

(2007) 10 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No's. 4250 and 8366 of 1996 and Civil Application No. 5549 of 2004

A.R. Brahme

APPELLANT

Vs

Gujarat Urja Vikas Nigam Ltd. and Others

RESPONDENT

Date of Decision : 18-10-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Electricity (Supply) Act, 1948 — Section 5

Industrial Disputes Act, 1947 — Section 18, 18(1), 19(6), 2, 23

Citation : (2008) 1 GLR 736

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : S.A. Desai, for Petitioners 1-17 and 19-50, for the Appellant; Lilu K. Bhaya, for Respondents 1-7, for the Respondent

Judgement

S.R. Brahmbhatt, J.

Heard learned Counsels for the parties.

1. In these two petitions under Article 226 of the Constitution of India, the petitioners have challenged the General Standing Order [GSO] No. 322 date 4/5/1996 revoking the benefits and provisions of Higher Grade Pay Scale sanctioned via Circular No. 578 dated 8/4/1993 ab-initio and all the orders made thereunder, on the grounds that the revoking of Circular No. 578 which was issued pursuant to valid 2 (p) settlement dated 5/4/1993 made between the petitioners through their Unions and the management of the then Gujarat Electricity Board which is now been represented by its successors u/s 2(p) of the Industrial Disputes Act, 1947.

2. As both these petitions involve identical challenge and the respondents are the same, these matters were heard together and are being disposed of by this Common Judgment & Order.

3. Facts in brief deserve to be set out in order to appreciate the controversy in these petitions.

The petitioners were at the relevant time in the employment of the then Gujarat Electricity Board holding various positions in the Board. The employees of the Board were agitating for revision of pay scales and other benefits since 1991 as their earlier wage settlement had expired on 31/12/1990. In order to resolve the issue the matters were jointly referred to the then Finance Minister and the settlement came to be announced on 6/3/1993. It deserves to be noted at this stage that the then Finance Minister was in fact entrusted with the task of amicably resolving the issue with regard to the demands in respect of wage revision and it was not in fact an arbitration proceeding *stricto sensu*. The then Finance Minister's recommendations had a salutary effect in arriving at the settlement u/s 2(p) of the Industrial Disputes Act. The settlement as it is stated herein above was executed on 5/4/1993. The settlement was in respect of various demands, the demand for receiving higher grade was also included. The scheme of according benefit of higher grade scale existing in the State under Resolution dated 5/7/1991 came to be adopted and implemented in respect of the employees covered under the settlement. The benefit of higher grade scale which was in vogue in the State under Resolution dated 5/7/1991 in fact have alleviated the feeling of stagnation in the employees who were not getting promotion despite being eligible after the period of 9, 18 and 27 years service. The said benefit came to be adopted and implemented under the settlement w.e.f. 1/1/1991, so far as Gujarat Electricity Board ("GEB") employees were concerned. It is also provided in the settlement that those categories who were not included in the scheme prevalent in the State would continue to receive the benefits of higher grade scale as per GSO No. 253 and 347 respectively. Pursuant to the said settlement executed u/s 2(p) of the I.D. Act 1947, necessary implementing orders were passed. Establishment Circular No. 578 dated 5/4/1993 came to be issued indicating the detailed procedure and provisions of the scheme of according benefit of higher grade pay scale to the GEB employees. This Circular No. 578 dated 8/4/1993 was issued by the then GEB pursuant to the settlement executed on the same day. GSO No. 575 had been issued on 5/4/1993 indicating the benefit of higher grade pay scale to be accorded to the employees of GEB. Pursuant to the said GSO the petitioners and other similarly situated employees of GEB started receiving the benefits as the implementation orders were issued accordingly.

