Citation of various authorities delivered by Hon'ble Supreme Court and Hon'ble High Court

1. On the issue of trees:-

- A. The Hon'ble Supreme Court in the case of <u>Ghulam Rassol and</u> others V/s State of <u>Jammu &Kashmir in Civil Appeal no.825 of</u> 1978. AIR 1983 Supreme Court 1188, has held that if the trees are planted on someone's land by mistake, then the person who has raised the trees, has right to cut and remove the trees and the land in dispute will be vacated thereafter.
- B. The Hon'ble Supreme Court decision in the <u>T.N Godavaram case AIR</u> <u>1997 S.C.1228</u> states that the word "Forest" must be understood according to dictionary meaning. The term Forest land will not only include "Forest" as understood in the dictionary sense but also any area recorded as forest in the Government record irrespective of the ownership. It further says "The felling of trees in all forest is to remain suspended except in accordance with the working plans of the State Govts. as approved by central Govt." The above is applicable to the strip forests which have been notified as protected forests in Govt. records for last 30-35 years. These are being worked / managed as per working plan/approved felling programmes. Forest Conservation Act (69 of 1980) S.2- Non Forest activity-Running of Saw Mills of any kind including veneer of plywood mills and mining Area non forest activities For doing such activity in forest prior permission of Central Govt. is necessary.
- C. In State of Haryana & other V/s Naresh Kumar case Hon'ble High
 Court of Punjab and Haryana in RSA No. 3137/1998 ordered for
 70% share of trees in favour of State.

2. <u>Section 25 F of I.D. ACT, 1947</u>

A. Hon'ble Supreme Court in Morinda Co-op. SM Ltd Vs R.K.&

others 1995 (5) SCC 653 held that cession of work in seasonal

employment is not retrenchment & requirement under section 25

F is not attracted

B. Hon'ble Calcutta High Court in <u>State of West Bengal & others Vs</u>

N.G. jara & others 1988 (1) CCJ 1116 held that when the works is os perennial nature & not for completion of a project or scheme Statuatory requirements as to retrenchment have to be complied with.

C. In CWP No.6503/1992 titled as Ramesh & others Vs State of disposed of the CWP No. 5525/1989 Harchand Vs State of Haryana & CWP No.525/1989 Harchand Vs State of Haryana & others observing that the works of Forest Department are Seasonal works. Sometimes, it requires less laboureres & sometimes more labourers. The demand of labourers depends upon the works of the different schemes.

(3) Burden of proof of 240 days:-

A. R.M. Yellatti V s Assistant Executive Engineer 2006 (1) RSJ

80 held that the burden of proof is on the workman to show that he had worked for 240 days in given year. Burden of proof to establish completion of 240 days of work within a period of 12 months preceding the termination lies on workman not on the management held by the Supreme Court in-

- B. <u>Surenderranagar District Panchayat, Appellant Vs. Dahyabhai</u>
 <u>Amarsinh, Respondent.(2005)8 Supreme Court Cases 750</u>
- C. U.P. State Brassware Corp. others Vs. Udit Narain Pandey JT2005 (10) SCC 344.
- D. State of M.P.Vs Arjun Lal Rajak (2006)2SCC610
- E. M/S Essen Denki, Appellant Vs. Rajiv Kumar, Respondents AIR

 2003 S.C.38
- F. Range Forest Officer with State of Karnataka & another Vs. S.T.

 Hadimani AIR 2002 S.C. 1147-1148.
- G. Babu Ram Vs DFO U.T Chandigarh and anothers 2005 (4) RSJ.

4. Gainful Employement:-

Burden of proof having to the principles analogous to section 106 of evidence Act that he has not gainfully employed was on worker, not on the management. It was held by the Hon'ble Supreme Court in Manager, Vs. S.Mani & others (2005)5 SCC 100.

5. For Setting aside the exparte order:-

Hon'ble Punjab & Haryana High Court in <u>Omi Ram Vs P.O Industrial</u>

<u>Tribunal, Rohtak & another 2005 (3) RSJ 126-127.</u> This authority may please be citied in application for setting aside the Ex.Parte order by the Deptt./State.

6. Continuous Services as per I.D. AC,1947 T:-

According to section 25 B of industrial Dispute Act, 1947 & also the Hon'ble High Court of Punjab & Haryana in <u>Satnam Singh Vs Presiding</u>

<u>Officer Labour Court Gurdaspur RSJ 2001 (Page 90)</u> P&H High Court held that continuous service means preceding year from date of retrenchment & not calendar year.

7. Seniority list of daily wagers:-

Hon'ble Supreme Court in **Surender Nagar District Panchayat Vs**

<u>DahyaBhai AmarSingh 2005 (8) SCC 750</u> held that in absence of regular employment of workman employer is not expected to maintain the seniority list of employees engaged on daily wages, casual labourer, temporary employee. The Hon'ble Apex Court also held that in absence of proof of existence of seniority list, no relief can be given for non-compliance with the said provisions.

8. On the issue of regularization:-

Hon'ble Supreme Court Judgement in (A) <u>Secretary, State of Karnatka & others Vs. Umadevi & others AIR 2006 SC1806</u>,

- (B) Muncipal Council Sujanpur Vs Surinder Kumar SCC 2006 (5) 173,
- (C) National Fertilizer Limited and others Vs Somvir Singh 2006 (5) SCC 493,
- (D) Principal Mehar Chand Polytechnic and Anr.Vs Anu Lamba and others (2006) (7) SCC 161,
- (E) <u>Surendra Parsad Tewari Vs Uttar Pardesh Rajiya Krishi Utpadan</u>
 Mandi Parishad & others on 8-9-2006.

