20. As a result of our above discussion, we are of the opinion that since the defendant-respondents herein have failed to prove that the properties mentioned in the aforesaid transactions were acquired by them as self-acquired properties, the judgment under appeal cannot be sustained. We, therefore, allow this appeal and set aside the order of the High Court and affirm the order of the trial court. There would be no order as to costs.

(2007) 1 Supreme Court Cases 533

(BEFORE S.B. SINHA AND DALVEER BHANDARI, JJ.)

GANGADHAR PILLAI . . Appellant;

Versus

SIEMENS LTD. . . Respondent.

Civil Appeal No. 4769 of 2006†, decided on November 10, 2006

A. **Labour Law — Industrial Disputes Act, 1947 — Ss. 25-T & 2(ra) r/w Sch. V Part I Entry 10 and 2(oo)(bb) — Employment of badlis, casuals or temporary workmen and continuation for years in these categories — When amounts to unfair labour practice — Entirety of circumstances brought on record by the parties — Breaks in service if artificial when occasioned by the nature of the work — Object of giving temporary employment — Case if falls under S. 2(oo)(bb) — Held, only because an employee has been engaged as a casual or temporary employee intermittently for a number of years, the same by itself would not imply that unfair labour practices have been resorted to — Determination of the question as to whether an unfair labour practice has been resorted to is essentially a question of fact — In present case, though there had been breaks in service, the same were not artificial ones — Requirement to employ employees on a temporary basis is writ large on the face of the nature of projects undertaken by respondent Company — Period of employment of appellant has all along been commensurate with the period of work undertaken by respondent under the respective project contracts — Further, appellant was actually employed by each site office of respondent, which is a separate establishment — Lastly, appointment was given on terms that bring the case squarely within the terms of S. 2(oo)(bb), wherein the term of the contract was fixed on basis of nature of job — In such circumstances, object of temporary employment was bona fide and not to deprive the appellant employee from benefit of a permanent status — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (1 of 1972), S. 26 and Sch. IV Entry 6**

B. **Labour Law — Industrial Disputes Act, 1947 — Ss. 25-T and 2(ra) — Unfair labour practice — Burden to prove, held, is on workman**

C. **Labour Law — Industrial Disputes Act, 1947 — S. 2(oo)(bb) — Applicability — Termination of services in case falling under S. 2(oo)(bb) — Actuation by malice — Inference of, when not warranted — Fixation of**

† Arising out of SLP (C) No. 9637 of 2006. From Final Judgment and Order dated 18-10-2005 of the High Court of Judicature at Bombay in LPA No. 44 of 2005

term of contract on basis of nature of job — Held, once the period of contract is fixed and the same is done keeping in view the nature of job, it cannot be said that the act of the employer in terminating services is actuated by any malice

D. **Labour Law — Regularisation — Entitlement to — Completion of 240 days' continuous service, held, does not entitle employee concerned to regularisation and/or permanent status — Violation of S. 25-F may lead to the termination of services being found illegal, but the same would not entitle workman concerned to regularisation — Reinstatement would only mean that the workman gets back the same status held by the workman prior to termination of his services**

E. **Labour Law — Industrial Disputes Act, 1947 — Ss. 25-F and 25-B — 240 days' continuous service — Introduction of concept of — Reason for, explained — Held, said concept was introduced so as to fasten statutory liabilities upon employer to pay compensation as provided for in S. 25-F before retrenchment, and not for any other purpose such as regularisation or grant of permanent status**

F. **Labour Law — Reinstatement — Status acquired by workman on reinstatement, held, is the same status held by the workman prior to termination of his services**

G. **Labour Law — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (1 of 1972) — Permanent status to employee on completion of a prescribed period — Obligation on employer under 1971 Act — Held, there is no such obligation under the 1971 Act**

Dismissing the appeal, the Supreme Court

Held :

The question as to whether an employee had been intermittently engaged as casual or temporary for a number of years is essentially a question of fact. The issue as to whether unfair labour practices had been resorted to by the employer or not must be judged from the entirety of the circumstances brought on record by the parties. (Para 23)