4. It is required to be noted at this stage that the then GEB which was an autonomous body constituted u/s 5 of the Electricity Supply Act, 1948, was governed by provisions of the Industrial Disputes Act, and accordingly the benefits of higher grade pay scales were given to the employees by executing settlement making the provision of according benefit of higher grade pay scale as integral part of the settlement itself. The employees started receiving benefits as it is stated herein above. However in the State earlier scheme of granting higher grade pay scale was in vogue under Resolution dated 5/7/1991, came to be

revised and reviewed and it was ultimately replaced by the new scheme with certain modification, came to be promulgated vide Resolution dated 16/8/1994. The State in exercise of its power of controlling autonomous body inquired of management of GEB as to whether the appropriate changes are made in view of the Government Resolution in respect of according benefit of higher grade pay scale. The GEB without following the due procedure under the provisions of I.D. Act issued GSO No. 322 on 4/5/1996 revoking the Circular No. 578 dated 8/4/1993 making it ab-initio void and effecting in their place a new scheme on the line of Government Resolution dated 16/8/1994. Though in terms it did say so, the revocation of Circular No. 578 dated 8/4/1993 ensued recovery which was to be effected after affording opportunity to the employees of being heard and if possible the same was required to be adjusted against the arrears that may be admissible under the new scheme. This GSO No. 322 dated 4/5/1996 is under challenge in these two petitions.

5. Learned Counsel Shri. Desai for the petitioners in both the petitions has submitted that the GEB- the then management and respondents who has now been replaced by the existing employer was constituted u/s 5 of Electricity Supply Act, 1948 and was an industry as defined under the Industrial Disputes Act. As the period of earlier wage settlement dated 24/7/1988 had expired w.e.f. 31/12/1990 the new wage settlement was due w.e.f. 1/1/1991. The benefit of according higher grade pay scale was granted to the employees under the valid settlement in accordance of Section 2(p) of the I.D. Act and pursuant thereto the Circular No. 578 dated 8/4/1993 came to be issued. Now, therefore, when the 2 (p) settlement was in fact implemented and the benefits of higher grade pay scale were in fact granted to the petitioners and other similarly situated employees it was not open to the respondent GEB to revoke the said benefit ab initio which it did under the GSO No. 322 dated 4/5/1996. Therefore this being contrary to the provisions of I.D. Act same is required to be quashed and set aside.

6. Shri. Desai has further submitted that in fact under the provisions of 2(p) settlement dated 5/4/1993 the implementing Circular No. 578 came to be issued and the employees received the benefits also. Therefore the benefits which were granted to the employees became part of the service condition and as such the same could not have been abruptly withdrawn without following due procedure envisaged under the provisions of I.D. Act.

7. Shri. Desai has placed reliance upon the decision of the Apex Court in case of North Brook Jute Co. Ltd. and Another Vs. Their Workmen, and submitted that the provision of I.D. Act are required to be followed for effecting any valid change in the service conditions of an employee. Shri. Desai has also placed heavy reliance on the observations of the Apex Court in case of The Management of Indian Oil Corporation Ltd. Vs. Its Workmen, and submitted that in the aforesaid case unilateral withdrawal of compensatory allowance without any notice of change was held to be fatal. In the instant case the benefit of higher

grade scale had become part of the service condition of the employee who had started receiving their salary accordingly, and therefore could not have been deprived of the same on abrupt introduction of GSO No. 322 dated 4/5/1996 without observing provisions of I.D. Act for changing service condition. The change in service condition without following the provisions of ID Act especially provision No. 9 (a) would vitiate the entire exercise of change in service condition. Shri. Desai has also relied upon a decision of the Apex Court in case of Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, and submitted that once a benefit is accorded to an employee by the industrial establishment pursuant to a settlement then revocation thereof or withdrawal thereof without following due procedure would amount to breach of the obligation of the employer u/s 18(1) of the I.D. Act. In the case of Madan Mohan (supra) the Apex Court did not approve the withdrawal of grant of annual cash bonus by LIC to its Class-III and Class -IV employees under Clause 8 (ii) of the settlement which in fact was approved by the Central Government. It is further held that it was not open to the Central Government to issue contrary direction which had an effect of compelling LIC to commit breach of its obligation u/s 18 of the I.D. Act. Shri. Desai has further relied upon the decision of the Apex Court in case of South Indian Bank Ltd. Vs. A.R. Chacko, and submitted that the settlement has statutory effect as in the case of South India Bank the Apex Court observed that even if the award is seized to be in operation under provision of Section 19(6) it would still continue to be operative as a contract between the parties. It was observed that there was nothing in the scheme of I.D. Act to justify and conclude that merely because the special provision of Section 23 and 29 regarding prohibition to strikes and lock outs and of penalties for breach of award thereof ceased to be effective then the new contract as embodied also ceased to be effective and it has to be replaced only in accordance with law. Shri. Desai has also relied upon a decision reported in case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and submitted that once the settlement is arrived at between the parties under the provisions of I.D. Act it shall have a binding effect on the parties and the Apex Court held after referring to the case of Chacko (supra); that the expired award would continue to govern the parties till it is displaced by another contract or by relationship otherwise substituted by it in accordance with law. In any case it is binding settlement and the effect thereunder could not be nullified without following procedure of law. Shri. Desai has also relied upon a decision reported in case of The Workmen and Others Vs. Hindustan Lever Ltd., and submitted the in the aforesaid decision the Supreme Court upheld that sanctity of the agreement remains in force and binding to the parties is unlimited.

