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**DIVISIONAL CONTROLLER MAHARASHTRA STATE**  
**ROAD TRANSPORT CORPORATION V. KALAWATI**  
**PANDURANG FULZELE, LNIND 2022 SC 73**

AUTHORED BY - LEKHANA WESLEY & ANIKA BALAL

Institution: Symbiosis Law School, Pune.

**Case Details**

**CASE NAME:** *Divisional Controller Maharashtra State Road Transport Corporation v. Kalawati Pandurang Fulzele*

<b>CITATION</b>	LNIND 2022 SC 73
<b>COURT</b>	SUPREME COURT OF INDIA
<b>BENCH</b>	DIVISION BENCH: M.R. SHAH, J., B.V. NAGARATNA, J.

**Facts of the Case**

The Respondent's spouse had been employed as a coolie in the MSRTC until he became blind. Consequently, the family was able to avoid destitution by appointing the Respondent in his place on 01.04.1991. She was compensated with a monthly honorarium of Rs 500, which was increased by Rs 50 each month. The respondent was employed for four years before being dismissed from her position on August 1, 1994, without any prior warning, severance payments, or salary associated with the termination. The respondent's primary concern is the nature of employment, specifically whether it is full-time or contractual.

### Procedural history

- **LABOUR COURT CHANDRAPUR**<sup>1</sup> – 20.06.2002- MSRTC was directed to reinstate the Respondent with back wages due to the termination being in breach of Sec 25-F, 25-G of the ID Act.
- **INDUSTRIAL COURT**<sup>2</sup> – 01.07.2003- Revision petition filed by MSRTC- judgement passed by Labour Court set aside.
- **HIGH COURT**<sup>3</sup> – Writ Petition- Single Judge restored award passed by the Labour court for back wages and reinstatement.
- **HIGH COURT** – Letters Patent Appeal- Division Bench- Appeal was dismissed
- **SUPREME COURT** – Present Appeal preferred by MSRTC.

### Issues Pertaining to the Case

**THE MAIN ISSUES UNDER CONTENTION IN THE PRESENT CASE ARE AS FOLLOWS:**

1. Whether the acts of the Appellants be tantamount to “unfair labour practices”.
2. Whether the employment of the Respondent by the Appellants was on contractual basis.
3. Whether the respondent is entitled to reinstatement and back wages.

### Rules Applicable

#### **I. Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971**

<b><u>SECTION</u></b>	<b><u>PROVISION</u></b>
<b>§28</b>	It stipulates the procedure to be undertaken when dealing with complaints pertaining to “unfair labour practices” which is to be done within 90 days from the alleged date of such a practice and provides further direction of 6 months as the duration within which the court should ideally render a decision. Further, opportunities are accorded to the court for the appointment of an Investigating

<sup>1</sup> Kalawati Pandurang Fulzele v. Divisional Controller Maharashtra State Road Transport Corporation, Complaint (ULPA) No. 135 of 1994.

<sup>2</sup> Divisional Controller Maharashtra State Road Transport Corporation v. Kalawati Pandurang Fulzele, Revision Application No. 339 (2002)

<sup>3</sup> Kalawati Pandurang Fulzele v. Divisional Controller Maharashtra State Road Transport Corporation, W.P. No. 3819 of 2003.

	Officer and details relevant to the same are contained in this provision <sup>4</sup> .
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## II. Industrial Disputes Act, 1947 (hereinafter, “ID Act”)

<u>SECTION</u>	<u>PROVISION</u>
§2(oo)(bb)	The provision defines retrenchment as a form of termination of the service by the employer and excludes termination carried out as a result of expiry of the contract of service. <sup>5</sup>
§2(ra)	Defines unfair labour practice based on the practices listed in the Vth Schedule <sup>6</sup> .
§25-F <sup>7</sup>	The provision states the conditions to be fulfilled prior to retrenchment, and are as follows- <ul style="list-style-type: none"> <li>- One month written notice, along with the payment of wages for such period.</li> <li>- Payment of compensation equal to “15 days’ average pay” in reference to every year of continuous service completed.</li> <li>- Service of notice on the relevant government authority</li> </ul>
§25-G <sup>8</sup>	This provides the procedure to be undertaken for retrenchment and the guiding principle for this is that unless an agreement to the contrary persists, if a workman has to be retrenched from a particular category, then the last person employed would be retrenched.

## III. The Industrial Disputes (Bombay) Rules, 1957

<u>RULE</u>	<u>PROVISION</u>
Rule 81 <sup>9</sup>	This rule requires the employer to prepare and post a list of all the

<sup>4</sup> Industrial Disputes Act, 1947, § 28, No. 14, Acts of Parliament (1947) – “Procedure for dealing with complaints relating to unfair labour practices.”

<sup>5</sup> Industrial Disputes Act, 1947, § 2(oo)(bb), No. 14, Acts of Parliament (1947) - Definition clause- “retrenchment”.

<sup>6</sup> Industrial Disputes Act, 1947, § 2(ra), No. 14, Acts of Parliament (1947- Definition clause- “unfair labour practice.”

<sup>7</sup> Industrial Disputes Act, 1947, § 25-F, No. 14, Acts of Parliament (1947)- “Conditions precedent to retrenchment of workmen”.

