(1996) 08 MAD CK 0041

In the Madras High Court

Case No : W.A. No. 332 of 1994 and W.P. No''s. 3124, 3125 and 3917 of 1993

E.I.D. Parry (India) Ltd. APPELLANT

Vs

Labour Court and Others RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:
Industrial Disputes Act, 1947 — Section 10(1), 14, 18, 19, 19(6)

Citation : (1997) 1 LLJ 170

Hon'ble Judges : Y. Venkatachalam, J;Shivraj V. Patil, J;S. Janarthanam, J

Bench : Full Bench

Judgement

Janarthanam, J.—Certain events and incidents, which formed the backdrop and setting of the present actions - Writ Appeal No. 332 of

1994 and Writ Petitions Nos. 3124, 3125 and 3917 of 1993 better it is, we feel, to relate to have a proper understanding and fine grasp, with

ease and grace - of the legal implications or positions to be derived or to flow from the factual matrix, giving rise to certain issues - so moot and

complicated in nature - with which, we are now called upon to decide, by giving our anxious consideration.

E.I.D. Parry (India) Limited (for short,""the employer"") has one of its units located at Ranipet in the State of Tamil Nadu, where sanitary ware,

superphospate and insecticides are manufactured. Some of its retired employees filed applications u/s 33-C(2) of the Industrial Disputes Act, 1947

(Act No. 14 of 1947 - for, short, ""the I.D. Act""), before the Labour Court, Madras, claiming pension by alleging that pay ability of pension was a

condition of service and the employer had stopped it without any justification and without giving any notice u/s 9A of the Industrial Disputes Act.

The Presiding Officer of the II Additional Labour Court, Madras, allowed the same by his order dated May 30, 1983, after computing the

amounts, on interpretation of the General Office Order No. 26 (for short, ""G.O.O. 26""), dated December 1, 1943.

The employer preferred six writ petitions. In the meantime, the same dispute had been referred to the Industrial Tribunal, Madras, and it answered

the reference against the employees, by an award dated February 13, 1985. The award was assailed before this Court by the union, by filing the

seventh writ petition.

All the seven writ petitions were heard by a learned single Judge, who allowed the writ petitions of the management against the order of the Labour

Court and dismissed the writ petition preferred by the union challenging the award of the Industrial Tribunal.

Writ appeals were carried against learned single Judge''s decision.

The main controversy before a Division Bench of this Court was as to whether ""pension"" (or as is referred to by the parties as ""retiring allowance"")

was payable to the employees. This dispute has a historical backdrop, to which we may now advert to :

(a) Under G.O.O. 26, dated December 1, 1943, ""retiring allowances"" were provided for. The office order provided that normally employees with

thirty years of service or more would be eligible to receive ""retiring allowances"". The board reserved the right to alter the scale of retiring

allowances either generally or in respect of individual employees and had the authority to sanction retiring allowances when first granted and

subsequent payment became a routine matter, subject to annual review.

(b) ""Gratuities"" were also provided under the said office order by saying that all permanent employees (other than workers, who qualify for

gratuities as per factory certified standing order), who were in the company''s services, prior to January 1, 1947, and who do not qualify for a

retiring allowance on retirement will be eligible for gratuity on finally leaving the company''s services, subject to one or other of the prescribed

conditions thereunder being fulfilled. In all four alternatives were provided, clause (4) indicated that the employees recruited on or after January 1,

1947, would not be entitled to any gratuity.

(c) There was a memorandum of settlement dated April 19, 1956, between the parties, which may be referred to as ""the 1956 settlement"". Clause

(iv) thereof related to gratuity and provided :

''Gratuity'' shall in future be payable by the company in accordance with the following rules :

(a)(i) Where, irrespective of the length of his past service, an employee dies in service, or is retired on a medical certificate acceptable to the

company, or is retired by the company on reaching the age of superannuation, he shall be entitled to gratuity calculated at the rate of one month''s

basic salary for each completed year of service, and pro rata for any partly completed year of service, subject to a maximum of fifteen months''

basic salary, if his service is not less than thirty years, together with half of one month''s basic salary for each completed year of service in excess of

thirty years and pro data for any partly completed year of service in excess of thirty years ...

(b) Employees in service prior to January 1, 1947, may opt, at the time of leaving service, either for :

(i) Gratuity calculated in accordance with these rules or in accordance with the current provisions of G.O.O. 26, whichever he prefers, or

(ii) in lieu of gratuity, a retiring allowance calculated in accordance with the current provisions of G.O.O. 26.

(d) The Payment of Gratuity Act, 1972 (Act No. 39 of 1972, for short, ""the P.G. Act""), came into force with effect from September 16, 1972,

and payment of gratuity became statutory. When the said Act came into force, the employer and the employees'' union jointly applied to the

Government for exemption from the provisions of the statute. The exemption so asked for, was, however, not granted. The pay ability of gratuity is

no longer in dispute.

(e) What is challenged is the claim of the workmen to ""retiring allowances (pension)"" under G.O.O. 26. The stand of the employees has been that

the retiring allowances under G.O.O. 26 has not been substituted by the 1956 settlement and they are, subject to being qualified, entitled to the

benefit of pension and the statutory advantage of gratuity. It is a fact that the settlement does not provide for payment of pension, except to the pre

- 1947 employees and making the beneficiary liable to exercise the option under clause IV(d) above. It is not in dispute that the retrial benefit

(pension) was payable to all qualified employees as a matter of practice. If, under the settlement, that was not done away with, the benefit arising

out of G.O.O. 26 would still be available and gratuity contemplated under the said settlement would not be a substitute for the retrial benefit of

pension.

(f) A Division Bench of this court in writ petitions, being Writ Petitions Nos. 864 to 870 of 1988, by a common judgment dated November 21,

1988, set aside the judgment of the learned single Judge and held in favour of the workmen in both the claim petitions as well as in the industrial

dispute. On the technical objection regarding the maintainability of the petitions u/s 33-C(2) of the Industrial Disputes Act, the Division Bench held

that in as much as they adjudicated the dispute above referred to in favour of the workmen, they were justified in accepting the applications u/s 33-

C(2) of the Industrial Disputes Act and the award passed in the said reference was being given effect to.

(g) The management preferred appeals, being Civil Appeals Nos. 1450 to 1458 of 1990, to the Supreme Court by special leave directed against

the common judgment of the Division Bench of this Court, as stated above. The Supreme Court ultimately dismissed the appeals so preferred and

the operative portion of the judgment reflected in paragraphs 9 and 10 thereof and reported as E. I. D. Parry (India) Ltd. v. Labour Court, reads

as under at page 284 :

We are satisfied that the appellate Bench of the High Court was right in holding that the entitlement to pension had not been substituted by the

settlement of 1956 and, therefore, the claim to pension subject to qualification being satisfied was available to be maintained not with standing the

settlement of 1956. The High Court rightly came to the conclusion that the Labour Court had justifiably worked out the dues and the claim

petitions u/s 33-C(2) of the 1947 Act. We uphold the judgment of the High Court and dismiss these appeals. The employees had asked for award

of interest on their dues. The challenge of the employer was not groundless and we do not think in the facts of these cases the employees or their

legal representatives would be entitled to interest. We hope and trust that the employer would now liquidate its liability without delay by satisfying

the orders of the Labour Court and the claims of the workmen or their legal representatives as and when made.

A sum of Rs. 10,000 had been given by the employer to Sri Pant for the union to contest these matters and he has been paid the amount under this

court''s order. No order for further costs.

(h) Inspired by the words ""subject to qualification being satisfied,"" the management refused to recognise the claims of those who had not completed

thirty years and those who had retired voluntarily under the voluntary retirement scheme or the early retirement scheme, known as ""VRS"" or ""ERS

respectively. Besides, the management disputed the claim of the employees for annual review of the pension payable on the basis of dearness

allowance. The management issued also a notice u/s 19(6) of the Industrial Disputes Act on August 12, 1991, that the award passed by this Court

would stand terminated on the expiry of two months of the service of the notice, that is, on October 11, 1991.

(i) That led to the filing of a number of claim petitions, being C.P. Nos. 18 to 31 of 1992, by the workmen before the Labour Court, Vellore, for

payment of specified amount with interest for arrears at 15 per cent. per annum. The management contested the petitions. On a joint request by

both the parties, the petitions were heard together and a common order was passed by the Labour Court in favour of the workmen, after evidence

was recorded in common.

(j) The management filed W.P. No. 12995 of 1993 against the common order praying for issue of a writ of certiorari to quash the said order. The

workmen (respondents Nos. 2 to 86 therein) contested the same. Respondent No. 23 - workman appeared in person and appeared to have

argued the matter by himself and the other respondents were represented by a counsel of their choice.

(k) The learned single judge, by a judgment dated January 20, 1994, dismissed the writ petition, holding that a single writ petition was not

maintainable against the orders of different claim petitions; the decision of the Supreme Court in the earlier proceedings had concluded the issue of

payment of retirement allowance to the employees; the documents filed by the management proved the claims of the workmen and the contentions

of the management were barred by the principles of constructive res judicata. As regards interest claimed by workmen, the learned single Judge

observed that they were not entitled to it; but dismissed the writ petition in to confirming even the award of interest by the Labour court.

