

(1997) 08 BOM CK 0043

In the Bombay High Court

Case No : C.W.P. No's. 797, 798 and 799 of 1997

Ashok and others

APPELLANT

Vs

Maharashtra State Transport Corporation and others

RESPONDENT

Date of Decision : 21-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 39
Industrial Disputes Act, 1947 — Section 18, 2
Road Transport Corporations Act, 1950 — Section 45

Citation : (1997) 2 LLJ 1189 : (1997) 3 MhLj 486

Hon'ble Judges : V.S. Sirpurkar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : D.C.R. Mishra and M.P. Jaiswal, for the Appellant; B.P. Dharmadhikari, for the Respondent

Judgement

B.H. Marlapalle, J.—Heard the learned Counsel for the respective parties. Rule returnable forthwith, with the consent of the parties.

2. The petitioners in all the three petitions are similarly placed and the relief sought is same. Hence they are being decided by this common judgment.

3. All the petitioners are the employees of Maharashtra State Road Transport Corporation (hereinafter referred to as "Corporation") and the petitioners in Writ Petition No. 797/97 are presently employed under Akola Division, the petitioners in Writ Petition No. 798/97 are employed under Buldhana Division whereas petitioners in Writ Petition No. 799/97 are employed under Nagpur Division of the Corporation. All the petitioner are holding the quaification of ITI and they came to be recruited as helpers on completion of apprenticeship training and by the selection processes prevalent in the Corporation. Initially all of them were appointed as daily rated helpers on different dates during the period from January 1986 to March 1991. Annexure "E" in all the petitions is the statement filed by the petitioners giving details of date of joining, date of temporary time scale and date on which they were granted time scale by the Corporation as well

as the pay fixation as a result of different settlements.

4. The Corporation is a State undertaking and it came into existence on December 6, 1956 as per the notification No. SRO/ 1061 issued under the provisions of the Road Transport Corporation Act, 1950. It has its own Service Rules framed u/s 45 of the Road Transport Corporation Act, 1950 and these Service Rules are known as Bombay State Transport Employees' Service Regulations. The Corporation has its main office at Bombay with Regional offices at the headquarter of every Revenue Division and Divisional Offices at District Headquarters. The Regional offices are under the control of Regional Managers, whereas Divisional Offices are under the control of the Divisional Controllers. The Corporation is required to engage apprentices under the Apprenticeship Act, 1961 and all the petitioners after completing their ITI course, came to be engaged as apprentices and they successfully completed the said apprenticeship. For regular recruitment, the Corporation has given them preference and they all came to be selected as helpers in daily rated scale under Class IV on different dates. It appears that all such helpers recruited by the Corporation are posted under different Divisional offices and they are continued on daily rate basis depending upon exigencies of work. It appears further that they are also given break and if they remain absent, such days are not counted 901 as they have not worked with the Corporation.

5. The employees of the Corporation are represented by different Unions and service conditions are regulated by Settlements signed between the Corporation and the Unions. The first such Settlement was signed on April 25, 1956 and it expired on March 3-1, 1958. Such Settlements have also been signed in 1961(sic) as well as in 1968. Clause 49 of the 1956 Settlement provided for abolition of daily wage system inasmuch as all those employees, who were engaged on daily wage basis would be brought on time scale of pay on completion of 180 days continuous service including weekly off and other holidays. Clause 80 of the said Settlement also provided for formation of a Joint Committee for enforcing the Settlement and for removing grievances of workers. Both clauses of the 1956 Settlements reads as under :

"49. All employees working for 180 days including weekly off and other holidays continuously will be brought on the time scale of pay and will get all the benefits available to time scale, workers. Any absence on account of authorised leave will not be treated as break for the above purpose and will not also count for service.