<sup>8</sup> Industrial Disputes Act, 1947, § 25-G, No. 14, Acts of Parliament (1947)- “Procedure for retrenchment

<sup>9</sup> Rule 81- Maintenance of Seniority List of Workmen”.

	workmen in the category in which retrenchment is contemplated as per seniority in the service in a conspicuous place of the "industrial establishment" and this should be done minimum 7 days prior to the date of retrenchment.
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### Analysis

- ⇒ **Issue 1** - The Respondent's application<sup>10</sup> to the court of first instance<sup>11</sup> does not provide evidence of any "unfair labour practice,"<sup>12</sup> and it appears that there is a consensus among all forums that have addressed this issue.<sup>13</sup> The claim of unjust termination has not been substantiated by any specific practice referenced in Schedule V. As a result, the author agrees with the courts' conclusion that MSRTC did not indulge in any unfair practices against the respondent party.
- ⇒ **Issue 2** - It is noteworthy that the respondent was to receive a fixed honorarium or remuneration of Rs 500 per month on a contractual basis, as evidenced by the "Appointment Order" that was presented. The appellants contended that the appointment was for a specific period; however, it is important to point out that it was only until "further orders." The respondent's claim of four years of uninterrupted employment is acknowledged; however, the subsequent termination does not violate § 25-F, 25-G, and Rule 81, as it was the consequence of the contractual provisions.

The current appointment order, which is structured as a contract, meets all of the criteria<sup>14</sup> for a legitimate contract,<sup>15</sup> and employment contracts are recognized under Indian law<sup>16</sup>.

Consequently, the termination would not be considered "retrenchment" because it is protected by the exception of section 2(oo)(bb) of the ID Act. Despite the conflicting judgments of the lower courts, the Court has accurately noted this.

<sup>10</sup> Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, § 28, Act No. 1, Maharashtra Act (1972).

<sup>11</sup> General Manager, Electrical Rengali Hydro Electric Project, Orissa & Ors. v. Sri Giridhari Sahu & Ors., Civil Appeal No. 8071 (2010)- the case recognises the labour court as the appropriate court of first instance for disputes as in the present case where allegations of termination and unfair labour practices have been levied.

<sup>12</sup> Industrial Disputes Act, 1947, § 2 (ra), No. 14, Acts of Parliament (1947).

<sup>13</sup> Industrial Disputes Act, 1947, Schedule V, No. 14, Acts of Parliament (1947).

<sup>14</sup> The Indian Contract Act, 1872, No. 9, Acts of Parliament (1872).

<sup>15</sup> The essentials for a valid contract as per the Indian Contract Act, 1872 are- offer (§ 2(a)), acceptance (§ 2(b)), intent to create legal obligation, consideration (§ 25), competency (§ 12), free consent (§ 13), legal object (§ 23).

<sup>16</sup> The Indian Contract Act, 1872, § 2(h), No. 9, Acts of Parliament (1872).

⇒ **Issue 3** - The assertion for back wages and reinstatement is undermined by the affirmation that the respondent's appointment was contractual, as MSRTC has not committed any error during the employment period or at the time of termination. The court mandated payment within four weeks and granted a lump sum settlement of Rs 300,000, claiming that it would serve the interests of justice.

The court recognized the importance of fostering "justice, equity, and good conscience," thereby assuming the role of genuine and comprehensive restorers of justice. The court granted compensation in light of the circumstances, despite the respondent's failure to provide sufficient justification for the denial of the reinstatement and back wages prayer. The respondent was not financially independent, was employed for sweeping tasks, and had lost her boyfriend, who may have been a potential provider. She spent several years pursuing justice. The courts have made an effort to address the *casus omissus*, acting as a guardian for the vulnerable and establishing a commendable precedent<sup>17</sup>, as the legislation does not assert a claim for compensation, which may attract criticism.

### Conclusion and Recommendations

The case demonstrates a critical aspect of law that is frequently disregarded and obscured by an abundance of rules and regulations that are intended to prevent all potential conflicts: the principle that legislation should be in accordance with "*justice, equity, and good conscience.*"

<sup>18</sup>It is therefore imperative that the courts move beyond the oversimplified interpretations of Bare Acts and judicial precedents. As a result, the subsequent suggestions are suggested:

- ❖ **STREAMLINING LAYOFF BENEFITS FOR CONTRACT WORKERS:** Fixed-term employment will accelerate the trend of contractualization, which is currently prevalent in both formal and informal sectors. Such personnel are prohibited from participating in organized strikes by other employees, are ineligible for severance benefits, and are subject to immediate termination. No regulations have been established regarding the number of extensions or the duration of contracts.

<sup>17</sup> Botad Taluka Sahkari Kharid vechan Sangh Limited v. Bhagirathbhai Kanubhai Khachar & Ors., LiveLaw (Guj) 120 (2022).

<sup>18</sup> Ramesh Chandra Sankla Etc. v. Vikram Cement, 14 SCC 58 (2008).

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- ❖ **CONTRACT RENEWAL REGULATION:** Employers are now permitted to employ an unlimited number of impermanent workers to replace permanent employees for regular work, following the increase in the threshold for the use of standing orders to 300. Their ability to exercise their right to association will be impeded by the ongoing concern of the non-renewal of their fixed-term contracts and the absence of permanent status.
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