Only because an employee has been engaged as a casual or temporary employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee. Unlike other statutes, the employer does not have any statutory liability under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act") to give permanent status to an employee on completion of a period specified therein. What is, therefore, necessary to be considered for drawing an inference in terms of the said provisions would be to consider the entire facts and circumstances of the case. (Para 24)

A finding of fact has been arrived at by the Tribunal keeping in view the nature of engagement offered to the appellant by the respondent. The burden to prove that the respondent resorted to unfair labour practice indisputably was on the workman. There had been breaks in service but then it has rightly been held that the same were not artificial ones. Requirement to employ employees on a temporary basis is writ large on the face of the nature of the projects undertaken by the respondent. There was nothing on record to show that the respondent had

been getting contracts on a regular basis. From the charts filed by the parties it appears that the contracts awarded in favour of the respondent employer by its various clients had not only been in different parts of the country but also outside the country. The period of employment had all along been commensurate with the period of work undertaken by the respondent under the respective contracts. It may be a small contract or it may be a big one. Period of contract in each case was indeed bound to be different. (Paras 25 and 26)

Each site office of the respondent Company is a separate establishment. Although the name of the appellant used to be recommended by the head office of the respondent, but for employing him a telegram used to be sent from the site office, in response whereto he would report at the place specified in the telegram and would be offered appointment in the prescribed pro forma, which clearly stated that at the expiry of the period specified therein the appointment would automatically stand terminated without any notice, unless the period of appointment was extended in writing. It further stated that during the temporary period of the service of the workman either party was at liberty to terminate the appointment without any notice and/or assigning any cause or any compensation in lieu thereof. Services of the employees engaged on such terms would come to an end on completion of the period of contract. Such retrenchment would come within the purview of Section 2(*oo*)(*bb*) of the Industrial Disputes Act, 1947. Once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant was actuated by any malice. Such an act on the part of the employer cannot be said to have been resorted to for defrauding an employee. The object of such temporary employment was bona fide and not to deprive the employee concerned from the benefit of a permanent status. Having regard to the fact situation obtaining herein it cannot be inferred that the findings of the Tribunal as also the Single Judge of the High Court were manifestly erroneous, warranting exercise of the extraordinary jurisdiction under Article 136 of the Constitution. (Paras 6 and 25 to 27)

It is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, 1947 the concept of 240 days was introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status. (Para 28)

Madhyamik Shiksha Parishad, U.P. v. *Anil Kumar Mishra*, (2005) 5 SCC 122 : 2005 SCC (L&S) 628 : AIR 1994 SC 1638; *M.P. Housing Board* v. *Manoj Shrivastava*, (2006) 2 SCC 702 : 2006 SCC (L&S) 422; *Executive Engineer, ZP Engg. Divn.* v. *Digambara Rao*, (2004) 8 SCC 262 : 2004 SCC (L&S) 1097; *Dhampur Sugar Mills Ltd.* v. *Bhola Singh*, (2005) 2 SCC 470 : 2005 SCC (L&S) 292; *Manager, Reserve Bank of India* v. *S. Mani*, (2005) 5 SCC 100 : 2005 SCC (L&S) 609; *State of U.P.* v. *Neeraj Awasthi*, (2006) 1 SCC 667 : 2006 SCC (L&S) 190, *followed*

Secy., State of Karnataka v. *Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753, *relied on*

State of Haryana v. *Piara Singh*, (1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403, *held, overruled*

Chief Conservator of Forests v. *Jagannath Maruti Kondhare*, (1996) 2 SCC 293 : 1996 SCC (L&S) 500; *Union of India* v. *Ramchander*, (2005) 9 SCC 365; *Haryana State Electronics Development Corpn. Ltd.* v. *Mamni*, (2006) 9 SCC 434 : 2006 SCC (L&S) 1830 : (2006) 5 Scale 164; *Buddhi Nath Chaudhary* v. *Abahi Kumar*, (2001) 3 SCC 328 : 2001 SCC (L&S) 589, *distinguished*