80. A Joint Committee should be constituted for enforcing the Settlement and for removing grievances of workers. It should also ensure proper implementation of all terms of the agreements, settlements and decisions of the Joint Committee and also see that no party does anything prejudicial to the rights privileges of the S.T. Corporation and its employees. The Implementation Committee referred to in Demand No. 1 (b) shall, comprise of three persons nominated by the Corporation and three persons nominated by the S. T. Workers Federation."

The said Clause 80 of the 1956 Settlement, seems to have been amended in 1968 Settlement between the Corporation and the recognised Unions of S.T. employees, namely Maharashtra State Transport Federation, Maharashtra S.T.Mazdoor Sabha, Provincial Rashtriya Motor Kamgar Union and Motor Kanigar Panchayat, Amravati so as to give proportionate representation to all the four Unions, The Vice Chairman of the Corporation was to be the Chairman with a workman as the Secretary of the Joint Committee. It was further stipulated that all matters affecting the employees would fall within the scope of the Joint Committee.

6. It is the grievance of the petitioners that they were not given the benefit of the time scale on completion of 180 days of continuous service and in the Settlement dated July 21, 1989, which was effective from April 1, 1988 to March 31, 1992, they were unfairly treated and denied the legitimate benefits of equal pay for equal work. It is the contention of the petitioners that Clause Nos. 4.1.2, 4.1.3, 4.2.1, 4.2.2 and 4.2.3 of the 1989 Settlement were derogatory to the interest of the petitioners and more particularly these provisions were contrary to Regulation 65 (a) and 67 (1) of the Service Regulations as well as these provisions were in violation of Articles 14, 16, 21 and 39(d) of the Constitution of India. For ready reference, the impugned Clauses of 1989 Settlement are reproduced hereinbelow :

"4.1.2 : In the case of an employee, who was drawing basic pay of less than Rs. 680/- as on January 1, 1986 in old pay scale and was drawing Index D. A. as on April 1, 1986, the sum of (i) basic pay as on March 31, 1988, (ii) Index D.A. of Rs. 940.80 as on March 31, 1988 and an amount equal to 208 of the unrevised basic pay in the regular post as on March 31, 1988,,subject to minimum of Rs. 100-will be worked out. This "sum" will be split into two parts, The first part will represent "notional pay" as on March 31, 1998 and the second part will represent "notional Dearness Allowance" at Government rates as on March 31, 1988. The government D.A. as on March 31, 1988 was 18% of basic pay. Therefore, the first part which will be equal to 100/118 will be treated as "notional pay" and the second part which will be equal to 18/118 will be treated as "notional Dearness Allowance" at Government rates. If the first part representing " notional pay" is a stage in the corresponding revised 1988 pay scale, the pay will be fixed at the stage, if it is not a stage it will be fixed at the next higher stage; if it is more than the maximum of 1988 pay scale, the pay will be fixed as per Clause 4.13.

4.1.3 : The basic pay of an employee appointed directly to the time scale during the period from April 1, 1988 to June 30, 1989 will be fixed at the minimum of the corresponding 1988 pay scale. If the sum of pay plus D. A. at the minimum of 1988 pay scale as per this fixation is less than the pay plus D.A. admissible in the old pay scale, the "difference" will be fully neutralised by granting ad hoc increments in the 1988 scale and the revised pay will be fixed appropriately at the stage at which the pay so fixed and D.A. admissible thereon fully neutralises the difference.

4.2.1. : With effect from April 1, 1988 all daily wage employees will be eligible for " 1988 Daily Wage Rate" calculated as follows :

1988 Daily Wage Rate = Basic Pay at minimum in 1988

Pay scale +D.A. + HRA + CLA

Working days in calender month

(Notes : 1) Number of working days are either 26 or 24 as may be applicable as per, instructions issued on the subject.

2. Where increment has become due to a daily wage earner as per existing instructions on the subject, it shall be granted on due date.

3. D.A., H.R.A. (i.e. House Rent Allowance) and C. L. A. (i.e. Compensatory Local Allowance) will be as applicable with reference to basic pay and the place of work as per State Government Rules, rates and slabs).

