BAJAJ AUTO LIMITED

v.

RAJENDRA KUMAR JAGANNATH KATHAR & ORS.

(Civil Appeal Nos. 2159-2160 of 2012)

APRIL 04, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 - ss. 28 and 30(1)(b) and Schedule IV item 6 - Unfair Labour Practice - Allegation by workman - Courts below held that the Company indulged in unfair labour practices - Held: Courts below rightly held that the Company indulged in unfair labour practice - In the facts of the present case, amount of reasonable compensation granted by the Industrial Court is modified - However, since the workmen have already withdrawn the compensation amount, no steps to be taken by the management to recover the differential amount from the workmen.

The respondents-workmen were employed with the appellant-Company. The workmen initiated action against the Company u/s. 28 of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971, before Industrial Court, seeking declaration that there was unfair labour practice under items 5, 6 and 9 of Schedule IV of the Act. They alleged that though they were engaged from the year 1990 to 1997, 1998 and 1999, yet every year their services used to be terminated after expiry of 7 months. 17 more workmen file separate complaint in the year 2003 for providing work to them as they were kept outside the factory premises without work. The employees, in addition to their evidence also relied on the evidence produced in another complaint filed by the workmen of the appellant-Company (the case reached upto Supreme Court Bajaj Auto Ltd. v. Bhojane

A Gopinath D. and Ors. wherein the supreme Court had held that the appellant had indulged in unfair labour practice).

Industrial Court held that standard of evidence produced in the proceedings decided earlier in Bhojane case and in the present proceedings were similar and B from the evidence it is proved that despite the continuation of theworkmen for years, they were not given status of permanency, and thus appellant-Company indulged in unfair labour practice under item 6 of Schedule IV of the Act, and directed payment to the C workmen following the Bhojane case. As regards 17 workmen who had filed complaint in 2003, the Court directed to adjust the compensation amount in the salary paid to them.

D Management preferred writ petition against the order of Industrial Court. Single Judge of High Court confirmed the order of Industrial Court. In Writ Appeal, Division Bench also upheld the orders of courts below. Hence the present appeals.

E Disposing of the appeals, the Court

HELD: 1. Unfair labour practice, in its very essence, is contrary to just and fair dealing by both the employer and the employee. Peace in industrial atmosphere F requires the parties to behave and conduct in a just and fair manner. The grievance of the aggrieved workmen has to be adjudicated under the necessary enactments on the bedrock of fairness and just needs. It is to be borne in mind that the primary obligation and duty of an industrial G forum is to see that peace is sustained between the management and the employees in an industry. An unfair action by the employer against an individual worker has its effect and impact. It could disturb peace and harmony in an industrial sphere and similarly, when a workman H behaves contrary to the code of conduct and accepted

norms, unhealthy tribulation comes into existence. That is why the enactments provide a mechanism for arriving at a settlement to see that the growth and progress of industry is not scuttled by taking recourse to such methods which will eventually affect the national growth. This being the position behind the philosophy which has to be kept in mind by the employer and the employee, all efforts are to be made to avoid any kind of unfair labour practice. [Para 18] [318-C-G]

2. The stray observation by the Industrial Court regarding the factum of rotational practice was not correct more so when such a finding was earlier recorded and travelled to this Court for being tested and was accepted. The ultimate conclusion in this regard by the Industrial Court is correct but the said observation, was absolutely unwarranted. Hence, the complainants have proved that the company had engaged itself in unfair labour practice as far as Item No. 6 of Schedule IV of the 1971 Act is concerned. [Para 17] [317-C-E]

3. Non-adducing of evidence by each workman would not make the order illegal on that score. The evidence in the earlier case was adopted and accepted by all parties and has to be read as evidence in the present case and, hence, it cannot be brushed aside. Even if the plea that evidence in the earlier case should not have been taken into consideration, is pressed to its ultimate conclusion, it might, in certain cases, be an irregularity but cannot create a dent in the justifiability of the conclusion more so when the controversy related to the same period, but the only difference was that though some of the workmen approached the Industrial Court earlier, yet they chose not to proceed with the case and some approached at a later stage and only proceeded after the judgment was delivered by this Court. [Para 12] [314-D-G]