(l) The aggrieved management preferred a writ appeal, being Writ Appeal No. 332 of 1994 on the file of this Court. Here again, respondent No.

23 appeared in person and argued the matter by himself, while the other employees were represented by a counsel of their choice.

(m) The following questions were raised for consideration (at page 83 supra) :

(1) Whether a single writ petition at the instance of the management is maintainable in this case ?

(2) Whether the management is barred by the principles of constructive res judicata from disputing any of the claims by the employees ?

(3) Whether persons who had served for 20 years and above; but below 30 years at the time of retirement are entitled to retiring allowance ?

(4) Whether the employees who had retired under voluntary retirement schemes or early retirement schemes are entitled to retiring allowance ?

(5) Whether the employees are entitled to insist upon annual review of retiring allowance ?

(6) Whether respondents Nos. 2 to 86 are entitled to claim interest on the amounts payable ?

(n) On the questions raised as above the Division Bench recorded the findings as below :

(1) The single writ petition filed by the appellant-management is maintainable against the common order of the Labour Court.

(2) The principles of constructive res judicata will not apply in this case, and the management is not precluded from challenging the claims of

persons, who are not entitled to retiring allowance as per the terms of G.O.O. 26.

(3) Payment of retiring allowance to persons, who have not completed 30 years of service at the time of retirement is left to the discretion of the

board and it is not a matter of right to the employees.

(4) Persons, who retired voluntarily of their own free will and accord under the voluntary retirement scheme or early retirement scheme are not

entitled to get the benefit under G.O.O. 26.

(5) Annual review of retiring allowance cannot at all be claimed as a matter of right and it is a matter entirely'' within the discretion of the, board.

(6) It may not be possible to accept the technical plea of the management that the applications are not maintainable u/s 33-C(2) of the Industrial

Disputes Act.

(o) On the basis of the above findings, the Division Bench allowed the appeal and the operative portion of the judgment dated June 25, 1994, is

reflected as below (at page 97 supra) :

In the result, the appeal is allowed. The order of the learned single Judge dated January 20, 1994, in W.P. No. 12995 of 1993 is set aside. The

order of the Labour Court in C.P. Nos. 18 to 31 of 1992 in so far as they are against the appellant and they direct the appellant to pay the

amounts cleaned the respondents in the claim petitions is quashed. The parties will bear their respective costs in the writ petition as well as in the

writ appeal.

(p) The judgment of the Division Bench as above is reported as General Manager, EID Parry (India) Ltd. Vs. Presiding Officer, Labour Court and

Others,

(q) Aggrieved by the judgment as above, the respondents-workmen preferred civil appeals arising out of special leave petitions, bearing Nos. SLP

(C) Nos. 10964, 11378, 15753 to 15756 and 19372 to 19374 of 1994 on the file of the Supreme Court of India.

(r) In the meantime, certain employees of Parry and Co. Ltd. and the workmen of E.I.D. Parry (India) Ltd. numbering 245, filed claim petitions,

being C.P. No. 743 of 1985, etc., batch petitions before the II Additional Labour Court, Madras. They claimed various sums to the employees

and workmen, as retiring allowance/pension in terms of G.O.O. 26 and the management opposed those claim petitions. The II Additional Labour

Court disposed, however, of the claim petitions in favour of the employees and workmen, by a common order dated October 12, 1992.

(s) The aggrieved management filed three writ petitions on the file of this Court, namely, Writ Petitions Nos. 3124, 3125 and 3917 of 1993,

challenging the common order, as afore said. Writ Petitions Nos. 3124 and 3917 of 1993, relate respectively to 199 and eight employees in Parry

and Company Ltd., while Writ Petition No. 3125 of 1993, relate to 38 workmen in E.I.D. Parry (India) Ltd. The three writ petitions thus cover

245 employees and workmen put together, of which 56 were recruited prior to January 1, 1947, and 189 were recruited after January 1, 1947.

E.I.D. Parry (India) Ltd. has factories and commercial establishments and one such factory is at Ranipet. Parry and Company Ltd., a subsidiary

company has only commercial establishments.

(t) The claim by the employees and workmen was u/s 33-C(2) of the Industrial Disputes Act seeking to compute the pension payable to each

employee as per G.O.O. 26 and for a direction to pay the same with interest at 12 per cent per annum from May 2, 1991, onwards.

(u) The claim petitions were opposed by the management - petitioners herein on the grounds of maintainability as well as on factual aspects. The

management contended that the claim of the employees u/s 33-C(2) of the Industrial Disputes Act was barred by the principle of resjudicata by

reason of the award in I.D. No. 55 of 1968, as confirmed by the order of a Division Bench of this court in Writ Petition No. 4696 of 1975, dated

October 19, 1978, and cannot he sustained because the benefits could not be computed in terms of money, as there is no award or settlement

entitling the employees to the benefit of pension. It was also contended that most of the employees retired under voluntary retirement schemes. It

was further contended that G.O.O. 26 has to be read, along with the subsequent settlements and the prevailing practice between 1956 and 1965.

It was their further case that only one of the benefits, namely, pension or gratuity was being extended to the employees. According to them, after

coming into force of the Payment of Gratuity Act, the pension scheme under G.O.O. 26 got scrapped automatically.

(v) The following points were posed for consideration in these writ petitions :

(1) Whether the three writ petitions filed at the instance of the management challenging the common order of the Labour Court dated October 12,

1992, disposing of 245 claim petitions filed u/s 33-C(2) of the Industrial Disputes Act are maintainable ?

(1A) Whether the employees of the petitioners are entitled to receive ""retiring allowance/pension"" under G.O.O. 26, dated December 1, 1943,

and whether the decision of the Supreme Court in E. I. D. Pany (India) Ltd. v. Labour Court, has to be confined to the workmen of the Ranipet

factory of E.I.D. Parry (India) Ltd., and cannot he invoked in support of the claim of the workmen employed in the establishments of the

petitioners for ""retiring allowance/pension"" under G.O.O. 26 ?

(2) Whether the right of the employees of the petitioners to claim retiring

allowance/pension under G.O.O. 26 has been negatived by the order of

this Court dated March 5, 1974, in Writ Petition No. 3029 of 1971 and by award in I.D. No. 55 of 1968, as confirmed by order of a Division

Bench of this Court in Writ Petition No. 4696 of 1975, dated October 19, 1978, and whether the order in Writ Petition No. 3029 of 1971 and

the award in I.D. No. 55 of 1968, as confirmed by the order in Writ Petition No. 4996 of 1975, will operate as res judicata and whether it is not

open to the employees of the petitioners to claim retiring allowance/pension in the proceedings u/s 33-C(2) of the Act ?

(3) Whether the employees of the petitioners by entering into settlements dated April 21, 1978, and May 17, 1985, have given up their rights to

claim retiring allowance/pension under G.O.O. 26, dated December 1, 1943 ?

(4) Whether there is an existing right available to the employees of the petitioners to claim retiring allowance under G.O.O. 26 and whether the

petitions filed by the employees of the petitioners u/s 33-C(2) for computation of retiring allowance as per G.O.O. 26 are maintainable ?

(5) Whether the employees of the petitioners are not entitled to claim retiring allowance, in addition to gratuity in the proceedings u/s 33-C(2) of

the Act, in view of their earlier conduct ?

(6) Whether the employees who served for 20 years and above but below 30 years and who retired under voluntary retirement scheme are

entitled to receive retiring allowance under G.O.O. 26 ?

(7) Whether the employees, who served for 20 years and above, but below 30 years and who retired on reaching the age of superannuation are

entitled to receive retiring allowance under G.O.O. 26 ?

(8) Whether the employees whose services were terminated by way of retrenchment are entitled to receive the retiring allowance under G.O.O. 26

?

(9) Whether the employees with 30 years of service and more and who retired under voluntary retirement scheme are entitled to receive the

retiring allowance under G.O.O. 26 ?

(w) The Division Bench, on the points so raised after taking into consideration the relevant materials placed and arguments advanced on the other

side, recorded its conclusions as below :

(a) The writ petitions, as filed by the management are maintainable.

(b) The employees of the petitioners are entitled to receive retiring allowance under G.O.O. 26 provided they satisfy the requirements of the said

G.O.O. 26.

(c) The order in Writ Petition No. 3029 of 1971, and the award of the Industrial Tribunal in I.D. No. 1968, as confirmed by Writ Petition No.

4996 of 1975 will not operate as res judicata and the employees of the petitioners can claim retiring allowance in proceeding s u/s 33-C(2) of the

Act.

(d) The employees of the petitioners by entering into the settlements dated April 21, 1978, and May 17, 1985, have not given up their rights to

claim retiring allowance/pension under G.O.O. 26.