8. Shri. Desai has submitted that the present petitioners approached this Court promptly and since then they have been pursuing the remedy with utmost vigilance and care and pendency of these proceedings before this Court has also been acknowledged by the respondents as they are duty bound. However at times respondent management could prevail upon Unions on the basis of some

offers where under some of the Unions agreed to give up the benefit accrued to its members under the settlement and the implementing circular thereof. But those subsequent settlements and or arrangements can not have any binding effect as even while arriving at subsequent settlement at least on two occasions the interim arrangement made because of pendency of the petition was agreed to be continued and made subject to the outcome of these petitions. In fact number of petitions were filed by individual workman and even by Unions also but their dismissal would not affect adjudication of these matters as could be seen from the various orders placed on record. Shri. Desai has submitted that in view of these, present petitions deserve to be allowed.

9. Shri Desai has submitted that this Court (Coram: Ms. R.M. Doshit, J) in these petitions, by way of interim order dated 16/8/1996 stayed the enforcement and implementation of GSO No. 322 and in another Special Civil Application No. 8366 of 1996 dated 2/11/1996. As many of the employees were retiring in between the settlement arrived at in year 2004 was accepted by some employees and some did not accept hence Civil Application No. 8766 of 1996 and in Special Civil Application No. 4250 of 1996 this Court (Coram: J.N. Bhatt, J, as he then was) passed an order where under the difference of amount payable on retirement to the employees in whose favour earlier stay order was existing, was ordered to be deposited in the Bank by way of fixed deposit and the retiring employee was permitted to receive amount of interest accrued thereon periodically. This arrangement is in force till date.

10. Ms. Lilu Bhaya, learned Counsel appearing for the respondents in both these petitions has submitted that both the petitions deserved to be dismissed as the petitioners have no right to challenge the impugned GSO No. 322 dated 4/5/1996 as it was in fact consonance with the settlement itself. Ms. Bhaya has submitted that the 2 (p) settlement under the I.D. Act was on line with the State Government's policy prevalent at the relevant time and therefore, if there is change in the policy or the scheme the same change was required to be carried out by the respondent GEB and therefore the impugned GSO No. 322 dated 4/5/1996 was nothing but a change carried out as per the change in the policy or scheme of according benefit of higher grade pay scale to the concerned employees. Ms. Bhaya has heavily relied upon the wording in the settlement dated 5/4/1993 that the "scheme prevalent in the State in respect of higher grade scale is to be effective in the Board w.e.f. 1/1/1991". Thus the settlement was in respect of according the benefits to the employees of GEB covered under the settlement on the lines of the scheme prevalent in the State and therefore when the scheme prevalent in the State itself was changed or was replaced the consequent change was also required to be carried out, and as a result thereof the impugned GSO dated 4/5/1996 came to be issued which can not be said to be in any way contrary to the provisions of law and therefore the same deserve to be upheld. In order to support the aforesaid submission she has invited this Court's attention to the circulars which contain the wordings that "Board has accepted the higher grade scheme of the Gujarat Government." The State of

Gujarat revoked the then existing scheme originally promulgated under the Resolution dated 5/7/1991 and framed new scheme from 16/8/1994. Therefore the scheme which was implemented under the settlement dated 5/4/1993 in the Board was also required to be revoked and new scheme on the lines of the scheme framed under Resolution dated 16/8/1994 was required to be implemented. Therefore revoking of earlier scheme and introducing of new scheme under GSO No. 322 dated 4/5/1996 could be said to be in consonance with the terms of the settlement dated 5/4/1993 and therefore the petitions deserved to be dismissed.