A 4. In the earlier case, Supreme Court had held that the High Court should not have directed reinstatement of the workmen with 50% back wages, but the situation warranted for grant of payment of reasonable amount of compensation in terms of Section 30(1)(b) of the 1971 Act. B In the earlier case, Supreme Court. on the basis of s. 30(1)(b) of the 1971 Act granted reasonable compensation by evolving a rational formula. What would be reasonable compensation would depend on the facts and circumstances of the case and no strait-jacket formula C can be evolved or laid down. [Paras 18 and 20] [318-H; 319-A; 321-D-E]

5. In the instant case, the complainants were silent spectators when the earlier group of cases was tried and the matter travelled to this Court. There were certain cases D which were filed at a later stage. The Division Bench also considered that the filing of the complaints range from 1997-2003. Regard being had to the totality of circumstances, the amount of reasonable compensation which has been granted by the Industrial E Court needs to be modified. [Para 21] [321-E-G]

6. The appellant-management is directed to pay lump sum amount calculated at 65 days' salary, inclusive of all allowances for the number of year each complainant has F actually worked irrespective of the days a complainant may have put in, in a year. The calculation would be made on the basis of work during a calendar year and that the calendar year in which a complainant may not have worked at all would be kept out of consideration while G calculating the amount. In calculating the salary that would be taken into account would be Rs.8,000/- p.m. subject to condition that if on the date of termination, the salary of any particular complainant was more, than the calculation would be made on the actual last drawn salary. The calculation in the above manner would be H

made for the period up to the date of terminations in 1997. For the period after termination till date of this judgment, the basis of calculation would be lump sum two years of service on the basis aforesaid, viz. 65 days for each year i.e. 130 days. [Para 21] [321-G-H; 322-A-C]

7. Despite the modification, keeping in view the fact that the respondent-workmen had already withdrawn the amount in pursuance of the order dated 06-02-2012 when leave was granted, no steps shall be taken by the appellant-company to recover the differential sum from the respondents. [Para 21] [322-C-D]

Bajaj Auto Ltd. vs. Bhojane Gopinath D. and Ors. **(2004) 9 SCC 488:2003 (6) Suppl. SCR 958;** *Bajaj Auto Ltd. vs. R. P. Sawant and Ors.***(2004) 9 SCC 486 - referred to.**

Case Law Reference:

2003 (6) Suppl. SCR 958	**referred to**	**Para 4**
(2004) 9 SCC 486	**referred to**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2159-2160 of 2012.

From the Judgment and Order dated 15.11.2011 and 20.12.2011 of the High Court of Judicature of Bombay, Bench at Aurangabad in Letter Patent Appeal No. 247 of 2011 and Review Application No. 248 of 2011, respectively.

WITH

C.A. Nos. 2821, 2822, 2823, 2824, 2825, 2826, 2827. 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, , 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898 & 2899 of 2013.

A J.P. Cama Gopal Singh, Manish Kumar, S.J. Cama, Amol N. Suryawanshi (for Uday B. Dube) Atul B. Dakh (for Dr. Kailash Chand) for the Apearinig parties.

The Judgment of the Court was delivered by

B **DIPAK MISRA, J.** 1. Leave granted in all the Special Leave Petitions and they are taken up along with Civil Appeal Nos. 2159 and 2160 of 2012. Regard being had to the commonality of the issue involved, all the appeals were heard together and are disposed of by a common judgment.

C 2. The facts which are essential to be stated for adjudication of the present batch of appeals are that the appellant-company is engaged in manufacturing of two-wheelers and three-wheelers and it has factories at Akurdi (Pune District) and Waluj (Aurangabad District). The D respondents, who were engaged as Welders, Fitters, Turners, Mechanics, Grinders, Helpers, etc., initiated an action against the appellant-company under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the 1971 Act") before the E Industrial Court, Aurangabad, seeking a declaration that there has been unfair labour practices under items 5, 6 and 9 of Schedule IV of the 1971 Act on the foundation that though they were engaged in the year 1990, yet in every year, they were offered employment for seven months each year and after the F expiry of the said period, their services used to be terminated and the said practice continued till they filed the complaints in 1997, 1998 and 1999. Seventeen of them also filed a separate complaint in the year 2003 for providing work to them as they were kept outside the factory premises without work. It was alleged that because of this unfair labour practice, none of them G could complete 240 days in employment in any corresponding year to make them eligible to earn the status and privilege of permanent employees. It was contended before the Industrial Court that in the year 1996, the employer, in order to improve work culture, used multi-skill and multi-operational system and H thereby the employees termed as multi-skill operators were