(e) The employees who retired under the voluntary retirement scheme or early retirement scheme are not entitled to receive retiring allowance

under G.O.O. 26.

(f) Employees, whose services were terminated by way of retrenchment are not entitled to receive retiring allowance under clause 4 of G.O.O. 26.

(g) Employees who completed 30 years of service or more and who retired on reaching the age of super annuation are entitled to receive retiring

allowance under G.O.O. 26.

(h) The question, whether the employees, who retired on reaching the age of super annuation and who completed 20 years of service and more but

not completed 30 years of service are entitled to receive retiring allowance under G.O.O. 26 will depend upon the ultimate decision of the Full

Bench on point No. 7, which is referred to the Full Bench for authoritative pronouncement.

(x) As a result of the findings on points Nos. 1 to 9 and the discussion, which preceded, the Division Bench passed the following order in those

writ petitions on August 17, 1994, reported in 1996 (89) FJR 288 :

(a) We confirm the common order of the Labour Court, dated October 12, 1992, in so far as they relate to the claim petitions listed in annexure

I"" to this order, granting retiring allowance to employees with 30 years of service or more and who retired on reaching the age of super annuation

and the writ petitions are dismissed so far as they relate to the claim petitions mentioned in annexure ""I

(b) The writ petitions so far as they relate to the claim petitions mentioned in annexure ""II"" filed by the employees who retired under the voluntary

retirement schemes and those whose services were terminated by way of retrenchment are allowed and the common order of the Labour Court

dated October 12, 1992, in respect of those claim petitions are set aside and the claim petitions mentioned in annexure ""II"" are dismissed.

(c) However, the writ petitions, in so far as they relate to the claim petitions filed by the employees who retired on reaching the age of

superannuation, completing 20 years of service but not completing 30 years of service, mentioned in annexure ""III"" to this order, are kept pending

and the same be posted for hearing no sooner the Full Bench answering the aforesaid question under point No. 7.

The Registrar shall place the records before the hon''ble Chief Justice for constitution of the Full Bench. Annexure ""I"", ""II"" and III will form part of

this order. There will be no order as to costs.

(y) Aggrieved by the judgment, as above, the management has preferred civil appeals arising out of Special Leave Petitions Nos. 19372 to 19374

of 1994 whereas the employees, on the issues which went against them, preferred civil appeals arising out of Special Leave Petitions Nos. 10964,

11378, 15753 to 15756 of 1994.

(z) In the meantime, the registry, pursuant to the directions of a Division Bench of this Court, while disposing of Writ petitions Nos. 3124, 3125

and 3917 of 1993, by order dated August 17, 1994 after obtaining the necessary orders of the Hon''ble Chief Justice of this Court on August 18,

1994, posted these matters before the Full Bench consisting of two of us (Janarthan Shivraj Patil, J.J.), besides Kanakaraj, J., on August 24,

1994, on which date, an order as below, resulted in :

Additional typed set to be filed within ten (10) days. At request, post these matters on September 20, 1994, at 2.15 pm.

Thereafter, the matters stood adjourned from 35 time to time, as a consequence of the matters being seized of by the Supreme Court and

ultimately on November 9, 1994, an order, as below came to be passed :

In view of what has been stated in the order of the Supreme Court dated September 16, 1994, and made in Special Leave to Appeal (civil) Nos.

10964 of 1994 with SLP (C) No. 113778 of 1994 and with SLP (C) Nos. 15753 and 15754 to 15756 of 194, this matter is directed to be

posted, after the disposal of those cases.

(a) Mr. V. Selvaraj, learned counsel on record appearing for the employees, submitted a letter to the Registry on October 9, 1995, enclosing a

certified copy of the judgment of the Supreme Court with a request with a request for placing the same before the hon''ble Chief Justice, since he is

desirous of seeking interim orders before the Full Bench.

(b) The Registry on October 13, 1995, accordingly placed the letter and the entire papers before the hon''ble Chief Justice, in turn, on the very

same day, passed an order as below :

The Full Bench consisting of MSJ, J., JK, J., and SRP, J., was constituted on August 18, 1994, to decide one of the questions arising in Writ

Petitions Nos. 3124, 3125 and 3917 of 1993. However, the said Full Bench could not decide the matter as the same was seized by the Supreme

Court. Now, that the Supreme Court has remitted all the matters, i.e., matters decided in the Division Bench of MS and AAH, JJ., and the

Division Bench of C.J. and TS. J., it is just and appropriate that the very same Full Bench, consisting of MSJ, J, JK, J and SRP, J., decides all

these matters in the light of the light of the order of the Supreme Court dated September 13, 1995, passed in civil appeals arising out of SLP (C)

Nos. 10964 of 1994, 11378 of 1994 and 15753 of 1994, 15754 to 15756 of 1994 and 19372 to 19974 of 1994. Accordingly, all the writ

petitions and writ appeal are referred to the aforesaid Full Bench.

The matter was again listed for final disposal before the Full Bench on October 31, 1995, on which date, Mr. T. S. Gopalan, learned senior

counsel appearing for the management expressed some difficulty in arguing the matter, by saying that in view of the order passed by one of us

(Kanakraj, J.) in W.M.P. Nos. 8539, 6292, 4950 and 4951 of 1993 on April 16, 1993, containing certain directions, the management finds it

difficult to persuade the said learned Judge (Kanakaraj, J.) from taking a different is view. Consequently, on the same day, an order to the

following effect was passed :

After ascertaining the convenience of the advocates appearing on either side and after listening to the prayer for interim directions made by Mr. V.

Selvaraj, learned counsel as well as the party in person, we direct these matters to be posted for final disposal on November 27, 1995.

2. Regarding interim orders Mr. T. S. Gopalan, learned counsel says that he had received copies of the application only on October 30, 1995, at 4

p.m. He wants time to file counter. Counter to be filed in the meanwhile.

3. Before we could commence any further proceedings in the matter, Mr. T. S. Gopalan, learned counsel appearing for the management has

brought to our notice, the order passed by one of us (Kanakaraj, J.) in W.M.P. Nos. 8539, 6292, 4950 and 4951 of 1993, on April 16, 1993,

and says in view of the directions contained therein, the management will find it difficult to persuade the said learned judge (Kanakaraj, J.) from

taking a different view. Mr. V. Selveraj, learned counsel appearing for the workmen opposed the said indirect suggestion of the management. The

said learned judge ""(Kanakaraj, J.) made it clear to the said learned counsel, if they have any objection to his sitting in the Bench. They may say so

openly. Even then, Mr. T. S. Gopalan, learned counsel represents the same thing. Saying that it will be difficult for the management to persuade the

said learned judge (Kanakaraj, J.) having regard to his earlier decision in the miscellaneous petitions.

4. In this view of the matter, the said learned Judge (Kanakaraj,.J.) expressed a strong desire to opt out of this Bench so that the parties will be

satisfied about the unbiased assessment of the case.

5. These matter be therefore be placed before Our Lord the Hon''ble Chief Justice for further orders.

The order, as above, having been placed before the Hon''ble Chief Justice, the Full Bench had been reconstituted substituting"" Y. Venkatachalam,

J."" for ""Kanakaraj, J."" but however, retaining two of us ""Janarthan, J., and Shivraj Patil, J."".

2. This is how these matters are before us and we are now called upon to decide all questions that may arise in all these actions W.A. No.332 of

1994 and W.P.Nos. 3124, 3125 and 3917 of 1993 afresh, in Division Benches of this court by allowing the respective civil writ appeals arising

out of those two decisions and remitted the matter to this Court for disposal, by a Full Bench of this Court, the entire gaunt of issues arising in the

matter by one single judgment, thereby making it implicit that the reference is wiped out.

Mr. S. G. Sundarasamy, learned senior counsel representing T. S. Gopalan and P. Ibrahim Kalifullah, learned counsel appearing for the appellant

in W.A. No.332 of 1994; Mr. S. Govind Swaminathan, learned senior counsel representing T. S. Gopalan and P. Ibrabim Kalifullah, learned

counsel appearing for the petitioner - management in W.P. Nos. 3124, 3125 and 3917 of 1993; Mr. K. T. Paul Pandian, learned counsel

appearing for the respondents in W.A. No.332 of 1994 and W.P. Nos. 3124, 3125 and 3917 of 1993 and Mr. R. C. Paul, a party appearing by

himself in person, would reiterate and press into service the very same questions, which were urged during the course of arguments in the writ

appeal and the writ petitions, as stated above, before the respective Division Benches, except the question relating to the maintainability or

otherwise of filing of the writ petition(s) filed at the instance of the management challenging the common order of the Labour Court disposing

innumerable number of claim petitions u/s 33-C(2) of the Industrial Disputes Act, besides projecting a question relatable to the contents of G.O.O.

26, although the said G.O.O. 26 formed the basis for arriving at a decision in respect of claim petitions filed by the employees before various

forums the lowest to the topmost - Labour Court to Supreme Court of - course, with a thrust and focus from new angle, which according to them,

is nothing but the resultant product of experience gained - a hallmark of maturity - of the very same questions on occasions more than one before

different forums for more than two and a half decades.