[Though on it being so suggested by the Supreme Court, the respondent Company has not be able to offer any employment to the appellant, as it has not been executing any contract job itself any more, the respondent was not averse to using its good offices with its contractors to see that the appellant was engaged by one of them on a site where work was going on. One of the contractors has in fact agreed to engage the appellant on total emoluments of Rs 10,000 p.m. The Supreme Court must express its satisfaction that the respondent has been able to provide some succour to the appellant.] (Paras 40 to 42)

D-M/A/35329/CL

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Ms Anuradha Singh and Ms Jyoti Mendiratta, Advocates, with him) for the Appellant;

P.K. Rele, Senior Advocate (Rajinder Dhawan, Ms Safali Dhawan and P.N. Jha, Advocates, with him) for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2006) 9 SCC 434 : 2006 SCC (L&S) 1830 : (2006) 5 Scale 164, *Haryana State Electronics Development Corpn. Ltd.* v. *Mamni* 544*d-e*
2. (2006) 4 SCC 1 : 2006 SCC (L&S) 753, *Secy., State of Karnataka* v. *Umadevi (3)* 543*b-c*
3. (2006) 2 SCC 702 : 2006 SCC (L&S) 422, *M.P. Housing Board* v. *Manoj Shrivastava* 542*g-h*
4. (2006) 1 SCC 667 : 2006 SCC (L&S) 190, *State of U.P.* v. *Neeraj Awasthi* 543*a-b*
5. (2005) 9 SCC 365, *Union of India* v. *Ramchander* 544*a*
6. (2005) 5 SCC 122 : 2005 SCC (L&S) 628 : AIR 1994 SC 1638, *Madhyamik Shiksha Parishad, U.P.* v. *Anil Kumar Mishra* 542*e*, 543*a*
7. (2005) 5 SCC 100 : 2005 SCC (L&S) 609, *Manager, Reserve Bank of India* v. *S. Mani* 543*a*
8. (2005) 2 SCC 470 : 2005 SCC (L&S) 292, *Dhampur Sugar Mills Ltd.* v. *Bhola Singh* 543*a*
9. (2004) 8 SCC 262 : 2004 SCC (L&S) 1097, *Executive Engineer, ZP Engg. Divn.* v. *Digambara Rao* 543*a*
10. (2001) 3 SCC 328 : 2001 SCC (L&S) 589, *Buddhi Nath Chaudhary* v. *Abahi Kumar* 544*g-h*
11. (1996) 2 SCC 293 : 1996 SCC (L&S) 500, *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare* 543*a-b*, 543*b-c*
12. (1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403, *State of Haryana* v. *Piara Singh* 543*b*, 543*b-c*

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2. The respondent has its own Engineering and Field Services Department which undertakes jobs of industrial project installation, erection, commissioning of electrical/electronic equipments which are supplied by it or the same are directly brought by its clients at various projects/sites as per their requirements.

3. The services of the respondent are utilised for the aforesaid work as a contractor which is a project/site work required to be completed within the stipulated period, time and quality being the essence of the contract entered into by and between the parties.

4. The respondent used to engage temporary personnel in the category of skilled, semi-skilled and unskilled workers. The appellant had been appointed by the respondent on temporary basis for duration of the project/site work and on completion thereof his services used to be terminated.

5. Indisputably, the appellant used to be employed almost on a regular basis since 1978. His services were availed by the respondent not only for its various projects in India but also in Iraq.