required to undertake various jobs, but the employer, by taking recourse to unfair labour practice, saw to it that their services were terminated immediately after the expiry of seven months. In this backdrop, they were deprived of the status under clause 4-C of the Model Standing Orders as appended to Schedule I-A of the Industrial Employment (Standing Orders) Act, 1945 (for short "the 1945 Act").

3. The aforesaid stand and stance of the workmen was opposed by the employer contending, inter alia, that the establishment was governed by the Certified Standing Orders dated 10.3.1986 and the said Certified Standing orders did not have a provision like clause 4-C of the Model Standing Orders. It was asserted that the company has employed 4250 permanent employees which is sufficient to meet the requirement of normal production but whenever there was a temporary rise during some period in a year, with the consent of the union, it used to engage employees for the duration which was restricted to few months. The allegation of unfair labour practice under items 5, 6 and 9 of Schedule IV of the 1971 Act was seriously controverted. It was categorically put forth that there was no intention whatsoever to deprive the workmen of their status but the appellant-company, in order to meet its target, had to engage the employees as and when required and, hence, the bald allegation of unfair labour practice was not only totally unwarranted but also uncalled for.

4. To substantiate their respective stands, the employer and the employees adduced evidence and also relied on the evidence produced in complaint ULP No. 192 of 1997. Be it noted, apart from the evidence recorded in complaint ULP No. 192 of 1997, one Mr. Dilip Suryavanshi was examined on behalf of the employer. The Industrial Court took note of the stand of the complainants with regard to the assertion that the employer deliberately adopted rotational system throughout the year as a consequence of which the temporary employees were rotated and not allowed to complete the requisite number

A of days to have permanency of employment and referred to the evidence in complaint ULP No. 192 of 1997 and came to hold that the standard of evidence produced in the proceeding decided earlier and produced in the proceeding before him were more or less similar and from the said evidence, it was B clear that the employees had been continued for years but were not granted the status or privilege of permanency at the relevant time. He referred to the earlier judgment of this Court in *Bajaj Auto Ltd. v. Bhojane Gopinath D. and others* and adverted to the doctrine of res judicata and principle of res integra and, C eventually, came to hold that the appellant-company had indulged itself in unfair labour practice under item No. 6 of Schedule IV of the 1971 Act. Following the decision in *Bhojane Gopinath* (supra), he directed the appellant-company to pay lump sum amount calculated at 85 days salary inclusive of all D allowances for the number of years each complainant had actually worked irrespective of the days a complainant may have put in a year and the calculation would be made on the basis of work during a calendar year and that the calendar year in which a complainant may not have worked at all would be kept out of consideration while calculating the amount. It was stated E that in calculating the salary it shall be at the rate of Rs.8000/- p.m. subject to the condition that if on the date of termination, the salary of any particular complainant was more, then the calculation would be made on the basis of actual last drawn salary and the calculation in the above manner would be made F for the period upto the date of termination in 1997 and for the period after termination till date of the judgment, the basis of calculation would be lump sum three years of service on the aforesaid basis, viz., 85 days for each year, i.e., 255 days. As far as 17 complainants in complaint ULP No. 79 of 2003 were G concerned, the Industrial Court directed that the compensation amount would be adjusted in the salary paid to them.

