before the Industrial Court or under Item 1(a), (b), (d) and (g) of Schedule IV of the 1971 Act before the Labour Court.

23) Similarly, in the case of **Bapusaheb Shripatrao Naik Nimbalkar Vs. K. G. Velhal, Member, Industrial Court, Pune and others, 1981 SCC Online Bom 318**, passed by this court at paragraph no.5 has observed that unfair labour practice under items 1(a), 4(a) and 4(f) of Schedule II of the said Act are actions directly connected with the Union activities of the employee. Whereas 1(a) pertains to a stage prior to actual discharge or dismissal by giving even a threat of discharge or dismissal, items 4(a) and 4(f) are concerned with events which have resulted in actual discharge or punishment of the employee.

24) Undisputedly, factual situation in this case is that after withdrawal of Complaint (ULP) Nos. 125/2019 and 130/2019, the Union and workmen approached Industrial Court by filing Complaint (ULP) No. 225/2019, in which following order is passed :-

> **"ORDER**
>
> 1. THE Workers, excluding Complainant Nos. 20, 44, 47, 60 and 73, are hereby directed to unconditionally joint their respective work with the Company.
>
> 2. The Company is also hereby directed to allow the Workers, excluding Complainant Nos. 20, 44, 47, 60 and 73, unconditionally to resume their respective work from 13.12.2019 as per the shifts chalked out by the Company for the smooth working of the Company.
>
> 3. The daily wages of the Workers shall commence from the date of their reporting and joining the Company.
>
> 4. The Workers are strictly directed to maintain peace and tranquility during their work, in and around the premises of the Company, and to ensure that they perform their duties for the better prospects of the company.

> 5. The Company is also directed not to change the service conditions of the Workers, except Complainant Nos. 20, 44, 47, 60 and 73, without following the due process of law.
>
> 6. Matter be listed on the board on 03.01.2020.
>
> 7. Costs in cause.
>
> Ordered accordingly."

25) In the instant case, the Complaint ULP No. 225/2019 was pending before the Industrial Court for unfair labour practice for joining trade Union and not allotting work. During the pendency of Complaint ULP No. 225/2019, it is alleged that the employees who were member of respondent No. 1/Union were dismissed from service for having joined the union activities and the dismissal was without inquiry as contemplated under the law. The allegation in the complaint is that the termination is on account of the complainants having joined the Union activities and only the complainants were singled out in the process of verification of educational qualification certificates for joining respondent No. 1/Union. The order of termination is in violation of the interim order of the Industrial Court in a ULP complaint which which was filed for victimization of the complainants for being member of respondent No. 1/Union.

26) On the allegations made in the complaint, the case will squarely fall within the jurisdiction of the Industrial Tribunal under section 28 r/w Item Nos. 1(a), 1(b) and 4(a) and 5 of Schedule-II and Items 4, 5, and 9 of Schedule-IV of the MRTU & PULP Act.

27) Thus, the Industrial Court has jurisdiction to deal with the matter based on the complaint made and the allegations made before the Industrial Court. So also, applying the case of **Motherson** (supra) the

employee in the facts of the present case could have also the option of filing the case for termination either before the Labour Court if he restricted his ULP only for unlawful termination under Item (1) of Schedule IV or the Industrial Court, more particularly, when the employee alleges that he has suffered at the hands of the Management for union related activities, although it is the defence of the management that the termination is independent of Union activities and is on account of loss of confidence in the complaint for providing fake education certificate at the time of joining.

28) The next issue that arises for consideration is, whether the termination of the complainant is lawful for the reason of loss of confidence ?

29) The Complaint ULP No. 225/2019 is filed by alleging that the company was restraining the employees from joining Union and victimized them for joining the union and during pendency of the proceedings, interim orders were passed. While the interim orders were in force, the employees were called for work and were admittedly asked to sit over onscreen training as they were out of employment for 20 days. It is stated that the training was given in terms of onscreen information. The employees/complainants refused to undergo the training. It is also stated by the company that while the employees were averse to the training the company was not satisfied with the general performance or competence, and due to their aversion for training, the company decided to call upon their original qualification certificates which were mentioned in their application form. When the employees failed to produce their original qualification certificates, the company wrote all the respective institutes from where the employees had completed their I.T.I. course. It is the case

of the petitioner that in response to the information sought from the institutes, the petitioner became aware that employees have not undertaken such I.T.I. training. Accordingly, the company issued notice to the employees and called upon them to produce their original certificates. It is only when employees failed to produce certificates, the company lost confidence in the employees and that termination order was made in terms of clause 17 of the appointment letter, which is as under :-

> "17. If any certificate of your qualification etc. produced by you at the time of appointment is found to be not genuine or any suppression of any material information while seeking employment, this appointment order will stand cancelled automatically with immediate effect and your shall not be entitled for any compensation whatsoever."