She has submitted that in absence of any specific mention about a particular scheme to be implemented in the Settlement dated 5/4/1993, the scheme which is referred thereto is the scheme prevalent in the State and therefore there was no breach of settlement and therefore the petitions deserved to be dismissed. The settlement refers to adopting of the scheme by the Board prevalent in the State of Gujarat in respect of according benefit of higher grade pay scale and therefore any change in the scheme or its replacement would have to be carried out as a necessary consequence in the Board also and this action can not be viewed as breach of terms of Settlement.

11. Ms. Bhaya has also relied upon the settlement dated 26/3/1998 for justifying issuance of Circular or order GSO 322 dated 4/5/1996 and submitted that even in the settlement dated 26/3/1998, as per Clause-30, the scheme that may be revised by the State time and again was to be adopted. Of course it was made subject to result of this Court's decision as the settlement dated 26/3/1998 came to be executed during pendency of these petitions. Ms. Bhaya has submitted that the petitioners and other similarly situated employees have accepted the wage revision effected under the Settlement dated 26/3/1998 and therefore the provisions of the settlement dated 26/3/1998 is binding upon them and in view of the provision that the scheme of higher grade pay scale as may be revised by the State shall be made applicable subject to result of decision of the Court the challenge to the GSO 322 dated 4/5/1996 should not survive in view of the binding effect of settlement dated 26/3/1998. She has further submitted that the employees who have accepted the benefit of wage revision which was admissible under the settlement order are estopped from raising plea of repugnance of GSO No. 322 dated 4/5/1996. She has further submitted that the wage revision came into effect from 1/1/1996 and petitioners were in service at the relevant time and they availed the benefit of wage revision and therefore the wage revision was in fact effected under the settlement dated 26/3/1998 and therefore the terms of the settlement dated 26/3/1998 being binding upon them they can not challenge the revocation of earlier GSO No. 322 dated 4/5/1996. Ms. Bhaya has further submitted that the factum of retiring of some of the employees would be of no avail as the settlement are between the management and unions and therefore they are binding on all its members, including the members retiring thereafter.

12. Ms. Bhaya has submitted that under the established principle of collective bargaining acknowledged by all the Courts, the individual worker has no right to challenge the provisions of settlement once the same is accepted by the Union on their behalf. In this view of the matter also the present petitions deserve to be dismissed as the settlement especially settlement dated 26/3/1998 and the subsequent settlement dated 28/5/2004 deserved to be taken into consideration as atleast in the settlement dated 28/5/2004 there is express provision with regard to giving up the challenge in the petitions. In view of this also, the petitioners having given up their right to agitate their cause, the petitions deserved to be dismissed in pursuance of settlement dated 28/5/2004. The circular dated 29/7/2004 was issued being Circular No. 334 and the effect thereof was to cancel Establishment Circular No. 578 dated 8/4/1993 and GSO No. 322 dated 4/5/1996.

13. Ms Bhaya learned Counsel for the respondents has also heavily relied upon the undertakings given by some of the employees which in terms go to show that they agreed to give up their challenge to the original GSO No. 322 and therefore now it would not be open atleast to them to agitate that GSO No. 322 was bad in law. The employees and the present petitioners have accepted the benefits of wage revision which was flowing from the settlement dated 28/5/2004 and therefore they would be governed by the terms of the said settlement which clearly indicate that the prevalent scheme of the State is only to be effective so far as the benefit of higher grade pay scale is concerned and, therefore, on this account also the petitions deserve to be dismissed. She has submitted that some of the petitioners and similarly situated employees have retired in the year 1997, 1998 and 1999 and they have accepted the wage revision effected under the resolution dated 28/5/2004. Therefore at this stage if the GSO No. 322 is declared to be bad and the present petitioners and other similarly situated persons are given same benefits, then it would amount to giving different treatment to similarly situated employees and the Board can not adopt different standards as the Board is a State under Article 12 of the Constitution of India.