5. Being aggrieved by the aforesaid order of the Industrial Court, the management preferred a batch of writ petitions. H Before the writ court, it was contended that the Industrial Court

has totally erred by coming to hold that the employer had indulged in unfair labour practice; that the workmen in their individual capacity could not have been allowed to prosecute the complaint after the recognized union came into existence in the year 1999; that the rise in production was not synonymous with the availability of work; that the increased production was achieved with the help of permanent employees of the company and whenever situation arose for meeting the target, the employees were engaged for few months on the basis of a settlement entered between the employer and the Union; that once the Industrial Court had expressed the opinion that the factum of rotational system had not been established by cogent evidence, a finding could not have been returned pertaining to unfair labour practice under item 6 of Schedule IV of the 1971 Act; that the reliance on the decision in *Bhojane Gopinath D.* (supra) was neither correct nor advisable as the said decision was restricted to its factual matrix; that there was no material on record to show that the employer had any intention to deprive the employees the benefits of permanency; that no independent evidence was adduced on behalf of the workmen but a conclusion had been arrived at by the Industrial Court on the base and foundation of the evidence recorded in complaint ULP No. 192 of 1997 which was absolutely impermissible; and that the Industrial Court failed to appreciate the evidence of Mr. Suryavanshi in proper perspective and had gone absolutely transient on the concept of res judicata and res integra which were untenable.

6. On behalf of the respondent-employees, reliance was placed on the previous pronouncement of this Court, the evidence brought on record and the defensibility of the analysis made by the Industrial Court.

7. The learned Single Judge referred to the decision in *Bajaj Auto Ltd. v. R. P. Sawant and others*[1] and the pronouncement in Bhojane Gopinath's case and opined that as

1. (2004) 9 SCC 486.

this Court had considered the same controversy, the lis required to be appreciated in the backdrop of the analysis made therein. The writ Court referred to paragraph 8 of the judgment delivered by the Industrial Court wherein a specific reference had been made to the fact that the parties had consented to rely upon the evidence produced in ULP complaint No. 192 of 1997 which came to be considered by this Court. The learned Single Judge scrutinised the reasoning ascribed by the Industrial Court and noticed that there was ample proof that the evidence in the earlier case had been adopted and the only additional evidence that had been brought on record was the evidence of one Mr. Suryavanshi. The Writ Court observed that the evidence adduced by Mr. Suryavanshi essentially pertained to the changed circumstances from July, 2000 onwards and, therefore, the same was inconsequential for the period prior to July 2000. It took note of the fact that the year of filing of the ULP complaints before the Industrial Court and decided by Judgment dated 21.8.2004 ranged from 1997 to 2003 but the thrust of the grievance was completion of 7 years of service from 1990 to 1997 and hence, the deposition of Mr. Suryavanshi really did not make any difference. In this backdrop, the learned Single Judge expressed the view that the earlier evidence being adopted by the parties by consensus deserved to be read as evidence in fresh cases and, therefore, the Industrial Court was absolutely justified to look into that evidence and in resting its finding on the same. Thereafter, commenting on the finding of the Industrial Court relating to the absence of rotational practice, the Writ Court observed as follows:-

> "Absence of rotation recorded by it cannot save the situation for the petitioner as all temporaries need to be treated as one class. In earlier round, the Industrial Court had directed the petitioner to prepare list of all temporaries whether continuing in service or out of it & to provide work to them as per seniority. This was as per the mandate of the standing orders. Petitioner did not produce any such

list. In view of earlier findings & directions, it was not necessary for workers/complaints to again disclose names of any juniors who got work prior to them. The burden was upon petitioner to prove that as per their seniority turn of employees/complains never came prior to the date on which they actually got the work. Petitioner Company conveniently destroyed those documents & did not examine any witness having competence to depose for period from 1990 to 1997.

Industrial Court therefore rightly accepted earlier finding of unfair labour practice under Item 6 of Sch. IV and proceeded to grant relief of compensation to complainants before it. There is no jurisdictional error or perversity on it part."

Being of the aforesaid view, the order passed by the Industrial Court was concurred with and resultantly, the writ petitions were dismissed.