Provided that in the case of daily wage employees joining the services of the Corporation on daily wage for the first time from April 1, 1988 and upto June 30, 1989 if the actual daily wage drawn by him is more than the "1988 Daily Wage Rate" the excess amount drawn over "1988 Daily Wage Rate" will be protected and regularised by treating it as "Personal Daily Wage" and will be shown separately in the pay bill.

Provided that in the case of daily wage employee joining services of the Corporation prior to April 1, 1988, the daily wage rate w.e.f. April 1, 1988 paid on the basis of old pay scales will be revised. Revised rates of daily wage will take into account fixation benefit of Rs. 100/- per month. In other words, revised rate of daily wage based on old pay scale in such cases will be -

Actual Daily Wage paid without" ad hoc advance payment" + (Rs. 100/25 or 24 working days) as the case may be.

Accordingly the wages paid to daily wage employees joining the services of the Corporation prior to April 1, 1988 will be revised w.e.f. April 1, 1988. In the first instance, in their cases, if revised rate of daily wage based on old pay scale with fixation benefit of Rs. 100/- er month is more than " 1988 Daily Wage Rate the excess will be protected and regularised by treating it as "Personal Daily Wage " and will be shown separately in the pay bill, arrears, if any, will be paid to such daily wage employees after recovery by adjustment of the "ad hoc " advance payment made as per Accounts Department Circular No. ST/Acc/Pay/ Gen/ 2032 dated March 15, 1989.

The last drawn "Personal Daily Wage" will be continued to protect wages already drawn until the employee is absorbed in regular time scale post. It will be also taken into account for fixation of pay in regular time scale post.

4.2.2 : If and when daily wage employee is appointed in time scale in a regular post on or after April 1, 1988, his pay wi be initially fixed at the minimum of

"1988 pay scale

Provided that in case whose "1988 Daily Wage Rate" includes one or more increments, equal number of increments shall be granted.

Provided further that in case an employee is drawing "Personal Daily Wage" the amount of "Personal Daily Wage" will be converted into monthly personal wage but multiplying by 26 or 24 working days as the 1 case may be. The amount of monthly personal wage so worked out will be merged in the pay in time scale and D.A. admissible thereon by granting additional ad hoc increments so that the sum of additional ad hoc increments and D.A. admissible thereon on that day fully neutralises "personal daily wage".

4.2.3. : Any person appointed or reap-1 pointed on daily wages after June 30, 1989-will be eligible for "1988 Daily Wage Rate" only".

7. The petitioners also admit that 1989 Settlement has expired on March 31, 1992 and a fresh Settlement came to be signed between Corporation and the Unions representing employees all over State on October 15, 1994. The petitioners have relied upon 1 Clause 23 of the said Settlement of 1994 and alleged that the Corporation did not take any steps to remove the anomalies/inequalities in terms of the said Clause, which reads as under :

"23-Discrepancies in Workers-Settlement 1989 : Discrepancies and mistakes in the workers Settlement 1989, pointed out by the Union shall be examined and decided by the Officers of Accounts and Personnel Department."

The petitioners also admit that when the Settlements were signed, they were members of some Union or the other and at no point of time, 4 any representation or grievance was raised by a Union representing the petitioners or any of the petitioners directly regarding the illegality or unfairness of the impugned Clauses of the 1989 Settlement. No such representation has also I been brought on record and to a pointed question in this regard, the learned Counsel for the Petitioners conceded that no such representation ras ever been made by any of the petitioners or any Union before either the Corporation or any Authority 1 Court at any time in the past. The contention of the petitioners is that even after signing of the 1904 Settlement, the impugned Clauses of 1989 Settlement were in force so far as their benefits were concerned and enforce merit of 1994 Settlement has not taken away their right to challenge the said Clauses of 1989 Settlement as these Clauses are in breach of Service Regulation Nos. 65 (a) and 67 (1) having statutory force and cannot be amended by 5 bilateral agreements. Regulation No. 65 (a) and 67 (1) of the Service Regulations are reproduced below :

"65 (a) : On appointment in State Transport 0 Corpn. an employee shall normally he eligible to draw as initial pay the minimum of the pay scale of the post to which he is appointed, unless the Competent Authority specifically sanctions an initial pay at a higher stage in the scale of pay of the post in consideration of his

special knowledge, training or experience.