On the face of the submissions as above, of learned senior counsel for the respective parties and Mr. R. C. Paul a party appearing by himself in

person - the following common questions arise for consideration in all these actions before us :

(1) Whether G.O.O. 26 contains four clauses alone, as contended by the management or six clauses, as contended by the employees and what is

its effect ?

(2) Whether the employees of the petitioners are entitled to receive retiring allowance/pension under G.O.O. 26, dated December 1, 1943, and

whether the decision of the Supreme Court in E. I. D. Parry (India) Ltd. v. Labour Court, has to be confined to the workmen of Ranipet Factory of E.I.D. Parry (India) Ltd., and cannot be invoked in support of the claims of workmen employed in the establishments of the petitioners for

retiring allowance/pension under G.O.O. 26 ?

(3) Whether the contention of the management in opposition to the claims of employees praying for computation of retrial benefits as per G.O.O.

26 are or not barred by the principles of constructive res judicata, in view of the decision of the Supreme Court in E.I.D. Parry (India) Ltd. v.

Labour Court, (Supra)

(4) Whether the right of the employees of the petitioners to claim retiring allowance/pension under G.O.O. 26 has been negatived by the order of

this Court dated March 5, 1974, in W.P. No. 3029 of 1971 and by award in I.D. No. 55 of 1968, as confirmed by the order of a Division Bench

of this Court in W.P. No. 4696 of 1975, dated October 19, 1978, and whether the order in W.P. No. 3029 of 1971 and the award in I.D. No.

55 of 1968 as confirmed by the order in W.P. No. 4696 of 1975 will operate as res judicata and whether it is not open to the employees of the

petitioners to claim retiring allowance/pension in the proceedings u/s 33-C(2) of the Industrial Disputes Act ?

(5) Whether the employees of the petitioners by entering into settlements dated April 21, 1978, and May 17, 1985, have given up their right to

claim retiring allowance/pension under G.O.O. 26 dated December 1, 1943 ?

(6) Whether there is an existing right available to the employees of the petitioner to claim retiring allowance under G.O.O. 26 and whether the

petition filed by the employees of the petitioners u/s 33-C(2) of the Industrial Disputes Act for computation of retiring allowance as per G.O.O. 26

are maintainable ?

(7) Whether the employees of the petitioners are not entitled to claim retiring allowance in addition to gratuity in the proceedings u/s 33-C(2) of the

Industrial Disputes Act, in view of their earlier conduct ?

(8) Whether the employees, who served for 20 years and above, but below 30 years and who retired under the voluntary retirement scheme are

entitled to receive retiring allowance under G.O.O. 26 ?

(9) Whether the employees, who served for 20 years and above, but below 30 years and who retired on reaching the age of superannuation are

entitled to receive retiring allowance under G.O.O. 26 ?

(10) Whether the employees who services were terminated by way of retrenchment are 5 entitled to receive retiring allowance under clause 4 of

G.O.O. 26 ?

(11) Whether the employees with 30 years of service and more and who retired under the voluntary retirement scheme are entitled to receive the

retiring allowance under G.O.O. 26 ?

(12) Whether the employees are entitled to claim interest on the amounts payable ?

3. Point No. 1. - In a queer and strange fashion, the petitioners-management projected for the first time before us, an argument as a bolt from the

blue that G.O.O. 26, dated December 1, 1943, which formed the basis for the computation of retrial benefits of the employees in all claim petitions

filed by them on occasions more than once before the competent forum resulting in adjudication of such claims being further agitated before this

Court and ultimately before the Supreme Court is the one attached to the 1956 settlement containing four clauses and not the one containing six

clauses. For appreciating this argument, we feel it is better, to pen down here G.O.O. 26, dated December 1, 1943, with all its clauses :

E.I.D. Parry (India) Limited, General Office Order No. 26, Non-Converted Staff-Retirement Benefits :

Retiring allowance :

1. Normally, only employees with 30 years service or more are eligible to receive a retiring allowance.

2. Until further notice, the basis on which monthly retiring allowance will be calculated will be the sum of the following :

(a) 10 percent of the last monthly basic salary drawn.

(b) A bonus for grade as follows :

(i) Non-covenanted staff (including lower grade employees) other than those categories specified under sub-clause (ii) below

Nil.

(ii) Senior stenographers, senior salesman and senior or grade V clerks, erectors and service engineers, works Stan grades WV and WX and cane

assistant inspectors and inspectors in grades A and B

Rs. 5 ..

(c) A graded service bonus for service over 30 years.

(i) Non-covenanted staff (including lower grade employees) other than those categories specified under sub-clause (ii) below

Re. 1 per year of service over 30 years.

(ii) Senior stenographers, senior salesmen and senior or grade V clerks, erectors and service engineers, works staff grades WV and WX cane

assistant inspectors and inspectors in grades A and B.

Rs. 1.8-0 per year of service over 30 years.

(d) One half of the average monthly dearness allowance drawn during the 12 months preceding retirement.

3. The Board reserves the right to alter the, scale of retiring allowances, either generally or in respect of individuals, in the light of circumstances

that may exist at any particular time.

4. The Board may also grant proportionate retiring allowance to those retired on reaching the age of superannuation, that is to say, on completing

the age of 55, or those who have to retire on account of reasons beyond their control, and have completed more than 20 years service - e.g. an

employee retiring after 25 years of service would be granted a retiring allowance calculated at 25/30th of the amount arrived at as para. 2 supra.

5. All retiring allowance must receive the formal sanction of the Board when first granted and thereafter they will be subject to an annual review.

6. For purpose of the annual review, the average rate of dearness allowance paid during the preceding 12 months and applicable to the grade of

each retired employee will be taken into consideration, and the necessary upward or downward adjustment will be made accordingly.

It is the contention of the management that G.O.O. 26 containing clauses 1 to 4 alone and not clauses 5 and 6 under the caption ""retiring

allowance"" as above was attached as annexure to the 1956 settlement and, therefore, G.O.O. 26 containing the first four clauses alone is

applicable in the instant case for computation of the retrial benefits to the employees. Pertinent it is to mention here that clause 5 there, is relatable

to annual review, while clause 6 specifies or mentions the factors, which will fall in the arena of consideration, in the process of determination or fixation of annual review. In projecting such an argument, the management, in an ingenious fashion, wants to wriggle out of the liability, if any, on

account of the annual review to be mulcted upon them. No doubt true it is, G.O.O. 26 annexed to the 1056 settlement contains only four clauses,

as contended by the management. It is not at all the case of the management that G.O.O. 26 contains only four clauses and not six clauses. A

xerox copy of the booklet of the General Office order of Parry and Co. Ltd., Madras - 1, has been submitted before us and on a perusal of the

same, we are able to find that there are 35 General Office orders. General Office Order 26 relatable to retirement benefits of non-covenanted staff

is available at pages 12 and 13 of the said booklet and it contains all six clauses under the caption ""retiring allowance"". General Office Order 1

dealing with the definition of General Office Orders, Madras branch and factory orders and office circulars, also contain a preamble preceding the

definition clauses, which throws a flood of light as to the existence or otherwise of clauses 5 and 6 of G.O.O. 26 at the time of the 1956 settlement

and in such a situation, better it is - we feel to extract the same, which reads, as under :

The following general office orders, incorporating all amendments and additions introduced since the last issue, will take effect from April 1, 1955.

(1-4-1955).

1. General office orders - These are permanent orders for application in head office, all branch offices and to staff employees in factories.

2. Madras branch and factory office orders. These are permanent orders for application in Madras, branch offices and factories permanently.

3. Office circulars. - These are semi-permanent orders for application as directed therein.

Thus, from a cursory perusal of G.O.O. 1 as extracted above, the following factors emerge, as respects G.O.O. 26 :

(i) The said order, in its present form containing six clauses under the caption ""retiring allowance"" took effect from April 1, 1955;

(ii) it is a permanent order; and

(iii) it is intended for application in head office, all branch offices and to staff employees and factories.

Such being the position, even the annexure of the copy of G.O.O. 26 containing first four clauses alone under the caption ""retiring allowance"" to the

1956 settlement is of no consequence. The reason is rather obvious.

The fact that clauses 5 and 6 were omitted to be typed in the copy of G.O.O. 26 annexed to the 1956 settlement cannot alter the character and

nature of the said G.O.O. affecting the rights and liabilities of the parties. Further, as already stated, this sort of a contention emerged from the

management for the first time before us. No such pleading had been adverted to in any of the counter filed by the management in the claim petitions

filed by the employers on occasions more than one. No murmur or whisper had ever been made, at least either before this court or before the apex

court in the process of three rounds of litigative duel or fight, the management got entangled with its employees spread over a period of more than

two and a half decades till up to the remit order made by the Supreme Court, which event happened on September 13, 1995. Top of all, so sordid

a fact it is that G.O.O. 26 containing six clauses under the caption ""retiring allowances"" has been subjected to interpretation in all the claim petitions

filed by the employees right from the lowest forum - Labour Court to the highest forum - Supreme Court - en route the High Court in all such

litigative fights between the management and the employees as stated earlier.