8. In intra-Court appeal, the Division Bench adverted to the factual score and addressed to the rivalised submissions of the parties and opined that the engagement of large number of temporary employees by the company during the relevant period was certainly a pertinent circumstance for deciding the issue of unfair labour practice under Item 6 of Schedule IV of the 1971 Act. It took note of the fact that there was circumstance to show that the company had admitted that the rotational system was in vogue during the said period. The plea of fluctuation of demand to meet the target was not accepted by the Division Bench. Further, analyzing the evidence of Mr. More, Operational Manager and Mr. Tripathi, Vice-President of the company and Mr. Malshe, General Manager, it came to hold thus:-

"The aforesaid evidence and circumstances are sufficient to infer that there was sufficient work with the company, the production was increasing, there was the demand to

A the vehicles of the company in the market and due to these circumstances, the temporary employees were appointed during all those years. On the basis of this evidence final decision was given by the Court in the previous proceedings that unfair labour practice under item No. 6 B is proved against the company. The present complainants, respondents were working during the same period and they were also appointed in similar manner. In view of these circumstances, no other inference is possible. The evidence and circumstances also show that the C documentary evidence of concerned Departments was not produced by the company by giving excuse that such record (of manpower recruitment analysis, etc.) of pre - 1997 was destroyed. It is surprising that when in the year 1997 itself thousands of the complaints were filed in the Industrial Court, the company destroyed this record. In the D pleadings no such defence was taken by the company. In view of these circumstances also, adverse inference needs to be drawn against the company."

Be it noted, the Bench also opined that the evidence of E Mr. Suryavanshi did not make any difference. Being of this view, it declined to interfere with the order of the learned Single Judge and that of the Industrial Court.

9. We have heard Mr. J.P. Cama, learned senior counsel F for the appellants-management, Mr. Atul B. Dakh, learned counsel for the respondents, and Mr. Uday B. Dube, learned counsel for the interveners.

10. Learned senior counsel appearing for the appellant has submitted that when the Industrial Court has recorded a G categorical finding that the rotational pattern was not adopted by the management inasmuch as no other workman was employed in place of the complainant, the concept of unfair labour practice would not be attracted. It is urged by him there was no intention of the management to deprive the workers of H their permanency and when such a finding had been returned

by the Industrial Court, the ultimate conclusion by the said Court and the High Court that there was unfair labour practice is unsustainable. It is put forth by him that the Industrial Court erroneously relied on the evidence adduced in the earlier case and further flawed in its analysis by holding that similar evidence could not be viewed differently when he himself was of the view that no unfair labour practice was adopted by the management. It is canvassed by Mr. Cama that in the absence of any mala fide object to deprive the workmen the benefit of permanency, it is ex facie unjustified on the part of the Industrial Court and the High Court to record a conclusion that the company was involved in unfair labour practice. It is his further submission that the High Court, while exercising the writ jurisdiction, could not have evaluated the evidence and drawn inferences to justify the order passed by the Industrial Court which is replete with inconsistent findings and based on faulty understanding of the principles of res judicata and res integra.

11. Mr. Dakh and Mr. Dube, in oppugnation, have submitted that when the evidence adduced in the earlier case was treated to be the evidence in the present batch of cases, it is inapposite on the part of the management to contend that the same could not have been looked into. It is urged by them that the Industrial Court has rightly observed that on similar evidence, a different conclusion was not possible and correctly adhered to the decision in *Bhojane Gopinath* (supra) and the view expressed by it and concurrence of the said finding of the Industrial Court by the High Court cannot be found fault with.

12. First, we shall advert to the issue whether the evidence adduced in ULP No. 192 of 1997 could have been taken into consideration. What should have been done in the ordinary course of things need not be dwelled upon. Mr. Cama, learned senior counsel, would contend that every individual workman was obliged under law to adduce evidence to establish his claim. The said submission, on a first blush, looks quite attractive, and rightly so, but on dwelling into the proceedings