67(1) : Same as provided in Regulation 67 0 (2) when the pay scale of a post is changed, the holder of the post shall draw in the new pay scale the pay equal to his pay in the old pay Scale existing at the time of the change is made, if that is a stage in the new pay g scale, or if there is no such stage, the stage next below that pay, plus personal pay equal to the difference to be emerged in the next increment and in either case he shall continue to draw that pay until such time as he would have received an increment in the old pay scale of pay or for the period after which an increment is earned in the new pay scale, whichever is less;

Provided that-When the pay of an incumbent in the old scale is less than the minimum of the new scale at the time the change is made, he shall draw pay scale equal to the minimum of the revised pay scale and shall earn his next increment after putting in full incremental period in the new pay scale.

Provided further that-When the pay of an employee in the old pay scale is more than the maximum of the revised pay scale, his pay shall be fixed at the maximum of the revised pay scale plus personal pay equal to the difference between his pay in the old pay scale and the maximum of the revised pay scale. "

8. The Corporation has appeared and filed its submissions opposing the petitions. Some relevant facts, which did not figure in the petitions, have also been brought on record by the Corporation and based on the said factual position, the Corporation has prayed for dismissal of the petitions. Clause 40 oi the 1956 Settlement was cancelled/ revised in the joint meeting held on April 14, 1978 and thereafter the Corporation in its meeting held on August 31, 1978 passed Resolution No. 8856 which reads as under :

"(i) the present Clause 49 of the Settlement dated April 25, 1956 shall stand cancelled;

(ii) the persons in the employment on daily wage as on July 31, 1978 and-those who may be employed on daily wages thereafter, if they have already completed or will complete an aggregate service of 180 days in any one financial year commencing from April 1, 1973, should hereinafter be appointed temporarily in ephemeral vacancies in time scale of pay as from July 31, 1978 or thereafter;

(iii) This provision is not operative with retro-3

spective effect, but will have only prospective effect from July 31, 1978 onwards."

The Resolution passed by Joint Committee 4, between the representatives of the Management and the Unions, claims the Corporation, is a Settlement arrived at between the Corporation and the Unions representing all the employees. The Joint Committee is represented by the Unions and 4.1 all the decisions are taken with the consent of the Unions and the Resolutions are signed by the Management as well as Unions" representatives. "Me decisions of the Joint Committee, therefore, amount to Settlement u/s 2(p) of the In-5 (Industrial

Disputes Act, 1947.

9. It has been further pointed out by the Corporation that in the year 1985, a new Settlement was reached relating to absorption of daily rated workmen after completion of 180 days of continuous service. Clause 19 of the 1985 Settlement pertains to absorption of daily rated workmen and it reads as under :

"19 Absorption of Daily Rated Workmen 0 after completed service of 180 days:

- i. The absorption of such workmen will be made as at present, i.e., subject to their selection at least once by the Competent 5 Selection Committee and availability of clear vacancies;
- ii. As far as possible no appointment except in the category of Driver will be made in future without selection of a workman by the Committee;
- iii. All past cases of daily wagers who are eligible for absorption will be reviewed on the merits of each individual case and as per the laws on the subject;
- iv. As regards surplus staff viz. Watchmen, the information will be called for from the division and the cases after reexamination will be put up to the Corporation Board for its directives."

This Clause has modified Clause 49 of the 1956 Settlement as well as the resolution dated August 31, 1978 regarding absorption of daily rated workmen.