14. Ms. Bhaya has relied upon a decision of the Apex Court in case of Tata Engineering and Locomotive Company Limited v. Their Workmen reported in 1982 SCC 1 and submitted that in light of the observations of the Apex Court in case of Tata Engineering And Locomotive Company Limited (supra) the settlement accepted by majority is required to be treated as just and fair settlement and tribunal's interference with it on the basis of its subjective view or minority workers' opposition was held to be unwarranted. The Apex Court has observed that settlement can not be weighed in golden scale and its fairness is to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. In short when the settlement is accepted by majority the individual worker or minority workers have no right to agitate the action taken under the settlement. Therefore, Ms. Bhaya argues, on this count also the petitioners who are in microscopic minority can not be permitted to agitate the grievance against GSO No. 322. Ms. Bhaya has also

relied upon a decision of the Apex Court in case of *Herbertsons Ltd v. The Workmen of Herbertsons Ltd and Ors.* reported in 1977 SCC (pg. 48 , and submitted that a voluntary settlement if fair and just could be allowed to be binding on all the workers even if at all there are small number of workers who were not members of majority unions. The established principle of law in respect of collective bargaining dictates that the settlement arrived at between the parties is binding upon all the workers irrespective of their individual grievance. As the fundamental principle is, unions would take care of the majority workers and it will work for their betterment. Ms. Bhaya has relying upon this ratio submitted that the settlement dated 26/3/1998 and settlement dated 28/5/2004 are therefore binding and atleast under 2004 settlement it is expressly stipulated that the scheme of higher grade pay scale as applicable to the State would be made applicable or rather revised time and again and therefore the petitions need not be entertained and be dismissed. Ms. Bhaya on relying upon another decision of the Apex Court in case of *I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others*, has submitted that, as held by the Apex Court in the aforesaid decision the industrial adjudicator has to keep in the forefront of his mind the settlement reached between the parties and once it is found that the terms of the settlement operate in respect of the disputes raised, then it is not open to the industrial adjudicator to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be contrary to the mandatory provision of the Act or unless it is found that there is non-conformance to the norms by which the settlement could be subjected to limited judicial scrutiny. Ms. Bhaya based on this judgment submitted that the present petitions deserved to be dismissed as there exist atleast two settlements which go to show that revoking of earlier scheme vide impugned GSO No. 322 was not bad at all and was in consonance with the settlements. Ms. Bhaya has submitted that the petitioners therefore are not entitled to continue their petitions against revoking of earlier scheme of GSO No. 322 dated 4/5/1996 and therefore the petitions deserved to be dismissed.

15. This Court heard learned Counsels for the parties and perused the record. The entire controversy in these matters require close scrutiny of three settlements and their subject matter in light of the prevalent mandatory provision of Industrial Disputes Act, 1947. It deserves to be noted at this stage that the respondent GEB at the relevant time was constituted u/s 5 of Electricity Supply Act and it was an autonomous body, though under some control of the State, but it is clearly classified to be an industry and governed by principle and provisions of I.D. Act with its all vigour. It deserves to be noted that the employees of GEB at the relevant time were agitating for appropriate benefits and wage revision and therefore one man committee was formed consisting of the then Finance Minister who was in fact required to go into larger issues with regard to the financial burden that would have affected the GEB being under the control of the State. Ultimately he made appropriate recommendation vide its

decision dated 6/3/1993. The management of GEB and its Unions entered into a settlement under provisions of Section 2(p) of the I.D. Act on various aspects which include admissible pay, new allowance like food allowance etc. It also discussed that there was no settlement in respect of medical reimbursement scheme and other incidental issues. With regard to the employees' demand for some benefit to those who were stagnating on same post or scale without being promoted for long. The Item at Sr. No. (D) provided for 3 tire higher grade scale on the line of the scheme prevalent in the State and further provided that it would be implemented in the Board w.e.f. 1/1/1991 and those which are not included therein would continue to receive benefits under GSO 347 and 253. At the relevant time in the State of Gujarat the benefit of 3 tire higher grade scheme was accorded to its employees. As per the resolution dated 5/7/1991 the employee completing 9, 18 and 27 years of service without being promoted though eligible were given benefit of pay scale of next higher grade, so as to assuage feeling of frustration. The scheme was popularly known as 9, 18 and 27 years scheme. The scheme, so far the State is concerned was given effect from 1/1/1987 and therefore almost all the concerned about the period, benefits, eligibility and other incidental factors was taken care of in the said scheme. In other words it could be said that the scheme was absolutely identifiable, articulated and capable of being adopted and implemented in other organizations also. It deserves to be noted that the said scheme was made applicable in case of employees of GEB w.e.f. 1/1/1991 as per the settlement dated 5/4/1993. Clause-7 of the settlement envisaged its life till 31/12/1995. By now the question regarding implementing of settlement and its life has been crystallized in various decisions which says that the settlement is to be in vogue till it is validly replaced, rescinded or otherwise dealt with in accordance with law.