30) For proving the charges against the workmen, the petitioner has examined four witnesses. In this regard, evidence of witness No. 1 – Kailas Bansi Rathod, Manager-IR and witness No. 4 is relevant.

Examination in Chief of Kailas Bansi Rathod, Manager-IR

31) In the affidavit of examination in chief, Witness No. 1 – Kailas Rathod has stated that in Jalna factory the setup for the manufacturing includes sophisticated VMC and CNC machines which require the deployment of the qualified and trained man-power. It is stated that the respondent initiated recruitment process and called candidates from employment exchage, conducted campus interviews, also informed ITI Colleges and BTRIC to inform the names of the candidates/persons who were interested. It is stated that the educational qualifications/technical qualifications as the minimum qualification required to be considered for recruitment is ITI and Diploma in Technical Education in concerned trade, without which the

person recruited would not be able to work in the factory in the light of manufacturing set up of the respondent. The complainants were taken in the employment of the petitioner during the said period strictly based on their qualifications and supportings thereof submitted by the complainants along with the joining report. It is stated that the complainants had submitted the xerox copy of the certificates allegedly issued by various ITI's. The petitioner believed their certificates without verification. It is stated that despite imparting training, there were continuous complaints of rejection of the products by the client and one of the major client of the petitioner M/s. Bajaj Auto Limited was reluctant to continue further relationship with the petitioner company in the month of January, 2019. It is stated that meanwhile one of the alleged Trade Union, Aurangabad Majdoor Union (CITU) has claimed status of collective bargaining agent for some of the workmen which the petitioner has resisted on all counts and the same was subjudice in Complaint (ULP) Nos. 125 and 130 before the Industrial Court. It is stated that in the aforesaid complaints, the complainants have themselves declared that they were I.T.I's. It is stated that the respondents/employees did not cooperate in the training and they continued their strike from 15.11.2019 till they were directed to report for duties by the Industrial Court vide order dated 11.12.2019. It is stated that the said illegal strike continued for more than 20 days and as such, it was incumbent upon the petitioner to give training to these complainants workmen, who were on strike as per clause of the Standard Operating Procedure of the petitioner and the Factories Act. It is stated that the petitioner gave classroom training to workmen to refresh them with the production process as per the Standard Operating Procedure and the workmen were paid full

wages during this period. It is alleged that the workmen showed averse attitude towards the training and were not able to answer the question sheets given during training to them. It is stated that thus, the company directed the workmen to produce all educational qualification certificates by notice dated 17.12.2019. Thereafter the petitioner again gave follow up notice dated 2.1.2020 asking the employees to file original documents. The complainants/workmen did not come forward with original certificates forcing the petitioner to check their certificates with the educational institutions based on the copy of educational qualification certificate submitted during the time of their joining petitioner/company. It is stated that 38 certificates were not genuine and not issued by the institutions. As such, notices were given on 25.1.2020 and 29.1.2020 naming the 38 workers to produce their original educational qualification certificates within three days and also individual letters were sent to all the 38 workers by R.P.A.D. However, no compliance was made by the workers. As such the said workers were terminated from the service as declarations given by the workmen while seeking employment are false.

Cross examination of Kailas Bansi Rathod, Manager-IR

32) In the cross examination of Kailas Bansi Rathod, Manager-IR, he has stated that the products are never rejected due to faults in machines and the defects are not due to level-III operators but by level-II operators. Level-II operators are working under supervisors and action is taken against the supervisors. He has also admitted that notices were not issued to the complainants for defective products. None of the employees after completing training was given post of operator and the employees available

in local area were trained by us as per the requirement.

33) It is stated that he has no personal knowledge of verification of documents. There is no signature and date on the application and that they have not distroyed certain documents.