A before the Industrial Court, the focused argument on that score dwells into insignificance. We are compelled to say so inasmuch as the Industrial Court, in paragraph 8 of its decision, has recorded that the parties relied on the evidence produced in the earlier case. Before the learned Single Judge, a B contention was advanced as stated earlier that none of the workmen entered witness box before the Industrial Court to lead any evidence and the said submission was controverted by the workmen that the parties with open eyes chose to adopt earlier evidence. The learned Single Judge, upon perusal of the C judgment passed by the Industrial Court, has recorded its concurrence by stating that the verdict of the Industrial Court expressly made reference to the fact that the parties chose to rely upon the evidence produced in ULP Complaint No. 192 of 1997 and the said finding is neither shown to be erroneous nor D perverse. It appears that the same aspect has gone unassailed before the Division Bench. On a perusal of both the decisions, we are of the considered opinion that the evidence in the earlier case was adopted and accepted by all parties and has to be read as evidence in this case and, hence, it cannot be brushed aside. Even if the contention of Mr. Cama, learned senior E counsel, is pressed to its ultimate conclusion, it might, in certain cases, be an irregularity but cannot create a dent in the justifiability of the conclusion more so when the controversy related to the same period, but the only difference was that though some of the workmen approached the Industrial Court F earlier, yet they chose not to proceed with the case and some approached at a later stage and only proceeded after the judgment was delivered by this Court in *Bhojane Gopinath* (supra). Be that as it may, the said aspect cannot be magnified to such an extent that non-adducing of evidence by each G workman would make the order illegal on that score. Thus, the submission, assiduously canvassed by Mr. Cama, does not deserve acceptance and, accordingly, we repel the same.

13. The next plank of submission relates to the finding H recorded by the Industrial Court relating to the absence of

sufficient evidence to come to a conclusion that rotational practice had been adopted by the company. As is evincible, the Industrial Court has observed that even from the seniority list produced in complaint ULP No. 192 of 1997, it could not be pointed out that a particular workman was disengaged on earlier date and the workman who was disengaged five months to eighteen months prior was engaged in his place for the same work to have the rotation. We have already noted how the learned single Judge and the Division Bench have commented on the said aspect. In the earlier round of litigation, it relied on the same period while dealing with the rotational employment and other findings and recorded its view as under: -

> "Learned counsel appearing on behalf of the appellant Company made a vain attempt to challenge the finding recorded by the Industrial Court to the effect that the workmen succeeded in providing that the appellant Company had employed unfair labour practice in its establishment in relation to the matters enumerated in Item 6 of Schedule IV of the 1971 Act. We have been taken through the award of the Industrial Court in extensor from which it appears that the court recorded the said finding after threadbare discussion of evidence adduced on behalf of the parties and there being no infirmity therein, the High Court was quite justified in not interfering with the same, accordingly, it is not possible for this Court to disturb the same in view of the fact that the finding is a pure finding of fact and no interference therewith is called for."

14. After so stating, this Court addressed to the submission about the view expressed by the High Court in affirming the finding of the Industrial Court that the appellant-company had indulged in unfair labour practice as enumerated in Item No. 9 of the Schedule IV of the 1971 Act and, eventually, came to hold that it cannot be said that the company, in any manner, employed unfair labour practice under Item 9 and, therefore, the High Court was not correct in affirming the finding

A of the Industrial Court in that regard.

15. Thus, it appears that the adoption of unfair labour practice in the establishment in relation to matters enumerated in Item No. 6 of Schedule IV was accepted. In this context, we may usefully refer to Item No. 6 of Schedule IV of the 1971 Act B which reads as follows: -

> "6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges C of permanent employees."

16. The conclusion arrived at by the Industrial Court on the basis of the inferences drawn from the material on record which have been given the stamp of approval by the High Court was D accepted by this Court and it needs no special emphasis that the said acceptation was on the foundation of the evidence which was considered by the Industrial Court. The question that emerges for consideration is whether a different conclusion should be recorded relating to the same period on the basis E of the same evidence. As is perceptible, though the Industrial Court in its decision held that on the basis of the earlier evidence it could not be established that a particular workman was disengaged on earlier date and a workman who was engaged earlier was brought in and, hence, there was rotation F of employees, yet at a later stage, the said court has categorically held that the employees had continued for years but were not granted the status and privilege of permanency at the relevant point of time. The learned single Judge, while scrutinizing the said finding, has opined that the Industrial Court had rightly accepted the earlier finding of unfair labour practice G and proceeded to grant relief and such a view, as quoted hereinabove, would show that it was based on the material already on record and further reflect the conduct of the company in not producing the list of all temporary workmen continuing in service or out of it and in taking the plea that it H had destroyed the records. The Division Bench has expressed

the view that in respect of the complainants working during the period who were appointed in similar manner, the inference has been correctly drawn by the Industrial Court. The High Court, as is evident, felt that the evidence of Mr. Suryavanshi pertained to the future period and should not be made use of for the earlier period.