As such, the argument of the management that the rights and liabilities of the parties are to be carved out or determined on the basis of G.O.O 26

containing the first four clauses under the caption ""retiring allowance"" which was attached as annexure to the 1956 settlement cannot at all be

countenanced and, therefore, this point is answered against the management.

4. Point No. 2. - The point posed for consideration herein consists of two facets - (a) whether the employees are entitled to retrial allowance under

G.O.O. 26; and (b) whether the decision of the Supreme Court in E.I.D. Parry (India) Ltd. ''s case, has to be confined to Ranipet factory of E.I.D.

Parry (India) Ltd., alone and cannot be invoked in support of the claim of workmen in the other establishments of the petitioner - management for

the retrial allowance under G.O.O. 26. In a bid to answer the twin facets of the question, it is necessary to understand the implication and

interpretation of G.O.O. 26, dated December 1, 1943, and the 1956 settlement dated October 23, 1956.

There is no need to extract G.O.O. 26, dated December 1, 1943, which is necessary for our present purpose, in view of the fact that the same

had been extracted earlier, while considering point No. 1. The factors which emerged from a perusal of the said G.O.O. with reference to G.O.O.

I have also been penned down in the arena of discussion relating to point No. 1. The sum and substance of the combined effect of G.O.O. 26 and

the 1956 settlement, the adjudication made in Claim Petitions Nos. 603, 604, 652 and 862 of 1981 and 27 and 234 of 1982 made u/s 33-C(2) of

the Industrial Disputes Act by the II Additional Labour Court, Madras, on May 30, 1983, the aggrieved employer - management preferring Writ

Petition No. 7746 of 1984, on the file of this Court, a reference of the dispute in I.D. No. 60 of 1982, in the meantime to the Industrial Tribunal

being answered against the employees by award dated January 13, 1985, the award being assailed by the union by filing Writ Petition No. 3637 of

1984, a learned single judge of this court allowing six writ petitions of the management, while dismissing the writ petition preferred by the labour

union challenging the claim of the Industrial Tribunal, Writ Appeals Nos. 864 to 870 of 1988, being preferred on the file of this court against

learned single judge''s decision, a Division Bench of this court allowing the six appeals, by setting aside the judgment of learned single Judge and

holding in favour of the workmen in both the claim petitions as well as in the industrial dispute and the award passed on the said reference being

given effect to by accepting the application u/s 33-C(2) of the Industrial Disputes Act, the aggrieved management preferring Civil Appeals Nos.

1450 to 1458 of 1990, on the file of the Supreme Court and the appeals so preferred getting dismissed by confirmation of the judgment of the

Division Bench of this court, which formed the backdrop and setting for the present actions W.A. No.332 of 1994 and W.P. Nos. 3124, 3125

and 3917 of 1993. The settlements dated April 19, 1956, April 21, 1978, and May 17, 1985, are similar to the settlement dated October 23,

1956.

The Supreme Court in E.LD. Parry (India) Ltd.''s case (Supra), held that the right to ""retiring allowance"" is contained in G.O.O. 26; but the 1956

settlement or the subsequent Payment of Gratuity Act did not take away the right to ""retiring allowance"" and that all employees - pre 1947 as well

as post - 1947 - were entitled to both the benefits, namely, ""retiring allowance"" under G.O.O. 26 and the ""gratuity"" under the Payment of Gratuity

Act. The Supreme Court while so holding, based on the contention of learned counsel representing the management, however, observed (at page

284) :

Mr. Narayanaswami had emphatically contended that what was being decided was not a claim of 347 employees but it had its repercussion on

the industrial peace between the employer and the employee at other places. He would like to make it clear that we have gone into the question

confined to the claim of the employees of the Ranipet factory and not the liability of the employer generally. Besides, Mr. Narayanaswami had also

told us at the hearing that there are special features in the arrangement in regard to the employees elsewhere.

Snatching the observation as above, Mr. S. G. Sundaraswami, learned senior counsel representing the management was at pains to suggest that

there are special features in the arrangement in regard to the employees elsewhere. What he would further say is that the decision of the apex

court, as above, is relatable to the factory at Ranipet at E.I.D. Parry (India) Ltd., and, therefore, such a decision cannot be made applicable to

commercial establishments of the petitioner - management. We rather feel, on the facts and in the circumstances of the case, that such a distinction

cannot be any one other than the one, ""distinction for distinction sake"" and nothing further. Other than this sort of a distinction, no other special

feature or any difference between the Ranipet factory and the commercial establishments of the petitioners - management is brought about.

Worthwhile it is to reiterate at this juncture by referring to G.O.O. 1, for the sake of emphasis, that G.O.O., inclusive of G.O.O. 26 are permanent

orders for application in head office, branch offices and all staff employed in factories. After a careful scrutiny of the materials available on record

in W.A. Nos. 864 to 870 of 1988, as confirmed by the apex court in E.I.D. Parry (India) Ltd. ''s case,(Supra) we do not find any difference

between the Ranipet factory and the commercial establishments of the petitioners - management. It is this very office order and the subsequent

settlements, with particular reference to the impact of the Payment of Gratuity Act, which was considered by the Division Bench threadbare to hold

that the workmen were entitled to the restoration of pension. In fact, the

Division Bench did not even rest the case on the basis of standing orders,

because the same had to be ignored on the basis of a legal infirmity. Therefore, in our opinion, it will be idle to contend that the ratio of the

judgment of the apex court in E.I.D. Parry (India) Ltd. ''s case (Supra), cannot be applied to the facts of the present cases. Thus, both the facets of

this point are answered against the management.

5. Point No. 3. - This point takes in its fold the question as to whether the contentions of the management in opposition to the claims of the

employees praying for computation of retrial benefits as per G.O.O. 26 are barred by the principles of constructive res judicata. We have held

earlier while answering point No. 2 that G.O.O. 26, dated December 1, 1943, is applicable not only to the factory establishments; but also to the

commercial establishments of the petitioners - management as well. In E.I.D. Parry (India)Ltd.''s case, (Supra) the apex court confirmed the award

passed by the IInd Additional Labour Court, Madras, in favour of the employees of the management, who filed claim petitions u/s 33-C(2) of the

Industrial Disputes Act seeking computation of the retrial benefits under G.O.O. 26. From a perusal of the materials available on record, we are

able to discern that all categories of employees were available in those claim petitions as below :

(a) employees, who retired either on superannuation or otherwise with 30 years of service or more;

(b) employees, who retired either on superannuation or otherwise with 20 years of service or more; but below 30 years of service;

(c) employees, who retired under voluntary retirement scheme or early retirement scheme with 30 years of service or more;

(d) employees, who retired under voluntary retirement scheme or early retirement scheme with 20 years of service or more; but below 30 years of

service; and

(e) employees, who claim annual review of the retiring allowance.

Thus, the award passed by the Second Additional Labour Court, Madras, in favour of all 5 categories of employees computing retrial benefits as

per G.O.O. 26 had been affirmed by the apex court.

Mr. S. G. Sundarsamy, learned senior counsel appearing for the management-in W.A. No.332 of 1994 - would, however, argue that the fact that the Supreme Court affirmed the award of the Second Additional Labour Court, Madras, granting retiring allowance to all categories of employees

of the Ranipet factory of E.I.D. Parry (India) Ltd., as per G.O.O. 26 is by itself not sufficient to conclude that the employees of the management in

these actions and other employees - present and future - are entitled to such retrial benefits, inasmuch as specific question on all those issues had

not been raised, considered and ultimately resolved in a decision, so that the management is thereby prevented from raising such issues again for

consideration.

Pertinent it is to mention here that the management did not at all rake up such issues and the contention of the management, as is getting reflected in

their common counter filed in opposition to the claim petitions of the employees was that they were not entitled to pension, in addition to gratuity

and most of them retired on superannuation.

Mr. K. T. Paul Pandian, learned senior counsel, representing the employees would, however, state that subsequent to the decision of the Supreme

Court as above, the reading of G.O.O. 26 will not yield to that sort of interpretation, as projected by the other side. According to him, the issues

sought to be raised, namely, the dispute regarding entitlement to retrial allowances to various categories of the employees, as per G.O.O. 26, on

the facts and in the circumstances of these cases, must be construed to be matters, Which might and ought to have been made a ground of defence

or attack in the former action shall be deemed to have been matters directly and substantially in issue in such actions and, therefore, the

management is barred by the principles of constructive res judicata.

As regards the applicability of the principles of res judicata, so industrial adjudication, implicit reliance is sought to be placed on few decisions of

the Supreme Court, to which we may presently advert to.