6. Procedure followed for availing the services of the appellant by the respondent had been that whenever such contract was obtained and project work started at the instance of the head office, a telegram used to be sent to him for availing his services whereupon he was asked to join the site office. Appointment letters which used to be issued by the said office were in a prescribed pro forma, the relevant portion from a sample copy whereof reads as under:

"LETTER OF APPOINTMENT FOR TEMPORARY PERSONNEL

Name	:	Mr R. Gangadharan Pillai
Roll No.	:	133
Local address	:	Room No. 148/4, Indhira Nagar, Chembur, Bombay 74
Permanent address	:	Saraswati Vilasm Ezhlcon, PO Anitose, Kerala
Date of birth	:	22 years
Consolidated salary/wages per month	:	Rs 200
Date of joining	:	22-5-1978
Type of employment	:	Helper

Dear Sir,

We have pleasure in appointing you on the terms mentioned above and conditions stipulated hereinbelow:

Your services are required for execution of erection job at F.C.-1 on purely temporary basis for a period of three months from 22-5-1978 to 21-8-1978, at the expiry of which your appointment will automatically stand terminated without any notice, unless the period of appointment is extended in writing. During the temporary period of your service either party is at liberty to terminate the appointment without any notice and/or assigning any cause or any compensation in lieu thereof…."

7. A declaration used to be given by the employee concerned that the contents thereof had been explained to him and upon understanding the same he used to put his signature.

8. Before us, a chart has been filed to show that the appellant had worked for as little as 4 days in a project up to 365 days in a year.

9. It, however, appears that he was temporarily appointed for different projects at Rourkela Steel Plant, details whereof are as under:

Sl. No.	*Site*	*From*	*To*	*No. of days worked*
1.	Rourkela Steel Plant	18-10-1992	31-3-1994	530
2.	-do-	1-1-1994	27-8-1994	150
3.	-do-	26-9-1994	6-4-1996	558
4.	-do-	14-5-1996	10-5-2000	1458

10. The services of the appellant came to an end on 10-5-2000. He filed a complaint petition before the Industrial Tribunal contending that the respondent herein had resorted to unfair labour practice within the meaning of Item 6 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act"). Before the Industrial Tribunal, the parties adduced their respective evidence.

11. In his deposition, the appellant contended that he had regularly been working in various projects of the respondent. It was contended that the services of personnel junior to him had been regularised and despite the fact that in many years he had worked for 240 days, he used to be appointed for temporary periods. According to him, the very fact that he had been working continuously since 1978 is itself an indicator to the fact that the job was perennial in nature.

12. The Industrial Tribunal by an award dated 4-8-2004, however, opined:

> "… Admittedly, as on this date, the complainant has not been in the employment of the respondent. Therefore, no question arises of giving any direction to the respondent Company to confer any status and privileges of permanent employee on the complainant. Besides, the complainant has miserably failed to prove that the break in two appointments of the complainant was 'artificial break'. The appointment letter placed on file is manifest that the engagement of the complainant was for a specific period as mentioned therein. Therefore, in my considered view, the substantial controversy emerging from the instant complaint has been in respect of alleged illegality on the part of the respondent Company in terminating his services from 10-5-2000…."

13. It further came to the conclusion that the substantial controversy revolved around the termination of the appellant's services on 10-5-2000 and, thus, the same was required to be considered in terms of Item 1 of Schedule IV to the Act and not under Item 9 of Schedule IV thereof. It was observed:

> "I may observe that the complainant could have taken recourse to Section 32 of the MRTU & PULP Act, to make prayer before this Court to decide the controversy pertaining to his alleged illegal termination of service dated 10-5-2000, had his services been terminated by the respondent Company pending the complaint under Items 5, 6 and 9 of

Schedule IV for redressal of his grievances of giving permanency in the employment. However, admittedly the complainant has approached this Court under said items of unfair labour practice, praying for permanency after termination of his services w.e.f. 10-5-2000. I, therefore, find the instant complaint being highly unsustainable as I find the substantial controversy in respect of admitted termination of his services by the respondent w.e.f. 10-5-2000 for which a special forum viz. Labour Court has been provided under the MRTU & PULP Act."