Examination in chief of R. Rameshkumar, Senior General Manager by way of affidavit.

34) Evidence is also given by the witness Ramesh Kumar, Senior General Manager. He has stated that ITI and Diploma in Technical Education in concerned trade, without which the perosn recruited would not be able to work in the factory in the light of the manufacturing set up of the respondent. It is stated that the complainants submitted the xerox copy of the certificates allegedly issued by various ITI's. The company believed the certificates without verification. The complainants have declared that they have acquired diploma in concerned trade. The complainant had failed to verify their documents. As such, they were dismissed from service.

35) It is stated that the company had no alternative than to decide to not to repose any further trust in these complainants and that therefore they terminated the complainants after giving them opportunity to submit their original educational certificates by also paying them three months notice pay in lieu of notice.

Cross-examination in chief of R. Rameshkumar, Senior General Manager by way of affidavit.

36) In the cross-examination the Manager has stated that he visits the factory at Jalna twice a year and that he personally interviewed the candidates and that he accepts recommendations of HR Jalna. It is stated that no specific appointment orders are issued for any trainees, such as

fitter, machinist, turner, electrician etc. It is stated that the worker does not need to be trained in ITI before undertaking the work. They appoint the worker as a trainee and after training the worker becomes technical assistants. After training is satisfactory, the workers are appointed on probation for a period of one year. It is stated that the probation period in Maharashtra is for three months. It is stated that he does not have the report from the shop floor than the products were rejected because of the fault of a particular worker and that he has not initiated any disciplinary action against the workers in the present case.

EVIDENCE : Examination in chief ON BEHALF OF THE WORKMEN

37) The workmen gave common evidence of one **Mr. Vikas Khajekar**. He has stated that the company has grudge against the complainants and, threatened the complainants with dismissal from service for joining union. That, on 09.11.2019, complainant no.20, Shri Sachin Pawar, when he had gone to canteen, the contractor misbehaved with him. Thereafter, he was refused entry and suspended from service. The complainants were asked to sign the good conduct bond which was kept ready on the gate. The complainants declined to sign the same and the respondent prohibited the complainant from entering the factory premises. Thereafter, the matter was taken up with the Deputy Labour Commissioner. He intervened in the matter. The Manager still did not allow the complainant workmen to resume their duties. The same was for interfering with the legitimate trade union activities of the complainant – union in its formation, protection and collective bargaining. The management was trying to sabotage the entire process of self organization by the workmen. The complainant workmen

were threatened of being discharge or dismissal.

38) Thereafter, when the complainants went for job they were asked to return for training and were not given regular work and the company continued lock-up. The complainants under the garb of training the company terminated 29 workmen on 31.01.2020 and on 01.02.2020 further terminated 8 workmen alleging failure on their part to produce the original copy of certificate / educational qualification.

39) It is stated that the workers were not employed through employment exchange or through any public advertisement and no technical qualification was requisite for the initial employment of "trainee". The qualification is of no relevance for the training imparted to them and the work allotted to them. The training period extended for two years and granting permanency in service to the complainants was purely based on their performance. The complainants after training were placed on probation for a period of two years and thereafter they were confirmed.

40) It is particularly stated that company is picking and choosing only members of complainant – union whereas those who are not so qualified all technical trades and had been engaged earlier through contractors are now taken on the roll of the company as workers. Those workmen were not subjected to such harassment, including discharge, just because they are not members of Complainant-union. The company is discriminating complainants – workmen only because they are members of complainant – union.

Cross Examination of Mr. Khajekar

41) In the cross he has stated that he was terminated because he became the member of the union and not because he has falsely stated that

he has a ITI certificate.