10. Relying upon the contents in Annexure "E" to the petitions, where in all the details of provided ,the Corpo the petitioners are employed after 1985 Settlement was signed and, therefore, their terms of employment are governed by the Settlement of 1985 and more particularly, their absorption in the time scale is governed by Clause 19 of the said 1985 Settlement. The Corporation further contends that in pursuance of 1989 Settlement, the petitioners have been given benefits of pay fixation and they were brought on the regular time scale in term, of 1985 Settlement and not in terms of the Settlement of 1956, which was not applicable to them. None of the petitioners has challenged at any time the terms of 1985 as well as 1989 Settlement and hence, they are estopped from raising 5 any grievance regarding the illegality/unfairness / arbitrariness or constitutional validity of any of the impugned Clauses of 1989 Settlement specially when 1994 Settlement has been brought into force and all the petitioners have been beneficiaries of all the Settlements of 1985, 1989 and 1994 asserts the Corporation.

11. In view of the rival contentions of the parties, the issues for our consideration and decision are-

- a) Whether the impugned Clauses of the Settlement of 1989 are illegal, in breach of service regulations and/ or infringe the provisions Of 2 Articles 14, 16 and 21 of the Constitution?
- b) Whether the Settlement of 1985 or 1989 has resulted in denial of the

principles of equal pay for equal work to the petitioners? 2

c) Whether the petitioners' challenge to some of the provisions of 1989 Settlement is legal and the petitioners are estopped from challenging the same?

12. To decide these issues, it is necessary to examine whether the petitioners could invoke Clause 49 of 1956 Settlement or whether they are governed by Clause 19 of the 1985 Settlement. From the details as provided in Annexure "E" to the petitions it is clear that all the petitioners have joined on or after January 1, 1986 as helpers in daily rated scales and they have admittedly been beneficiaries of the 1985, 1989, and 1994 Settlements. As a result of all these three Settlements, they have been fixed in the temporary time scale, regular time scale and their pay has been revised upwards each time. The contention of the Corporation that by way, of pay fixation or revision of pay, none of the petitioners has been put to disadvantage financially deserves to be accepted by perusal of Annexure "E" to the petitions. These details in Annexure "& have been provided by the petitioners themselves. The controversy regarding modifications of Clause 49 of 1956 Settlement either in 1978 or by way of Settlements of 1961 and 1968 is not relevant in the present context inasmuch as the petitioners have been employed by the Corporation only from January 1, 1986 onwards and the Settlement of 1985 governs their service conditions. Clause 49 of the 1956 Settlement regarding absorption in regular service of the Corporation on completion of 180 days of continuous service has been reviewed and replaced by Clause 19 of the 1985 Settlement, which Clause has been reproduced hereinabove. The petitioners, therefore, cannot invoke Clause 49 of 1956 Settlement and their 5 challenge to the five Clauses of 1989 Settlement, as reproduced hereinabove, based on Clause 49 of 1956 Settlement, is, therefore, invalid. As far as the petitioners are concerned, their absorption in temporary time scale or regular time scale is covered by Clause 19 of 1985 Settlement and they cannot rely upon any earlier Settlement signed between the Corporation and the Unions.

13. The learned Counsel appearing for the petitioners has strenuously urged before us that the impugned Clauses of 1989 Settlement are against the principles of "equal pay for equal work" as enshrined under Article 39(d) of the 0 Constitution and these Clauses hit the fundamental rights under Articles 14, 16 and 21 of the Constitution. He has also submitted that these Clauses are in breach of Regulations 65(a) and 67 (1) of the Service Regulations. However, on 5 perusal of the details provided in Annexure "E" to the petitions, we are of the considered opinion that Regulations 65 (a) and 67 (1) of the Service Regulations have not been violated by any of the Settlements signed in 1985, 1989 and 0199@. The petitioners have not suffered any financial loss in pay fixation in any of these three Settlements and their pay has been revised upwards as a result of all these Settlements.