17. On a scrutiny of the evidence brought on record, we find that the analysis made by the Industrial Court as well as by the High Court is absolutely defensible and cannot be flawed, for the said witness has really deposed with regard to the changed circumstances. This being the position, in our considered opinion, the stray observation by the Industrial Court regarding the factum of rotational practice was not correct more so when such a finding was earlier recorded and travelled to this Court for being tested and was accepted. We may hasten to clarify that the ultimate conclusion in this regard by the Industrial Court is correct but the said observation, we are constrained to say, was absolutely unwarranted. Hence, the irresistible and inescapable conclusion is that the complainants have proved that the company had engaged itself in unfair labour practice as far as Item No. 6 of Schedule IV of the 1971 Act is concerned. We may hasten to add that the submission of Mr. Cama, learned senior counsel is that there was no mala fide intention and the said mala fide intention is sine qua non to arrive at a conclusion that there was unfair labour practice. He has also laid emphasis on the words used "with the object" which find place in Item No. 6 of Schedule IV. We need not labour hard on the said score as on earlier occasion, such a finding was returned on the basis of the material on record and this Court had accepted the said conclusion to be impeccable. Ergo, the assail on the said score has to be repelled and we so do.

18. It is evincible from the judgments of the Industrial Court as well as the High Court that similar benefit has been extended that has been given in the case of *Bhojane Gopinath* (supra).

A It has been done on the basis of the conclusion arrived at relating to unfair labour practice and the consequent benefit given by this Court. Unfair labour practices have been dealt with in Chapter VI of the 1971 Act. Section 26 stipulates that unfair labour practices, unless the context requires otherwise, would B mean any of the practices listed in Schedule II, III and IV of the 1971 Act. Section 27 mandates that no employer or union and no employee shall engage in any unfair labour practice. Section 28 provides the procedure for dealing with the complaints relating to unfair labour practices and Section 29 stipulates who C are the parties and on whom the order of the court shall be binding. Unfair labour practice, in its very essence, is contrary to just and fair dealing by both the employer and the employee. Peace in industrial atmosphere requires the parties to behave and conduct in a just and fair manner. The grievance of the D aggrieved workmen has to be adjudicated under the necessary enactments on the bedrock of fairness and just needs. It is to be borne in mind that the primary obligation and duty of an industrial forum is to see that peace is sustained between the management and the employees in an industry. An unfair action by the employer against an individual worker has its effect and E impact. It could disturb peace and harmony in an industrial sphere and similarly, when a workman behaves contrary to the code of conduct and accepted norms, unhealthy tribulation comes into existence. That is why the enactments provide a mechanism for arriving at a settlement to see that the growth F and progress of industry is not scuttled by taking recourse to such methods which will eventually affect the national growth. This being the position behind the philosophy which has to be kept in mind by the employer and the employee, all efforts are to be made to avoid any kind of unfair labour practice. As the G finding has been returned that there has been violation of item No. 6 of Schedule IV of the 1971 Act, the question that arises as a fall-out is whether the Industrial Court has extended the apposite benefit or does it require any modification. In *Bhojane Gopinath* (supra), this Court had held that the High Court should H not have directed reinstatement of the workmen with 50% back

wages, but the situation warranted for grant of payment of reasonable amount of compensation in terms of Section 30(1)(b) of the 1971 Act. While so holding, this Court referred to the submission of the learned counsel for the parties in Civil Appeal No. 5003 of 2002 wherein the appellant-company and the workmen had settled the controversy and the entire compensation had been paid to the workmen as was paid to the other workmen in terms of the order dated 11.9.2003 passed in Civil Appeal No. 5002 of 2002 and a prayer was made to dispose of the appeal in terms of the directions enumerated in the said order. Be it noted, in the case of *R.P. Sawant* (supra), while dealing with Civil Appeal No. 5002 of 2002, this Court recorded as follows: -