Consideration of evidence

42) Considering the evidence as is placed on record by the Union and the Management the tribunal has rendered a finding that the employees were terminated on account of their joining Aurangabad Majdoor Union. Perusal of the evidence would indicate that the appointment of complainants/employees was from open market and not by advertisement prescribing qualifications. The evidence of the Management does not indicate that all the similarly placed employees have ITI qualification. There is a categorical statement made in the evidence of Mr. Khajekar that only the employees of the trade union were called upon to furnish certificates although they were imparted two years of training and, thereafter, two years of probation before confirmation. The complainants' job is only of assistant trainees and not as a operator of the CNC machines. The machines does not require only ITI qualified persons and that at no stage any of these employees were issued notice for having failed in performing their duties. Although attempt is made by the petitioner, though the evidence of its witnesses, to demonstrate that the complainants were averse to the training and were not able to answer the question sheet given during training, it is to be seen that no such answer-sheet are produced and proved by the management. The attempt has been only to single out the complainants/employees. The reason for calling upon their ITI certificates after five years of service is not bonafide. More so, when it is not clearly established that the ITI was the minimum requisite statutory qualification or atleast in terms of the advertisement. The complainants/employees were

working satisfactorily without production related individual complaint and they were taken from open source, imparted training as trainees for two years and thereafter, taken as technical assistant on probation for two years and thereafter made permanent. The finding rendered by the tribunal in this regard cannot be faulted with. It is based on preponderance of probabilities. The Management has used the ITI certificate as loaded gun only on the members of the union for having joined the trade union which the management did not want in their factory.

43) Thus, to say that the management had lost confidence in the employees since they had failed to produce original ITI certificates, is merely a farce/excuse more so when none of the employees were issued notice at earlier point of time for non performance or having committed errors in their duties. The argument of the petitioner that the employees were terminated in terms of clause 17 of the conditions of the letter of employment cannot be accepted as the contract of employment is controlled by statutory provisions of industrial law applicable to the workmen **(Bharatiya Kamgar Karmachari Mahasangh Vs. Jet Airways Ltd.** reported in **AIR 2023 SC 3596)** and the contract between the employer and workmen cannot override the statutory law and embodied in certified standing order or the provisions of Industrial Dispute Act and other Industrial Law.

44) It is also submitted before this court that during the pendency of the proceedings various employees/complainants had to leave the union on account of the pressure techniques adopted by the management and when the employees who had left the union and joined another internal union, immediately settlement was shown with the workmen and the same was also accepted before the court and the employees who had left the Union

were taken in service. It is also stated that the workers who left the union were assigned work and did not prosecute 18 workers who did not contest the case on the grounds of humanitarian acts. There is no counter submission in this regard by the petitioner.

45) From the evidence on record and the facts from record, it is not difficult to hold that the management has used the ITI qualification as subterfuge against the complainants/employees for joining respondent No. 1/Union. It is also pertinent to note that there was no formal inquiry conducted, charge-sheet given and the process completed for termination.

46) The next issue before this court is, whether the employees are entitled to backwages ?

47) In this regard, the management has submitted that the affidavit is filed by only Mr. Kahjekar – employee. There is no affidavit by other workmen that they were out of service nor they were permitted to be cross examined when an application was made to that effect to cross examine all the employees, the same was declined. In the case of **O. P. Bhandari Vs. Indian Tourism Development Corporation Ltd. And others, 1993 Supp (4) SCC 468,** the Hon'ble Supreme Court has held that reinstatement should not automatically lead to full backwages and that evidence has to be available on record whether the employee was unemployed at the time during the period of his termination.

48) This Court has upheld the finding of the Industrial Court that the termination is illegal and the termination was on account of the complainants having joined the respondent No. 1/Union. The Hon'ble Supreme Court in the case of **Deepali Gundu Surwase v. Kranti Junior**

Adhyapak Mahavidyalaya, (2013) 10 SCC 324, as regards grant of backwages, at paragraph no.38, has made the observations as under:

> *"38. The propositions which can be culled out from the aforementioned judgments are:*
>
> *38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> *38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> *38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*
>
> *38.4. The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*
>
> *38.5. The cases in which the competent Court or tribunal finds*

that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or Tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power Under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. V. Employees.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P.Agrawal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an
employee/workman."

49) In the instant case, in an interim order passed in the Complaint ULP, option was given to the employer to employ the workmen or to pay 50% wages as interim relief and the company took the option of 50% of wages

and did not take the employees back in the employment. The company has not taken the employees although available for employment.

50) Considering the observations in the case of **Deepali** (supra) and that having held that the termination is illegal and as a harassment to the employees for joining the respondent No. 1/Union, the order of backwages cannot be faulted with.

51) For the reasons noted above, the writ petition is devoid of merits and is accordingly dismissed.

[ARUN R. PEDNEKER, J.]

ssc/