14. The learned Counsel for the petitioners has mainly stressed that the petitioners were not regularised in service strictly on completion of 180 days of

continuous service and in some cases, petitioners were, not allowed to complete 0180 days of service by the wrong or illegal action of the Corporation and as a result, the petitioners had to wait for four to six years before they were fixed in the time scale. This challenge does not appear to be factually correct. Clause 19 of the 1985 Settlement, if read correctly, does not give an automatic right of fixation in the time scale on completion of 180 days of continuous service. The said absorption in the time scale is subject to selection by the Selection Committee, availability of posts and merits of individual cases. Perusal of Annexure "E" in Writ Petition No. 797/97 indicates that the petitioners were given the temporary time scale within a period of one year of their initial date of appointment and subsequently, they have all been absorbed in the regular time scale from June 1989 onwards. The petitioners in Writ Petition No. 798/97 have also been given temporary time scale within a period of eight months to two years from the date of joining and they have been fixed in the regular time scales from, August 1993 onwards. Same is the case with the petitioners in Writ Petition No. 799/97 as is evident from Annexure "E" to that petition.

15. When the petitioners have been fixed in, the temporary time scale or regular time scale in pursuance of 1985 Settlement, Fixation of their salary has not resulted in reduction of their pay packet at any time and they have been given the protection of Regulation No. 67(1) of the Service Regulations. The petitioners have not pointed out any single case to show that while fixing their pay in the temporary time scale or regular time scale, they were not given the protection as provided under Regulation 67(1) of, the Service Regulations. We, therefore, hold that the Corporation has not acted in breach of either Regulation 65(a) while petitioners were appointed as helpers or Regulation 67(1) when the petitioners were absorbed in the temporary time scale or regular time scale in terms of the Settlement of 1985.

16. The impugned Clauses of the 1989 Settlement have not put any of the petitioners to any financial disadvantage as is evident from the details provided in Annexure "E" to the petition. The petitioners have ignored the fact that the Corporation has while fixing the pay of the petitioners in terms of the 1989 Settlement enforced the protection provided under Regulation 67(1) of the Service Regulations and the shortfall in the old pay and the new pay has been met by giving additional personal pay. Annexure D-D 4 to the petition clearly shows that Column No. 16 pertains to monthly personal pay and this figure is equal to the shortfall in the old and new pay in pursuance of 1989 Settlement. The Corporation has thus ensured that while fixing the pay of any of the petitioners or for that matter, any employee of the Corporation, in pursuance of 1989 Settlement, protection of Regulation 67 (1) is en and the old earnings are protected by of monthly persona wage equivalent to the difference between the old pay and new pay. The said Annexure D-D 4 clearly demonstrates that the 1989 Settlement has not resulted into any financial loss to any of the petitioners and, therefore, challenge to the relevant Clauses (supra) is without any merit. There is no case made out to show that any provision of 1985 or 1989

Settlement is in breach of fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution.

17. The next grievance of the petitioners is that the classification or discriminatory procedure adopted in the matter of pay fixation on the basis of "Employees on Time Scale and Employees on Daily Wages" holding the same post has violated the principle of "equal pay for equal work" inasmuch as both the categories of employees were performing the same work, but in terms of pay fixation, they have been treated indifferently. As per the petitioners, the impugned Clauses have thus resulted into denial of the protection under Article 39(d) of the Constitution of India. The petitioners were not eligible to be fixed in regular time scale unless the condition Of Clause of the 1985 Settlement 3 were satisfied and all of them have been absorbed in the time scale only in pursuance of the said Clause. They did not have the right for absorption in the time scale unless the conditions in Clause 19 of the 1985 Settlement were satisfied. In such circumstances, the petitioners are not entitled to invoke the principle of equal pay for equal work. In the case of State of Haryana V. Surinder Kumar and others AIR 1997 SCW 1980 the Clerks appointed on daily wages had claimed the salary as applicable to the regularly appointed Clerks. The Supreme Court rejected the claim and held as follows:

"Merely because they are able to manage to have the posts interchanged, they cannot become entitled to the same pay scale, which the regular Clerks are holding by Claiming that they are discharging their duties as regular employees. The very object of selection is to test the eligibility and then to make selection in accordance with rules prescribed for recruitment. Obviously the respondents' recruitment was not made in accordance with the Rules."