(F) Indian Drugs and Pharmaceuticals Limited Vs. Workmen, Indian Drugs & Pharmaceuticals Limited (2007) 1 SCC-408 has held interlaid that creation of posts, appointments to posts and regularization etc. are purely executive functions.

(G) State of U.P, Appellant Vs Neeraj Awasthi and others, Respondents. (2006) I Supreme Court Cases 667

Supreme Court has now firmly laid down that regularization cannot be mode of appointment-Illegal appointments cannot be regularized and neither temporary nor permanent status be conferred by regularization — An attempt to induct an employee without following the procedure would be back-door appointment- Such back door appointments have been deprecated by Supreme Court. times without number- Mere description of illegal appointments as "irregular" does not mean they are not illegal.

When a post is not sanctioned, normally, directions for reinstatement should not be issued.

Availability of funds and/ or vacancies is not and cannot be a valid ground to make appointments without proper sanction and creation of posts and cannot be taken as an excuse to perpetrate illegalities.

Held, if illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetrate – Art. 14 has positive concept- No equality can be claimed in illegality.

Entitlement to – Past illegal regularization/appointment, held, does not create entitlement to further regularization/appointment-Appointment-Labour Law.

- Hon'ble Punjab & Haryana High Court in]
- (A) Rajinder Kumar Vs State of Haryana and others on 25.4.2006 PLR

 2006 (2) 474.
- (B) Santra Devi and others Vs State of Haryana and others in CWP

 No.17374/2006 (D.O.D-6.11.2006)
- (C) Budh Ram and others Vs State of Haryana and others in CWP

 No.14001/2007(D.O.D-10.9.2007)
- (D) In COCP No.262 of 2008 titled Om Parkash Vs Dharamvir the

 Hon'ble High Court that in view of ratio of Uma Devi's Judgement

 no direction can be issued by this Court even on the basis of any

 Govt. policy or unimplemented judgement or an undertaking to

 regularize such a direction would be de hor dictum of Uma Devi

 Judgement.
- (E) <u>Didar Singh Vs Punjab School Education Board and another on</u>
 21.5.2007 in C.W.P No.15761 of 2005 (O & M)

9. In project Cases:-

Hon'ble Suprem Court in State of Himachal Pardesh (through the Secy to Rural Development) Vs. Aswani Kumar etc. on 3.1.1996

10. Limitation for filing contempt petition

COCP is not maintainable if has been filed after more than one year thus time barred in view of judgement passed by <u>Full Bench of Hon'ble</u>

<u>Supreme Court on 10.8.2001 (7)SCC 549 in case titled Pallav Sheth V/s custodian and others</u>.

11. Benefit of Judicial Prouncement:-

Jugal Kishore Vs State of Haryana and others in Civil Writ .No.3896 /2008

Judicial Pronouncements- It is not necessary for every affected person to approach the Court seeking an order in his /her favour once the matter has already been settled by the Court- The benefit of Judicial pronouncements after the same attains finality is required to be given automatically to all such persons whose cases are covered by such decision.

12. Recovery of excess payement:-

The Hon'ble Supreme Court in Sayed Abdul Qadir and others Vs. State of Bihar and others, reported as 2009 (1) SCT 611 has delivered the Law that if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in case where the error is detected or corrected within a short time of wrong payment, the matter, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

13. Appointments restricted to the advertised post:-

<u>Hon'ble Supreme Court in Prem Singh Vs Haryana State Electricity</u>
<u>Board 1996 (4) SLR 661</u> held that appointment can't be given in excess to advertised posts and thus appointment from the waiting list will be made only if candidate from the original list doesnot assume charge of his assignment or any vacancy from this list remains unfilled for any other reason.

14. Regarding Seniority:-

Hon'ble Supreme Court in Uttaranchal Forest Rangers Association (Direct Recruit) & Ors Vs. State of U.P & Ors 2006 (2) Scale 577, was of the view that seniority has to be decided on the basis of Rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this court in the case of K.C. Joshi vs Union of India 1972 Suppl (1) SCC 272.

15. Regarding 2.2(b) of Haryana Civil Services of Punishment and Appeal Rules (1987):-

Full Bench decision of Hon'ble High Court in Issar Singh Vs State of Punjab R.S.J.

16. Regarding transfer:-

Hon'ble High Court in Smt.Urmila Devi & others Vs State of Haryana and others 1998 (3) RSJ page 516 held that no employee can claim a choice place of posting as a matter of right. It is an administrative need for which the authority has the power to transfer whenever necessity arises.

17. Section 17 -B of ID ACT, 1947:-

In Dena Bank, Appllant Vs Ghanshayam, Respondent 2001 (5) SCC 169.

The Statement of objects and reasons for inserting Section 17-B in the ID ACT, 1947 indicates that Parliament intended that the workman should get the Last-Drawn wages from the date of the award till the challenge to the award is finally decided.

If the appellant succeeds in the writ petition, it will be entitled to recover the difference of amount (i.e. amount paid under the impunged order less the amount payable under section 17-B of the ACT) from the respondent in accordance with Law.