(a) In Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., , wherein what their Lordships said at

paragraphs 25 and 26 which is relevant, is reflected as below (at page 280) :

It is now well established that, although the entire CPC is not applicable to industrial adjudication, the principles of res judicata laid down u/s 11 of

the Code of Civil Procedure, however, are applicable, wherever possible, for very good reasons. This is so since multiplicity of litigation and agitation and regiation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which

is the principal object of all labour legislation bearing on industrial adjudication. But, whether a matter in dispute in a subsequent case had earlier

been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be of

pertinent consideration and will have to be determined before holding in a particular case that the principles of res judicata are attracted .... The

real character of the controversy between the parties is the determining factor and in complex and manifold human relations between labour and

capital giving rise to diverse kinds of ruptures of varying nuances no cast iron rule can be laid down.

(b) In Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, their Lordships of the Supreme Court said in

paragraph 8 thus (at pp 164-165).

It is well-known that the doctrine of res judicata is codified in Section 11 of the CPC but it is not exhaustive. Section 11 generally comes into play

in relation to civil suits. But, apart from the codified law, the doctrine of res judicata or the principle of res judicata has been applied since long in

various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res judicata is en grafted

in Explanation IV of Section 11 of the CPC and in many other situations also principles not only of direct res judicata but of constructive res

judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res

judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res judicata also comes into

play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by

implication; then also the principle of res judicata on that issue is directly applicable. When any matter might and ought to have been made a ground

of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring

about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided.

In the instant case, the dispute is the same; the parties are the same; the dispute between the parties on all issues had been conclusively decided on

an earlier occasion by the decision of the apex court confirming the decision of the Second Additional Labour Court, Madras. In this view of the

matter, to say that the contentions of the management, in opposition to the claims of the employees praying for computation of retrial allowances as

per G.O.O. 26 are not barred by the principles of constructive res judicata cannot at all be countenanced, on the facts and in the circumstances of

these cases. This point is, therefore, answered against the management.

6. Point No. 4 : Now, it is the turn of the management to wield the hatchet of the plea of res judicata in rather a bid to cut to pieces the demand of

the employees for retiring allowance as per G.O.O. 26 by filing claim petitions u/s 33-C(2) of the Industrial Disputes Act; thereby wriggling out of

huge liability being mulcted upon them by payment of retiring allowances to the employees. Mr. S. Govind Swaminathan, learned senior counsel

representing the management petitioners in W.P. Nos. 3124, 3125 and 3917 of 1993 would strenuously contend that certain earlier proceedings

between the management petitioners culminating in the shape of an award in I.D. No. 55 of 1968 and orders in Writ Petitions Nos. 3029 of 1971

and 4696 of 1975 would operate as res judicata, in the sense of the employees of the management being barred from filing claim petitions u/s 33-

C(2) of the Industrial Disputes Act praying for computation of the retiring allowances as per G.O.O. 26.

We may now delve deep to consider the ten ability or otherwise of such a submission in the light of the factual position, reflected by the materials

available on record. The employees of the petitioner - management submitted a charter of demands on August 8, 1968. One of the demands is that

the exercise of option for payment of gratuity or retiring allowance should be extended to all employees, irrespective of the date of initial

recruitment and such an issue was referred to the Industrial Tribunal for adjudication in I.D. No. 55 of 1968. The reference is to the following

effect :

Whether the demand for revision of optional retiring allowance is justified ? If so, to what extent ?

The award in I.D. No. 55 of 1968 was made on March 18, 1971. The workmen challenged it in W.P. No. 3029 of 1971. By order dated March

5, 1974, a learned single Judge of this Court set aside the award in so far as the demand relating to the revision of optional retiring allowance was

concerned and remanded the matter to the Tribunal for fresh disposal. On remand, the Tribunal made an award on November 12, 1974, rejecting

the demand for revision of optional retiring allowance. The award in I.D. No. 55 of 1968 was confirmed by the Division Bench of this Court in

W.P. No. 4696 of 1975 by order dated October 19, 1978, which held as follows :

The revision asked for in the demands and the reference made to the Industrial Tribunal required an answer only as to whether the workmen are

entitled to ask for pensionary benefit in lieu of gratuity and a revision of the existing scheme of gratuity was justified. Since the Tribunal has no

jurisdiction in view of the provisions of Section 14, to grant any such relief except gratuity, the Industrial Tribunal rejected the contention of the

workmen and held that they are entitled only to gratuity as per the Act and not as per the scheme. We are, therefore, unable to find any illegality in

the order of the Tribunal to interfere under article 226 of the Constitution. Writ Petition No. 4696 of 1975 is liable to be dismissed.

Thus, it is clear that the Tribunal in I.D. No. 55 of 1968 and this Court in W.P. No. 4696 of 1975 have not decided the question whether the

workmen are entitled to retiring allowance under the General Office Order 26 in addition to gratuity under the Payment of Gratuity Act. What is

further fluidly crystal clear is that the Tribunal and this court proceeded on the basis that the Industrial Tribunal has no jurisdiction to decide the

question whether the workmen are entitled to pension under G.O.O. 26, in lieu of gratuity, after coming into force of the Payment of Gratuity Act

and that the dispute involved in the present proceedings u/s 33-C(2) of the Industrial Disputes Act had not at all been an issue in the earlier

proceedings and, therefore, we are of the view that the award made in I.D. No. 55 of 1968, the order in W.P. No. 3029 of 1971 and the order in

W.P. No. 4696 of 1975 cannot operate as res judicata.

As a matter of fact, the distinction between the pre - 1947 employees and the post - 1947 employees was removed and such a distinction did not

exist, in view of clause IV of the settlement dated April 22, 1968, which formed the basis of the award dated January 27, 1968 in I.D. No. 45, of

1969.

Clause IV of the terms of the settlement referred to above reads thus :

IV. Gratuity scheme. - The modified gratuity scheme will be as per Schedule B and the scheme will be substituted for the existing gratuity scheme,

provided that it shall be open to employees to opt for the company''s existing retiring allowance, if eligible in lieu of this gratuity, scheme.

This position appears to have been taken by the management in the counter - affidavit filed in W.P. No. 3029 of 1971.

In any event, the employees of the petitioners - management initiated the present proceedings u/s 33-C(2) of the Industrial Disputes Act for

computation of the retiring allowances on the basis of the law declared by the Supreme Court in E.I.D. Parry (India) Ltd., (Supra) incorporating

G.O.O. 26 and considering the effect of the provisions of the Payment of Gratuity Act and the relevant clauses in the 1956 settlement, which are

similar to the terms of the settlement dated April 19, 1956, and G.O.O. 26. What their Lordships of the Supreme Court unequivocally said therein

was that the right to retiring allowance was contained in G.O.O. 26 that the 1956 settlement or the subsequent Payment of Gratuity Act did not

take away the right to retiring allowance contained in G.O.O. 26 and that all the employees - pre - 1947 as well as post 1947 were entitled to

both the benefits, namely retiring allowance under G.O.O. 26 and gratuity under the Payment of Gratuity Act.

In view of what the law declared by the Supreme Court, as aforesaid, if we are to hold that the employees in the present case are barred by the

principles of analogous res judicata from claiming the retiring allowance under G.O.O. 26, it would lead to an anomalous position of having two

sets of conditions of services regarding the retrial benefits under the very same General Office Order 26, one in respect of workmen in the Ranipet

factory of E.I.D. Parry (India) Ltd. and another in respect of workmen in the other establishments of the petitioners - management, that is to say,

workmen in the Ranipet factory of E.I.D. Parry (India) Ltd., are entitled to retiring allowance under G.O.O. 26 whereas the workmen employed in

the other establishments of the petitioners - management would not be entitled to retiring allowance under the very same G.O.O. 26. This is wholly

incompatible with the object of the policy of the Payment of Gratuity Act. It may also be pointed out that the common order challenged in these

writ petitions was passed by the Labour Court following the ratio of the decision of the apex court in E.I.D. Parry (India) Ltd.,(Supra), interpreting

the scope of G.O.O. 26. Thus, we are of the view that the common order challenged in these writ petitions was passed by the Labour Court,

under the circumstances different from those, which prevailed when the order in I.D. No. 55 of 1968 was passed by the Tribunal. Therefore, the

principle analogous to res judicata cannot at all be applied to the facts of the present cases.

For the reasons as above, we are of the view that it is not possible to accept the contention of the management that the findings and conclusions in

I.D. No. 55 of 1968, W.P. Nos. 3029 of 1971 and 4696 of 1975 will operate as res judicata and it is not open to the employees of the

petitioners - management to claim the retiring allowance in the proceedings u/s 33-C(2) of the Industrial Disputes Act. Accordingly, this point is

answered in the negative and in favour of the petitioners - management.

7. Point No. 5 : The bone of contention of the management is that its employees and the petitioners - management, by entering into the settlements

dated April 21, 1978, have given up their rights to claim the retiring allowance under G.O.O. 26. The discussion of such an articulated and

vociferous contention - we rather feel - cannot detain us for pretty long, in the backdrop and setting of certain historical events that took place

culminating in the judicial pronouncement, in an authoritative fashion, by the apex court of this country. There is no denial of the fact that the

settlements dated April 21, 1978, and May 17, 1985, are similar or akin to the settlement dated October 23, 1956. What the apex court in E.I.D.