18. The Corporation has vehemently urged before us that the petitioners are estopped from challenging any term of the 1985 and 1989 Settlements. It is contended by the Corporation that the said Settlements are binding on individual employees, at no point of time the employees have raised any grievance regarding any terms of these Settlements and in pursuance regarding any terms of these Settlements and in pursuance of the 1994 Settlement which has been already brought into force after having signed by the Corporation and the recognised Unions, the action of challenge to 1985 and 1989 Settlements is highly belated and cannot be looked into by this Court. On the other hand, the learned Counsel for the petitioners has opposed these contentions and submitted that the individual employees have right to challenge any terms of the Settlement, if it is unfair, illegal, arbitrary or contrary to the principle of equal pay for equal work or in breach of any Service Regulation or any Article of the Constitution of India. The term "Settlement" has been defined in Section 2(p) of the Industrial Disputes Act, 1947, which reads as under:

""Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding,

where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

Whereas Sections 18(1) and 18(3) of the Industrial Disputes Act provides for the binding character of a Settlement. In the case of *Barauni Refinery Pragatisheel Shramik v. Indian Oil Corporation Limited* (1991-I-LU-46), the Supreme Court referred to the provisions of Sections 2(p) and 18 of the Industrial Disputes Act to the term "Settlement" and the binding nature of such Settlements and observed as under: at p51

"It may be single sections (1) and (3) of settlements are divided into two categories, namely (i) those arrived at outside the Conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority"

19. Admittedly the petitioners have received and accepted the benefits of 1985, 1989 and 1994 Settlements signed between the Corporation and Union representing the employees. Some of these Unions are also recognised Unions as is clear from the records. The petitioners cannot pick and choose and while they have accepted all the benefits of the Settlements, they cannot challenge a particular Clause or few Clauses of any Settlement on the ground that such Clause or Clauses are illegal/unfair or in breach of Service Regulations. In the case of *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, , the Supreme Court held that a Settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. The Supreme Court in that case also referred to its

earlier decision in the case of *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd. and others* AIR 1977 SC 322. Some of the relevant observations made by Supreme Court in the case of *Herbertsons Ltd.* may usefully be reproduced as under:

"When a recognised Union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised Union, which is expected to protect the legitimate interests of labour, enters into, a settlement in the best interests of labour." This would be the normal rule. There may be exceptional cases where there may be allegations of malafides, fraud or even corruption or other inducements. But in the, absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."

"When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well being, there is always give and take The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust."

"There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement, which operates well for the period that it is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication."

"It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole..."

The dictum as laid down by the Supreme Court in the above case is squarely in the present case inasmuch as the Settlements of which the petitioners have been beneficiaries cannot be challenged by the petitioners by picking up one or few Clauses on the ground that they are unfair or illegal.

20. In the case of *Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others*, , Clause 17 of the Settlement entered into between the Management and the recognised Union came to be challenged. As per the said Clause, the Company was to collect from each workman an amount equivalent to 15% of the gross arrears payable to each employee under

such Settlement as contribution to the Union Fund and this amount was to be paid to the Union within three days of the payment of arrears by Account Payee Cheque. It was inter alia contended by the petitioner Union that such Clause was in breach of the provisions of the Payment of Wages Act. The said challenge was negated by the Supreme Court in the following words:

"It is well known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act unless authorised by that Act. A settlement arrived at on consent of parties can however permit a deduction as is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act."