14. A writ petition was filed by the appellant aggrieved by and dissatisfied therewith. The said writ petition was also dismissed by a learned Single Judge by a judgment and order dated 8-12-2004 opining:

"... It is well settled by a catena of decisions of this Court as well as of the Apex Court that the project-related employees cannot as a matter of right, demand any status and privileges of permanent employee. Considering the same merely because the petitioner has been engaged from time to time in relation to the projects undertaken by the respondent Company, no fault can be found in the impugned order holding that there was no unfair labour practice on account of such employment and non-grant of status and privileges of permanent employee to the petitioner...."

15. A Division Bench of the High Court in an intra-court appeal refused to interfere with the judgment of the learned Single Judge stating:

"Then a reasoned order followed thereafter. The learned Judge of the Industrial Court came to the conclusion that the unfair labour practices, as alleged by the complainant-present appellant, are not committed. The finding on the issue is given on appreciation of the evidence by the learned Industrial Court. After giving such finding, in para 13 the learned Industrial Judge has observed that factually the services of the appellant were terminated on 10-5-2000 and, therefore, unless he seeks and gets reinstatement to the job, he again complained of an unfair labour practice because the unfair labour practice committed during the course of the employment. The observations in regard to jurisdiction, therefore, were completely ancillary, and the learned Industrial Judge gave a finding that the commission regarding unfair labour practices was not proved. This order was challenged before the learned Single Judge of this Court and the learned Judge, on appreciation of the contentions raised, rejected the writ petition. The learned Single Judge had analysed the order passed by the Industrial Court and has observed as under:

'The Industrial Court, after hearing the parties on analysis of the materials on record while dismissing the complaint, has held that what has been reiterated in the complaint was that the complainant was engaged at various sites of the respondents after giving artificial breaks in the service.'

Then, the learned Single Judge has given a finding that in such circumstances, there is no question of adoption of an unfair labour practice and, therefore, declined to interfere under Article 227 of the

Constitution. That being so, the letters patent appeal, obviously, is not tenable. Even otherwise, we see no fault with the order impugned…."

16. Mr Colin Gonsalves, learned Senior Counsel appearing on behalf of the appellant, in support of this appeal would contend that in the instant case a skilled workman of a multinational corporation had been kept on temporary basis for 22 years by giving artificial breaks in service and by engaging and disengaging him on regular basis. Item 6 of Schedule IV to the Act, it was submitted, covers work of a regular or perennial nature and yet the employer appointed the appellant merely on temporary basis. The question of temporary appointment on a project-related work, it was urged, would not arise as:

(*i*) the period is sufficiently large;

(*ii*) the respondent gets contract on regular basis and number of days for which services of the employee are taken correspond to the work of a regular employee and is more than 240 days a year; and

(*iii*) no explanation has been offered by the respondent as to why the appointments have to be of such a nature.

17. Drawing our attention to the evidence produced by the appellant before the Tribunal, it was submitted that from the statements it was necessary to draw an inference as regards existence of a critical case and, particularly, in view of the fact that the juniors to the respondent were made permanent but the same benefit was denied to him. It was urged that the excuse as regards lack of qualification on the part of the appellant could not have been a ground (*sic* not) to regularise his services as his experience for a period of 22 years had made up the lack of educational qualification.

18. Lastly, it was contended that assuming that the termination of the job was valid, the appellant could not have been denied the benefit of 22 years of service in the event it is held that the respondent is guilty of taking recourse to unfair labour practices within the meaning of the Act.

19. Mr P.K. Rele, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would draw our attention to the chart for the purpose of showing that the appellant had never been appointed in any continuous job and his services were taken as and when the same became available.

20. Drawing our attention to the practice and procedure for such appointment, as noticed hereinbefore, it was submitted that the appointment letters categorically stated about the nature of job, the period of employment and the fact that on expiry of the said period, his employment would come to an end.

21. The learned counsel pointed out that not only had the legal dues of the appellant been paid, he had also been paid compensation which has been accepted by him without any demur except the provident fund dues and, thus, it was not open to him to take a different stand before the Tribunal.