Parry (India) Ltd., (Supra), said, while considering the effect of the provisions of the Payment of Gratuity Act and the relevant clauses in the 1956

settlement, which are similar to the terms of the settlements dated April 21, 1978, and May 17, 1985 and G.O.O. 26 will be the answer for the

point under discussion. In order to bring home, the answer to the point under discussion, with much needed clarity and precision, we may again

pen down, by way of repetition - a compelling necessity in a case of this nature, where multifarious points under discussion are inextricably

interconnected to one another - what the Supreme Court said. The Supreme

Court, in fact, expressed in an unequivocal and positive fashion that

the right to retiring allowance was contained in G.O.O. 26; that the 1956 settlement or the subsequent Payment of Gratuity Act did not take away

the right of retiring allowance contained in G.O.O. 26 and that all the employees - pre - 1947 as well as post - 1947 - were entitled to both the

benefits, namely, retiring allowance in G.O.O. 26 and the Payment of Gratuity Act. As such the bone of contention of the management that the

employees, by entering into the settlements dated April 21, 1978, and May 17, 1985, have given up their right to claim retiring allowance under

G.O.O. 26 cannot at all be countenanced. This point is accordingly answered against the management.

8. Point No.6 : The curves, contours and complexion of the question relatable to the maintainability or otherwise of the petitions filed u/s 33-C(2)

of the Industrial Disputes Act by the employees praying for computation of the retrial allowance under G.O.O. 26, out of which the present actions

- W.P. Nos. 3124, 3125 and 3917 of 1993 and W.A. No. 332 of 1994 - arise may fall for consideration in the arena of discussion. On behalf of

the management, it is contended that the proceedings u/s 33-C(2) of the Industrial Disputes Act are in the nature of execution proceedings, which

envisage a prior adjudication or recognition of the claim of workmen to be paid retrial allowance as per G.O.O. 26 and when the basis of their

claim is disputed, the remedy u/s 33-C(2) is not available to the workmen. What is further is contended is that in these actions, there was no earlier

adjudication or recognition of the workmen''s claim to be paid of the retrial allowance under G.O.O. 26 and, therefore, the basis of the

computation being disputed, the proceedings u/s 33-C(2) of the Industrial Disputes Act were not maintainable. On the other hand, it is submitted

on behalf of the workmen that there was no dispute of this kind and their entitlement to the benefit claimed by them - that is, their entitlement to the

retrial allowance, as per G.O.O. 26 had been declared by the apex court in E.I.D. Parry (India) Ltd., (Supra), by confirming the award of the

Second Additional Labour Court, Madras, and what remains to be done is the computation of such benefits as per G.O.O. 26 and, therefore, the

proceedings u/s 33-C(2) of the Industrial Disputes Act computing retrial benefits as per G.O.O. 26 are maintainable.

In our opinion, the question for decision is no longer res integra by being long settled by decisions emerging from the Apex Court of this Country.

We may now propose to refer to a few of such decisions, in order to understand the sweep, amplitude and scope of Section 33-C(2) of the

Industrial Disputes Act and make an endeavour to give a legal fitment relatable to the maintainability or otherwise of the petitions filed u/s 33-C(2)

of the Industrial Disputes Act by the employees in these actions.

(a) In The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., the question of maintainability of a proceeding u/s 33-C(2) of the Industrial

Disputes Act was considered in a claim made by the workmen on the basis of the Sastri Award. The employer disputed the claim of the workmen

on multifarious grounds, including the applicability of Section 33-C(2) of the Industrial Disputes Act. It was argued that since the application

involved a question of interpretation of the Sastri Award, they were outside the purview of Section 33-C(2) of the Industrial Disputes Act, because

the interpretation of awards or settlements has been expressly provided for by section 36A. The objection was rejected. The Supreme Court

pointed out that the difference in the scope of Section 36A and Section 33-C(2) of the Industrial Disputes Act indicating that the distinction lies in

the fact that section 36A is not concerned with the implementation or execution of the award, whereas that is the sole purpose of Section 33-C(2)

of the Industrial Disputes Act and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen, falling under its

provisions, Section 36A merely deals with the question of interpretation of the award, where a dispute arises in that behalf between the workmen

and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by a reference u/s 36A. In this context, the

Supreme Court also indicated that the power of the Labour Court in a proceeding u/s 33-C(2) being akin to that of the executing court, the

Labour court is competent to interpret the award or settlement, on which a workman bases his claim u/s 33-C(2) of the Industrial Disputes Act,

like the power of the executing court to interpret the decree for the purpose of execution.

What their Lordships of the Supreme Court said, which is relevant for our present purpose is reflected at page 96, which reads as under (at page

96)

Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his

existing individual rights, it is virtually exercising execution powers in some cases, and it is well-settled that it is open to the executing Court to

interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go beyond the decree, nor can it add to or

subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing court, the Labour Court would

also be competent to interpret the award or settlement on which a workman bases his claim u/s 33-C(2). Therefore, we feel no difficulty in holding

that for the purpose of making the necessary determination u/s 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret

the award or settlement on which the workman''s right rests.

(b) In Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , their Lordships referred to three earlier decisions of the

Supreme Court, namely, Punjab National Bank Limited Vs. K. L. Kharbanda, ; Central Bank of lndia v. P. S. Rajagopalan, and Bombay Gas Co.

Ltd. Vs. Gopal Bhiva and Others, and deduced the following propositions on the question as to the scope of section 33-C(2) of the Industrial

Disputes Act (at page 92 of 33 FJR) :

(1) The legislative history indicates that the Legislature, after providing broadly for the investigation and settlement of disputes on the basis of

collective bargaining, recognised the need of individual workmen for a speedy remedy to enforce their existing individual rights and therefore,

inserted section 33A in 1950 and Section 33C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights

without having to take recourse to section 10(1) and without having to depend on their union to espouse their case.

(2) In View of this history two considerations are relevant while construing the scope of Section 33C. Where industrial disputes arise between

workmen acting collectively and their employers such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance u/s

10(1). But having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore, though in determining the scope of

section 33C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance u/s 10(1), cannot be

brought u/s 33C.

(3) Section 33C which is in terms similar to those in section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is a provision in the

nature of an executing provision.

(4) Section 33-C(1) applies to cases where money is due to a workman under an award or settlement or under Chapter V-A of the Act already

calculated and ascertained and, therefore, there is no dispute about its computation. But sub-section (2) applies both to non-monetary as well as

monetary benefits. In the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its

calculation.

(5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms

of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to

interpret the award or settlement on which the workmen''s right rests.

(6) The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950, are omitted in section 33-

C(2) shows that the scope of section 33-C(2) is wider than that of section 33-C(2). Therefore, whereas sub-section (1) is confined to claims

arising under an award or settlement or Chapter V-A, claims which can be entertained under sub-section (2) are not so confined to those under an

award, settlement or Chapter V-A.

(7) Though the court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2), it pointed out illustrative

cases which would not fall under subsection (2), viz., cases which would appropriately be adjudicated u/s 10(1) or claims which have already been

the subject-matter of settlement to which Sections 18 and 19 would apply.

(8) Since proceedings u/s 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the

benefit claimed by a workman is in such cases in the position of an executing Court, the Labour Court like the executing court in execution

proceedings governed by the Code of Civil Procedure, is competent u/s 33-C(2) to interpret the award or settlement where the benefit is claimed

under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

After stating the propositions as above extracted, their Lordships expressed (at page 144), which runs as under (at page 93 of 33 FJR) :

It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided

for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.

(c) In Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , their Lordships of the Supreme Court said in paragraph 12 as under

.... where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or

recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the

scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen''s entitlement and then proceed to

compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier

adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires

interpretation that the interpretation is treated as incidental to the Labour Court''s power u/s 33-C(2) like that of the executing court''s power to

interpret the decree for the purpose of its execution.

In the backdrop and setting of the principle evolved by the Supreme Court relatable to the sweep, amplitude and scope of Section 33-C(2) of the

Industrial Disputes Act as above, we may now endeavour to give a legal fitment to the factsituation of these present actions.

In these actions, the entitlement of workmen to retrial allowance, as per G.O.O. 26 had been adjudicated by an award of the Second Additional

Labour Court, Madrad, agitated further by filing writ petitions and writ appeals and ultimately confirmed by the Supreme Court in E.I.D. Parry

(India) Ltd., (Supra), and what is required to be done is nothing but the computation of the retrial benefits, as per G.O.O. 26, and such being the

case, it cannot be said that there is no existing right available to the employees to claim retrial allowance under G.O.O. 26 and the petitions filed by

the employees u/s 33-C(2) for computation of retrial allowances, as per G.O.O. 26 are not maintainable. This point, as such, is answered in favour

of the employees.