> "5. The matter has been settled between the parties. It is agreed that the order of reinstatement in favour of the workmen be set aside and instead the appellant management would pay to each of the workmen a lump sum amount calculated at 65 days' salary, inclusive of all allowances, for the number of years each workman has actually worked irrespective of the days a workman may have put in in a year. It is further agreed that the calculation would be made on the basis of work during a calendar year and that the calendar year in which a workman may not have worked at all would be kept out of consideration while calculating the amount. While calculating the salary for each workman the minimum salary that would be taken into account would be Rs.8000 per month subject to the condition that if on the date of termination the salary of any particular workman is more, then the calculation would be on the actual last-drawn salary. The calculation in the above manner would be made for the period up to the date of termination in the year 1997-98. For the period after termination till date, the basis of calculation would be lump sum three years of service on the basis aforesaid, namely, 65 days for each year i.e. salary for 195 days. The payment so calculated and made would be in full and final

A payment of all claims of the workmen and the workmen will have no further claim from the Company. The appeal is disposed of in the above terms agreed by learned counsel for the parties. The impugned judgment would not be treated as a precedent either on fact or on law."

B

19. In *Bhojane Gopinath* (supra), after referring to the said order, this Court took note of the fact that in Civil Appeal No. 5003 of 2002, out of 1197 respondents, 1006 had compromised the matter in terms of the order in Civil Appeal No. 5002 of 2002. As far as the remaining workmen were C concerned, a view was expressed that it would be just and expedient that they are paid a reasonable amount of compensation under Section 30 of the 1971 Act. Therefore, the Court proceeded to direct as follows: -

D "Each of the remaining workmen shall be paid a lump sum amount calculated at 85 days' salary, inclusive of all allowances, for the number of years each workman had actually worked irrespective of the days a workman may have put in in a year. The calculation would be made on E the basis of work during a calendar year and that the calendar year in which a workman may not have worked at all would be kept out of consideration while calculating the amount. In calculating the salary for each workman, the minimum salary that would be taken into account would be F Rs.8000 per month subject to the condition that if on the date of termination, the salary of any particular workman was more, then the calculation would be made on the actual last-drawn salary. The calculation in the abovesaid manner would be made for the period up to the date of G termination i.e. on 9-1-2001. For the period after termination till date, the basis of calculation would be lump sum two years of service on the basis aforesaid, namely, 85 days for each calendar year i.e. salary for 170 days."

20. Section 30 of the 1971 Act deals with the powers of H industrial and labour courts. Section 30(1)(b) reads as follows:-

"(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;"

On the basis of the aforesaid provision, reasonable compensation was granted by evolving a rational formula. We may hasten to add that what would be reasonable compensation would depend on the facts and circumstances of the case and no strait-jacket formula can be evolved or laid down.

21. In the case at hand, as is noticeable from the judgment of the Industrial Court, the complainants were silent spectators when the earlier group of cases was tried and the matter travelled to this Court. It is also observed that there were certain cases which were filed at a later stage. The Division Bench also considered that the filing of the complaints range from 1997-2003. Regard being had to the totality of circumstances, we are inclined to modify the amount of reasonable compensation which has been granted by the Industrial Court. The modified order would read as under: -

The appellant is directed to pay lump sum amount calculated at 65 days' salary, inclusive of all allowances for the number of year each complainant has actually worked irrespective of the days a complainant may have put in in a year. The calculation would be made on the basis of work

during a calendar year and that the calendar year in which a complainant may not have worked at all would be kept out of consideration while calculating the amount. In calculating the salary that would be taken into account would be Rs.8,000/- p.m. subject to condition that if on the date of termination, the salary of any particular complainant was more, than the calculation would be made on the actual last drawn salary. The calculation in the above manner would be made for the period up to the date of terminations in 1997. For the period after termination till date of this judgment, the basis of calculation would be lump sum two years of service on the basis aforesaid, viz. 65 days for each year i.e. 130 days.

Although we have modified the order, yet keeping in view the fact that the respondent-workmen had already withdrawn the amount in pursuance of the order dated 06-02-2012 when leave was granted, no steps shall be taken by the appellant-company to recover the differential sum from the respondents.

22. With the aforesaid modifications in the order passed by the Industrial Court that has been affirmed by the learned single Judge and concurred with by the Division Bench of the High Court, the appeals and Interlocutory Application Nos. 10-11 of 2013 for intervention and vacation of the order of stay are disposed of. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

K.K.T. Appeals disposed of.