22. The Act was enacted not only for recognition of trade unions but also prevention of unfair labour practices. What is an "unfair labour practice" has been defined in Section 26 of the Act to mean all the practices listed in Schedules II, III and IV. Section 27 of the Act prohibits engagement of an employee by any employer or union in any unfair labour practice. Section 28 provides for procedure for dealing with complaints relating thereto. Schedule IV to the Act enumerates general unfair labour practices on the part of the employers. Item 6 of Schedule IV to the Act reads as under:

> "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 of permanent employees."

23. The question as to whether an employee had intermittently been engaged as casual or temporary for a number of years is essentially a question of fact. The issue as to whether unfair labour practices had been resorted to by the employer or not must be judged from the entirety of the circumstances brought on record by the parties.

24. Only because an employee has been engaged as a casual or temporary employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee. Unlike other statutes, the employer does not have any statutory liability to give permanent status to an employee on completion of a period specified therein. What is, therefore, necessary to be considered for drawing an inference in terms of the said provisions would be to consider the entire facts and circumstances of the case.

25. A finding of fact has been arrived at, keeping in view the nature of engagement offered to the appellant by the respondent, by the Tribunal. The burden to prove that the respondent resorted to unfair labour practice indisputably was on the workman. There had been breaks in service but then it has rightly been held that the same were not artificial ones. Requirement to employ employees on a temporary basis is writ large on the face of the nature of the projects undertaken by the respondent. There was nothing on record to show that it had been getting contracts on regular basis. We have perused the charts filed by the parties herein wherefrom it appears that the contracts awarded in favour of the respondent by its various clients had not only been in different parts of the country but also outside the country. It has also not been disputed before us that although the name of the appellant used to be recommended by the head office of the respondent but for employing him, a telegram used to be sent from the site office, in response whereto he would report at the place specified in the telegram and would be offered appointment in the prescribed pro forma as noticed supra.

26. The period of employment had all along been commensurate with the period of work undertaken by the respondent under the respective contracts. It may be a small contract or it may be a big one. Period of contract in each case was indeed bound to be different. Each site office of the respondent Company is also a separate establishment.

27. It has furthermore not been denied or disputed that services of the employees engaged on such terms would come to an end on completion of the period of contract. Such retrenchment would come within the purview of Section 2(*oo*)(*bb*) of the Industrial Disputes Act. Once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant was actuated by any malice. Such an act on the part of the employer cannot be said to have been resorted to for defrauding an employee. The object of such temporary employment was bona fide and not to deprive the employee concerned from the benefit of a permanent status. We, having regard to the fact situation obtaining herein, cannot infer that the findings of the Tribunal as also the learned Single Judge of the High Court were manifestly erroneous warranting exercise of our extraordinary jurisdiction under Article 136 of the Constitution of India.

28. It is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to for regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status.

29. In *Madhyamik Shiksha Parishad, U.P.* v. *Anil Kumar Mishra*[1] this Court has categorically held: (SCC p. 124, para 5)

> "The assignment was an *ad hoc* one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provisions of the Industrial Disputes Act, 1947, importing the incidents of completion of 240 days' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here."

30. In *M.P. Housing Board* v. *Manoj Shrivastava*[2] this Court held: (SCC p. 709, para 17)

> "*17.* It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be

1 (2005) 5 SCC 122 : 2005 SCC (L&S) 628 : AIR 1994 SC 1638
2 (2006) 2 SCC 702 : 2006 SCC (L&S) 422

regularised in service. (See *Madhyamik Shiksha Parishad, U.P.* v. *Anil Kumar Mishra*[1]; *Executive Engineer, ZP Engg. Divn.* v. *Digambara Rao*[3]; *Dhampur Sugar Mills Ltd.* v. *Bhola Singh*[4]; *Manager, Reserve Bank of India* v. *S. Mani*[5] and *Neeraj Awasthi*[6].)"

31. The learned Senior Counsel placed strong reliance upon a decision of this Court in *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare*[7] wherein this Court was considering the question of appointment of a person in the social forestry services. The Bench inter alia noticing the decisions of this Court in *State of Haryana* v. *Piara Singh*[8] opined that they are entitled to regularisation of services. *Piara Singh*[8] has since been overruled by a Constitution Bench of this Court in *Secy., State of Karnataka* v. *Umadevi (3)*[9].