16. As against the aforesaid settlement the subsequent settlement executed on 26/28-3-1998 deserves to be examined. It is to be noted that this settlement was executed on 26/28-3-1998. This settlement is essentially in respect of wage revision and pay fixation. Clause 30 of the settlement which is heavily relied upon by Ms. Bhaya needs to be set out as under:

30. The 3 tire higher grade scheme will be suitably revised on the lines of State Government. Till such time the existing scheme will be continued subject to the Honorable High Court decision.

17. It deserves to be noted at this stage that the respondent issued the GSO No. 322 dated 4/5/1996 impugned in these petitions revoking the orders and Circular no. 578 dated 8/4/1993 and introducing new scheme of according benefit as in the year 1994 the State had also replaced the earlier scheme of 3 tire higher grade scheme dated 5/7/1991 with that of 16/8/1994. This GSO No. 322 dated 4/5/1996 was impugned in these proceedings and this Court in SCA No. 4250 of 1996 (Coram: Ms. R.M. Doshit, J) passed the following order.

Rule. By way of interim relief it is directed that the impugned GSO 322 shall not be implemented. Direct service is permitted.

18. It is submitted by learned Counsels of both the sides that same is continuing till date as it was never modified thereafter nor was it challenged in the LPA. By virtue of this order it can be well said that the scheme promulgated vide Establishment Circular No. 578 dated 8/4/1993 was the existing scheme. Bearing this in mind Clause No. 30 deserves to be read, then it would be clear that even as per this clause also the scheme existing under Establishment Circular dated 578 was continued as it can never be said that the scheme of GSO No. 322 had ever been implemented as it could not have been in light of the clear injunction order dated 16/8/1996 passed by this Court in Spl. Civil Application No. 4250 of 1996. As the stay order was operating and GSO No. 322 had never been implemented atleast so far as the petitioners are concerned, the rider appears to have been introduced in Clause 30 "subject to result of the petitions". Thus so far as the settlement of 1998 is concerned, it can well be said that it did not make any inroads so far as the old scheme under Establishment Circular 578 dated 8/4/1993 is concerned. This Court hasten to add here that it would be a different matter in case of set of employees if they had given up their right and benefits voluntarily in view of accepting of some other benefits but as the counsel has submitted, till the settlement of 1998 and thereof no employee was required to forgo any benefit of the Establishment Circular dated 8/4/1993 No. 578 after receiving the benefits of wage revision in the said settlement of the year 1998. Therefore this Court is unable to agree with the submission of Ms. Bhaya that in view of 1998 settlement the principle of estoppel will come in operation against challenge to GSO No. 322 dated 4/5/1996. It is also expedient to consider the relevant clause in settlement of 2004 which in fact has heavily been relied upon by Ms. Bhaya in support of her submission against the petitioners. The said settlement between management of respondent Board and the concerned Union executed on 28/5/2004, in its preamble refers to earlier settlement dated 5/4/1993 and the establishment circular No. 578 dated 8/4/1993. It also refers to pendency of litigation challenging the GSO No. 322 dated 4/5/1996 and the order of injunction staying the implementation and enforcement of GSO 322 dated 4/5/1996, and it mentions that under the Establishment Circular No. 578 the higher grade scale were to be sanctioned. The employees who retired in the meantime were not permitted to receive the admissible amount of gratuity and leave encashment on that basis when the matter was said to be pending in the Court. It also refers to the subsequent settlement dated 26/3/1998 and Clause 30 thereof indicating the issue was to be resolved and till then the existing scheme was to be continued. On 16/5/2003 a committee was formed consisting of representatives of Unions and the Board for resolving the issue and a consensus was arrived at in respect of new scheme as provided in the said settlement. In Clause 17 in this settlement it was agreed that on issuance of new 3 tire higher grade pay scale scheme circular (GSO) the Establishment Circular No. 578 as well as GSO No. 322 would be treated as having been revoked. Ms. Bhaya relying upon this circular has advanced a submission that this being a settlement between Union and the Management the same is binding and in view of this the present petitioners have no right to continue in their challenge to GSO