The Supreme Court held the said Clause of Settlement entered into between Management and the recognised Union as valid even though the said Clause was prima facie contrary to the provisions of the Payment of Wages Act.

21. In a more recent judgment in the case of line K.C.P. Limited Vs. Presiding Officer and Others, a somewhat similar situation as in the present case was before the Supreme Court regarding a Settlement entered into between the employer and the Unions representing the employees. The issue of dismissal of workmen by way of punishment was pending for adjudication and during such pendency, the recognised Union entered into a Settlement with the Management regarding these 29 dismissed workmen and it was agreed that option would-be given to the said 29 workmen either to accept reinstatement without back wages or a lumpsum amount of Rupees seventy & five thousand with other monetary benefits may be accepted by the concerned workmen in place of reinstatement. workmen had accepted the Settlement and remaining 12 workmen challenged the said settlement and pressed for adjudication being continued and finalised by the Labour Court. The matter finally reached the Supreme Court. The contesting workmen contended before the Supreme Court that the Settlement regarding their interest signed between Management and recognised Union during the Pendency of adjudication of dispute was illegal and not binding on them. It was also submitted that they were not parties to the Settlement and hence, it was not binding on them. After referring to the earlier judgment in the cases of Herbertsons Ltd. and jauni Refoery Pragadsheel Shramik Parishad (supra), the Supreme Court held that the Settlement arrived at by direct negotiations between the Management and Union was valid and legal. It was further held that the recognised Union had represented 29 dismissed workmen and the Union was justified in signing the Settlement in respect of dismissed-work-men, out of whom 17 workmen had accepted the Settlement. In para 27 of the said judgment, the Supreme Court observed asunder atp 315 :

Relief of reinstatement was made available to Respondents 3 to 14 on the same line as it was made available to their 17 remaining colleagues who were covered by the very same settlement and who accepted the relief Of settlement without back wages or a lump sum compensation of Rs. 75,0001- and other monetary

benefits in lieu of that. In our view such a package deal entered into by Respondent No. 2 in the best interest of these workmen could not be said to be unfair or unjust from any angle

22. The learned Counsel for the petitioner has submitted written arguments and relied upon a number of Judgment of the High Courts and the Supreme Court. On the factual analysis of the benefits received by the petitioners as a result of the 1989 Settlement, we are of the considered view that the impugned Clauses of the said Settlement have not adversely affected any their pay fixation ale as per which is squarely applicable to them. Their reliance on Clause 49 of the 1956 Settlement is wholly misplaced and thus, the challenges raised in the petitions are misconceived. The petitioners hive willingly and without any protest accepted the benefits of all the three Settlement signed in 1985, 1989 and 1994. These Settlements were entered into between the Corporation and the Unions representing the employees and they have a legal sanctity None of the petitioners ever raised any dispute against any term of the these Settlements either before the Corporation and or-authority/Court. They have accepted the benefits of the Settlements wholeheartedly and they are bound by these Settlements. It is too late for the petitioners to turn back and say that the impugned Clauses of the 1989 Settlement are illegal and that the Corporation has acted in breach of any service Regulation or has taken away fundamental rights the petitioners regarding their pay fixation or absorption in the time scale. The challenge of the petitioners is, therefore, illegal and devoid of merits. The concept of Collective Bargaining has been well recognised in the Labour Jurisprudence for establishing and maintaining industrial peace and harmony. The Settlement as a result of such collectiveness cannot be upset by individual like the Present petitions and such against the principles of justice a of settlement, which ha a vast majority of Wor s open, has always been upheld by v enunciations as quoted a ove. A re-employees have no locus stands to challenge such settlement entered into between the Management and recognised Unions, especially when the same individuals have enjoyed the benefits of the Settlements for a number of years. The challenge by the petitioners to the Settlement or Settlement must fail.

23. In the result, the petitions are dismissed without any order as to cost. Rule is discharged.