32. It may, however, be noticed that in *Chief Conservator of Forests*[7] the employer was the State. The respondent therein used to be employed at the same place by the Conservator of Forests for the same purpose year after year and in that factual matrix, it was opined: (SCC pp. 302-03, para 22)

"22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if *badlis*, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to the Industrial Court of Pune (and 15 to the Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If even in such projects, persons are kept in jobs on casual basis for years the object

3 (2004) 8 SCC 262 : 2004 SCC (L&S) 1097
4 (2005) 2 SCC 470 : 2005 SCC (L&S) 292
5 (2005) 5 SCC 100 : 2005 SCC (L&S) 609
6 *State of U.P.* v. *Neeraj Awasthi*, (2006) 1 SCC 667 : 2006 SCC (L&S) 190
7 (1996) 2 SCC 293 : 1996 SCC (L&S) 500
8 (1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403
9 (2006) 4 SCC 1 : 2006 SCC (L&S) 753

manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."

33. Our attention was also drawn to *Union of India* v. *Ramchander*[10] wherein again engagement of the workman on a regular basis for a period of 89 days on each occasion was held to be impermissible in law stating: (SCC p. 366, para 4)

> "*4.* The respondents were appointed against casual labourers but nevertheless they continued in service for four spells and that too their reappointments were made immediately within a few days of termination on completion of 89 days. It shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, they would have completed 240 days of continuous employment. In that view of the matter the appellants had violated Section 25-G of the Industrial Disputes Act. We do not find any error or illegality in the decision rendered by the Division Bench. We direct the appellants to re-employ the respondents as daily-wagers."

34. In that case, this Court did not lay down any law having universal application. Directions were issued in the facts and circumstances of the case. It is worthwhile to note that this Court did not direct regularisation of services of the workman but merely directed the appellants therein to re-employ the respondents as daily-wagers. The said decision, therefore, does not have any application in the instant case.

35. Yet again, reliance has been placed on *Haryana State Electronics Development Corpn. Ltd.* v. *Mamni*[11] wherein having regard to the fact situation obtaining therein the action on the part of the employer to terminate the services of an employee on regular basis and reappoint after a gap of one or two days was found to be infringing the provisions of Section 25-F of the Industrial Disputes Act. This Court held: (SCC p. 437, para 11)

> "*11.* In this case the services of the respondent had been terminated on a regular basis and she had been reappointed after a gap of one or two days. Such a course of action was adopted by the appellant with a view to defeat the object of the Act. Section 2(*oo*)(*bb*) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case."

36. Unlike the Act, there is no provision for prevention of unfair labour practices under the Industrial Disputes Act. The view of the High Court as upheld by this Court, merely negatived a contention that such appointment came within the purview of Section 2(*oo*)(*bb*) of the Industrial Disputes Act. This Court noticed various decisions rendered by it as regards payment of back wages and instead and place of reinstatement in service, compensation was directed to be paid.

37. In *Buddhi Nath Chaudhary* v. *Abahi Kumar*[12] wherein again reliance has been placed by the learned counsel, has no application in the facts and circumstances of this case.

10 (2005) 9 SCC 365

11 (2006) 9 SCC 434 : 2006 SCC (L&S) 1830 : (2006) 5 Scale 164

12 (2001) 3 SCC 328 : 2001 SCC (L&S) 589

38. We, therefore, do not find any reason to differ with the findings of the High Court.

39. We may, however, notice that this Court by an order dated 12-5-2006 observed:

> "It is seen from the papers placed before us that the worker, the petitioner herein, was in employment with the respondent M/s Siemens Ltd. from 22-5-1978 to 10-5-2000. The chart has also been placed before us showing the order of appointment, period of work, days worked and total days in a year. It is seen from the chart that the petitioner was appointed on several times and terminated on a number of occasions with some break. The petitioner was terminated from service on 10-5-2000. Since the petitioner was in employment with the respondent herein from 1978 to 2000, we feel that the management may reconsider the plea of the petitioner on sympathetic grounds and provide employment in the same or different project. The petitioner will not claim any back wages if the management provides some suitable employment in any of the projects. The learned counsel for the management, the respondent herein, submits that he will ascertain from the respondent and report to this Court after summer vacation."