No. 322 impugned in these petitions. This Court is unable to accept the said submission as it can be seen that pursuant to the settlement the Board always insisted upon undertaking from the concerned employees in express term that the employees would give up their challenge to GSO No. 322. In view of this insistence it is not now open to those employees who have filed those undertakings to agitate and claim benefit of establishment circular no. 578. But so far as the employees who have not filed any undertaking can still continue their challenge as the said settlement dated 28/5/2004 can not in stricto sensu said to be a settlement having an effect upon the petitioners, whose petitions are pending before the Court and who did not file undertaking as aforesaid. Therefore these petitions qua the petitioners who have not filed undertaking would survive and appropriate relief could be granted on examining their challenge to GSO No. 322 dated 4/5/1996.

19. In light of the aforesaid discussions, now it would be appropriate to examine the challenge to GSO No. 322 dated 4/5/1996 in respect of those employees who have not submitted their undertakings and in whose case the respondents were required to deposit the amount of difference in the Bank as per the order of this Court passed in Civil Application No. 8476 of 1996 in Special Civil Application No. 4250 of 1996 dated 24/10/1996 (Coram: J. Bhatt, J, as he then was). The submission of Ms. Bhaya with regard to interpretation of item No. (D) in settlement dated 5/4/1993 can not be accepted in view of the fact that the scheme referred thereto of 3 tire higher grade pay scale existing in the State was absolutely identifiable, articulated and acceptable for being implemented and was in fact implemented in respect of State employees as per Resolution dated 5/7/1991 and the employees of the State received benefit thereunder. Therefore respondents would not be justified in canvassing submission that the Clause (D) of the said statement referred to any scheme that may be implemented by the State and not the scheme which was in fact being implemented by the State at the relevant time. It was in fact adoption of a scheme which was promulgated in the State under resolution dated 5/7/1991 which was in a concrete shape being implemented in respect of State employees. The interpretation canvassed on behalf of the respondents therefore is not capable of being accepted as Clause (D) does not contain any specific clause or stipulation that the existing scheme or the scheme that may be modified hereafter by the State shall be implemented. It would not be possible to deny by the Respondents the fact that the scheme promulgated by State under resolution dated 5/7/1991 was adopted as it is quite well established from the record that by implementing the same the establishment circular No. 578 came to be issued. Meaning thereby the scheme was adopted and implemented and on that basis the pay scales were revised and benefits were received by the employees concerned. Thus it can well be said that it became part of the service conditions as it was adopted under valid settlement under the provisions of Section 2(p) of the I.D. Act. The provision of I.D. Act clearly makes it incumbent upon the parties to follow the procedure for either revoking or amending the settlement recorded u/s 2(p) of the I.D. Act. It is not

in dispute that the Board did not follow any procedure under I.D. Act before issuing the impugned GSO No. 322 dated 4/5/1996. The decision relied upon on behalf of the petitioners in case of Madan Mohan Pathak reported in (1978) 2 SCC 250 would clearly be applicable to the facts & circumstances attending the case on hand. In light of the ratio of Apex Court in case of Madan Mohan Pathak (supra) it can well be said that the benefit created under settlement which was implemented by GSO No. 578 could not have been taken away by the impugned GSO No. 322.

20. It also deserves to be noted that the Apex Court has held in case of North Brook Jute Co. Ltd supra) reported in AIR 1960 879, the change to service conditions can not be effected without following the procedure under the I.D. Act. The actual change takes place when a new condition of service are actually introduced by following the due procedure. Section 9A of the ID Act stares in the face of the respondent who have admittedly not followed the procedure before issuing the impugned GSO No. 322 dated 4/5/1996. The non compliance with the provisions of ID Act go to show that the impugned GSO No. 322 could not have been validly issued at all by the respondents.

21. This Court is unable to accept the submission of Ms. Bhaya on behalf of the respondents that the petitioners are estopped from challenging the same in view of the subsequent settlement namely settlement dated 26/3/1998 ad 28/5/2004. As it is stated herein above, second settlement dated 26/3/1998 being a subsequent settlement naturally could not have been pressed into service for justifying the GSO no. 322 dated 4/5/1996. More over it deserves to be noted that the said GSO is expressly stayed by this Court vide order dated 16/8/1996 and this fact have been duly acknowledged by the respondents in subsequent settlement dated 26/3/1998 and it is rather expressly provided in clause No. 30 that therefore the existing scheme continues. In light of this the relevance placed on settlement dated 26/3/1998 is absolutely misconceived and deserves to be rejected outright.

22. This Court is unable to accept the submission of Ms. Bhaya on behalf of the respondents that the settlement dated 28/5/2004 is atleast binding in view of the fact that said settlement could not have been said to have the effect of compelling atleast those petitioners who have not filed undertaking to give up their challenge before the Court. The settlement arrived at between the parties during pendency of adjudication of the dispute between the parties would have to be made effective only after the same is approved by the concerned Court. In the instant case the settlement dated 26/3/1998 and dated 28/5/2004 were admittedly not put up before the Court for its approval and therefore, it can well be said that atleast the present petitioners who have not submitted any undertaking would not be governed by the said settlement. Apart therefrom, it is also required to be noted that so far as the second settlement, namely Settlement dated 26/3/1998 is concerned, which has been discussed here before elaborately as it is in fact containing Clause No. 30 where under the then existing

scheme of according three tire benefits was said to be continued and it was made result of the outcome of this litigation. In view of this, the plea regarding binding effect of the Settlement dated 28/5/2004 can not be accepted. Suffice it to say here that atleast there is a group of petitioners who have not filed any undertaking pursuant to settlement dated 28/5/2004 and therefore, it can be said that these petitions is required to be taken into consideration so far as those petitioners who have not filed any undertaking. It goes without saying that the petitioners who have filed undertaking before the respondent authority can have no right to receive any benefits of Establishment Circular no. 578 or can they agitate their challenge to GSO No. 322 and therefore learned Counsel Shri. Desai for the petitioners has fairly submitted that, he is not pressing the petitions qua them and therefore suitable directions may be passed.

23. Thus the 2(p) settlement dated 5/4/1993 and the relevant Circular No. 578 implementing the scheme of three hire grade pay scale to the concerned employee could not have been legally revoked by issuing GSO 322 dated 4/5/1996 as admittedly no provision for modification revoking and /or replacing the Settlement dated 5/4/1993 had been followed. Therefore the GSO No. 322 could not have been validly implemented atleast qua those petitioners who did not subsequently also agreed to accept the condition of giving up their challenge before this Court as it is settled in case of other employees who filed undertaking pursuant to the settlement dated 28/5/2004. it is also a subject matter of consideration as to whether and to what extent the employer was justified in obtaining undertaking from the employees without giving up their challenge before the Court without consulting the Court. However, this Court is not called upon to examine this aspect at this stage as atleast in respect of the persons and the petitioners who have not filed any undertaking pursuant to the settlement dated 28/5/2004, the Scheme of GSO No. 322 can be said to have not been applicable at all.

24. In view of the aforesaid discussions, this Court is of the view that both the petitions deserve to be allowed only qua those petitioners who have not filed any undertaking after the settlement dated 28/5/2004 and in whose case the amount of difference is deposited by GEB and or its successors in the concerned Bank where of only interest is being paid to the employees. The quashing of GSO No. 322 will have adverse impact upon the subsequent settlements and will have devastating effect upon the other employees. Therefore, this Court is not quashing the GSO No. 322 dated 4/5/1996. Suffice it to say that, atleast so far as those petitioners are concerned who have not filed undertaking are entitled to receive benefits as if GSO No. 322 dated 4/5/1996 did not exist qua them.

25. Accordingly the respondents are hereby directed to release all the benefits qua the petitioners who did not file any undertaking after settlement dated 28/5/2004 on the basis of the earlier Establishment Circular No. 578 dated 8/4/1993. The amount lying in the Bank therefore deserves to be released forthwith without any unreasonable delay. Rule made absolute to the above said

extent with no order as to cost.

26. In view of the order in main petitions, no order in Civil Application No. 5549 of 2004 and the same stands disposed of accordingly.

27. The third petition being Special Civil Application No. 4441 of 1996 which was ordered to be heard together with the present petitions decided by this judgment & order, is now ordered to be de-linked as the notice issued to the petitioner therein remained unserved. The said matter may come up for hearing after the petitioner is duly served.