40. The learned counsel appearing on behalf of the respondent, however, states that it is not possible for his client to offer any employment to the appellant as it has not been executing any contract job itself any more. According to it, it is not economically viable to appoint an employee on permanent basis and the work is now depleting. Our attention was further drawn to the following statements made in this behalf:

> "... Engineering and Field Services Department has since discontinued engagement of direct workmen of the profile of the petitioner at project site(s) as an outcome of re-engineering process and has started outsourcing the said jobs in view of the competitive advantage in terms of economy of operation and flexibility it offers. Also in view of the complexity involved in execution of the project execution job combined with the demands of client demanding engagement of personnel with formal qualification including the higher qualification viz. BE, DEE, NCTVT, it is not possible for the Company to engage people of the petitioner's profile anymore."

41. Mr Rele, learned Senior Counsel, however, submitted that although the appellant had been engaged on contract basis, the respondent was not averse to using its good office with the contractors to see that he is engaged by it on the site where work is going on. An affidavit in this behalf has been filed before this Court stating:

> "As stated in the counter-affidavit that the Engineering and Field Services Department of the Company has since discontinued engagement of direct workmen of the profile of the petitioner at the project sites and that the Company has started outsourcing the said jobs, therefore, I talked to M/s JT Engineering, proprietor Mr John Thomas, having its office at Standard CHS, 301, A Wing, Plot No. 394, Lokmanya Nagar, Panvel, Pin

410 206 one of our contractors, who are handling the work of installation/erection of equipment currently at Enercon Ltd., Windfarm Project at Ahmednagar, Maharashtra and the said contractor has agreed to engage the petitioner at this site viz. Enercon Ltd., Ahmednagar, Maharashtra. The said contractor has further agreed to pay the following emoluments to the petitioner:

(*a*)	Basic pay	Rs	7500 p.m.
(*b*)	Allowances	Rs	2500 p.m.
	Total =	Rs	10,000 p.m."

42. We, therefore, while dismissing the appeal must express our satisfaction that the respondent has been able to provide some succour to the appellant.

43. For the views we have taken, we are of the opinion that there is no merit in this case. The appeal is dismissed. No costs.

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(BEFORE RUMA PAL AND DALVEER BHANDARI, JJ.)

GURDEV KAUR AND OTHERS .. Appellants;

Versus

KAKI AND OTHERS .. Respondents.

Civil Appeal No. 2083 of 2006†, decided on April 18, 2006

A. **Civil Procedure Code, 1908 — S. 100 — General principles — Nature and scope — Position before and after 1976 amendment — Even before the said amendment, the scope of such interference was limited and did not extend to interference with concurrent findings of fact — After the amendment, it was further curtailed — Now, High Courts can interfere thereunder only where substantial questions of law are involved and have been formulated in the memorandum of appeal — Moreover, High Court must first formulate the questions of law and only thereafter it can proceed to decide them — The amendment clearly indicates that the legislature never intended the second appeal to become a third trial on facts — Hence, justice should be administered in accordance with law and not according to Judge's whim, desire and notion of justice — Hence, where the will bequeathed the entire inheritance of the testator to only one of several heirs and the courts below recorded a concurrent finding that the will was a genuine and valid document, held, High Court erred in setting aside the same on the ground that in normal circumstances a prudent man would have bequeathed the property in favour of his legal heirs — Interpretation of Statutes — Basic rules — Legislative intent — Taken into consideration**

† Arising out of SLP (C) No. 20797 of 2003. From the Order dated 1-8-2003 of the High Court of Punjab and Haryana at Chandigarh in CRSA No. 885 of 1983