9. Point No. 7 : This point faintly touched and consequently not left out of consideration-takes in its purview whether the so-called consistent

conduct of the employees right through in claiming various charter of demands and the settlements entered into between them and the management

at different points of time of their right to retrial allowance in lieu of gratuity and that too for the pre-1947 employees, will preclude them from

claiming retrial allowance not only to the pre-1947 employees; but also to the post-1947 employees, under G.O.O. 26 in addition to payment of

gratuity under the Payment of Gratuity Act, by filing petitions u/s 33-C(2) of the Industrial Disputes Act in these actions. The simple answer is that

there is no estoppel against law. The Supreme Court, as referred to earlier, after taking into consideration G.O.O. 26, the 1956 settlement and the

Payment of Gratuity Act declared the law that the employees - either the pre-2947 or the post-1947 are entitled to retrial allowance as per

G.O.O. 26, in addition to the statutory payment of gratuity. This point as such, which deserves outright rejection, is rejected.

10. Points Nos. 8 to 11 : G.O.O. 26 is the fulcrum, on which projection of contention on either side, giving rise to these points revolve and,

therefore, it is, they are grouped together for a compendious discussion, in order to avoid repetition of ideas in the process of their consideration

and discussion.

Before entering into the arena of discussion on these points, better it is, we feel, to understand the concept of the various expressions,

namely,""retirement"", ""voluntary retirement"", ""early retirement"", ""retrenchment"", ""resignation"", ""superannuation"", ""pension"" and ""gratuity"", in order to

provide a satisfactory solution to the questions posed in these points under discussion.

The fact that where a person employed in some service - Government Central or State or otherwise - private management - states that he is

retired, it is taken for granted in common parlance that he retired from service on superannuation, that is to say, he completed the full tenure of

office in service on attaining the age - be it 55 or 58 or 60 prescribed by the rules relating to conditions of service. Though the term ""retirement"" is

colloquially referable to ""superannuation"", it is not so in legal parvalance. The word ""retirement"" is not conclusive. It is the substance of the matter,

which is to be looked at, on the facts and in the circumstances of the case, in the backdrop of the service conditions and other allied matters

incidental to such service.

Retirement"" is nothing but cessation of service. Such cessation may take place by (1) removal; (2) dismissal; (3) compulsory retirement by way of

punishment; (4) compulsory retirement in public interest; (5) compulsory retirement on completing the age of superannuation; (6) voluntary or early

retirement under certain schemes or provisions made in the service rules; (7) retrenchment, and (8) resignation.

(a) ""Termination of service"" takes place before the fruition of the full tenure of office in service in all the cases, as referred to above, excepting

compulsory retirement by attaining the age of superannuation"" as prescribed by the rules relating to the conditions of service.

(b) ""Compulsory retirement"" on completion of the age of superannuation takes place by mere sands of passage of time without reference to any act

either on the part of the employer or the employee.

(c) ""Removal"", ""dismissal"", ""compulsory retirement by way of punishment"", ""compulsory retirement in public interest"" and retrenchment"" take place

as a consequence of an action taken on the part of the employer.

(d) ""Resignation"" ""voluntary retirement or early retirement under certain schemes"" or under the provisions made in the service rules are traceable to

an act on the part of the employee.

The concepts of ""resignation"" and ""retirement"", if understood properly, we rather feel, that the concept of ""voluntary retirement"" which is akin to

early retirement"" can he made explicityery well.

(a) ""Resignation"" is a term of art conveying legal connotation, which describes certain legal results. It is characteristically a voluntary surrender of position by the one resigning, made freely and not under duress, and the word is generally defined as meaning the act of resigning or giving up, as a

claim, possession or position (see Corpus Juris Secundum volume 27).

(b) A resignation becomes effective when the authority competent to make the appointment accepts it and the servant resigning is relieved of his

duties, as the resignation after it has become effective, puts an end to the relationship of ""master"" and ""servant"" and the post occupied by the

person resigning becomes vacant.

(c) The term ""retrenchment"" means discharge of surplus labour or staff in a continuing or running industry in order to avoid retention becoming a

dead weight - an uneconomic surplus.

(d)(i) In retrenchment compensation paid is not a ""retirement benefit"" at all. As the expression ""retrenchment compensation"" indicates, ""it is a

compensation paid to a workman on his retrenchment and it is intended to give some relief and to soften the rigour of hardship, which retrenchment

inevitably causes. The retrenched workman is suddenly and without his fault, thrown on the street and has to face the grim problem of

unemployment. At the commencement of his employment, a workman naturally expects and looks forward to security of service spread over a

long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the

retrenched employee and his family to enable them to tide over the hard period of unemployment. Thus, the concept on which grant of

retrenchment compensation is based is essentially different from the concept on which, gratuity is founded. (vide The Indian Hume Pipe Co. Ltd.

Vs. The Workmen and Another,

(ii) It is thus crystal clear that ""resignation"", ""retrenchment"" and ""voluntary retirement or early retirement"" - a common thread that runs through them

is that cessation of service takes effect sometime anterior to the date of superannuation, which event happens automatically by sands of passage of

time, in the sense of the incumbent in office attaining a particular age, prescribed by rules relating to the conditions of service.

(iii) At the time of resignation. It is possible that the employee, workman or servant could have had the eligible criteria, namely, qualifying service

and fulfilment of other conditions for certain retrial benefits, such as ""pension"", etc. So also is the case of an employee or workman or servant

retrenched or retired voluntarily under certain schemes or under some provisions made in the rules relating to the conditions of service.

(e) ""Retrial benefit"", such as ""pension"", ""gratuity"" are all earned by the employee and such earnings cannot be denied to him, in case he fulfills the

eligible criteria, not with standing such an employee or workman or servant happens to fall under any of the categories of employees or servants

either resigning or being retrenched or retiring voluntarily under certain schemes or under some provisions made in the rules relating to the

conditions of service. The reason is rather obvious. In the case of ""resignation"", the employee gets nothing for forgoing his future services, although

his past services, if eligible for retrial benefits, cannot at all be forfeited. In the case of employees retrenched, what is paid as compensation to them

is for dispensing with their future services and so also is the case of employees or workmen or servents receiving certain amounts retiring under

voluntary or early retirement scheme or under some provisions made in the service rules and such categories of employees cannot be denied retrial

benefits for the past service rendered, as in the case of employees resigned having qualified services plus fulfilment of conditions for the claim of

retrial benief its.

(f)(i) ""Pension"", ""gratuity"" and ""providentfund"" as is well-known are three different and distinct types of retirement benefits, although the basis for

calculating all of them is furnished by the salary or emoluments drawn by a servant.

(ii) The word ""pension"", which has not been defined in the Pension Act, 1871, has been held to mean a periodical allowance or stipend granted,

not in respect of any right, privilege, perquisite or office, but on account of past service or particular merits or as compensation to dethroned

princes, their families or dependents. (vide Secretary of State v. Khemchand Jeychand, ILR [1880] 4 Born 432, and Bankey Behari Lal Vs. Lala

Babu, Raja Babu and Another, .

(iii) Two essentials are necessary to constitute ""pension"" - (1) it must be a periodical payment; and (2) it must be a grant not in respect of any right,

privilege, perquisite or office, but on political considerations or on account of past services or present infirmities or as a compassionate allowance.

(vide : Shaukat Husain Beg Mirza Vs. State of Uttar Pradesh and Another,).

(iv) ""Gratuity"" is not paid to an employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the

employer. It is earned. (vide The Garment Cleaning Works Vs. Its Workmen,).

In the light of the various concepts, as explained above, we may now proceed to consider entitlement to retrial benefits of various categories of

employees, failing within the purview of G.O.O. 26 de hors the finding we have recorded on point No. 3, namely, ""to say that the contentions of

the management, in opposition to the claims of the employees praying for computation of retrial allowances as per G.O.O. 26 are not barred by

the principles of constructive res judicata - cannot at all be countenanced, on the facts and circumstances of these cases.

G.O.O. 26 is captioned as ""Non-covenanted staff-retirement benefits"". Such retirement benefits consists of :

(1) retiring allowance; and

(2) gratuities.

The entitlement to retirement allowance is governed by clauses (1) to (6) figuring under the heading ""Retiring allowance"". Likewise, the entitlement

to gratuity is determinable by clauses (1) to (4) figuring under the head ""Gratuity"". Out of clauses (1) to (6) under the caption ""Retiring allowance"",

the first four clauses thereof are relevant for the determination of the question relating to the entitlement of retrial benefits of various categories of

employees falling within the purview of these points - 8 to 11, now under consideration.

It is of signal importance to note that the expression ""superannuation"", about which we have explained earlier, figures only in clause (4) and not in

any other clause of G.O.O. 26. According to the said clause, the age of superannuation is 58 years. Further, the word ""pension"" is not at all used in

any of the clauses thereof and instead, the phraseology ""retiring allowance"" has been used and there is no dispute that the phraseology ""retiring

allowance"" denotes nothing but ""pension"".

(1)(a) Clause (1) is couched in the language as below :

1. Normally, only employees with 30 years service or more are eligible to receive a retiring allowance.

From a careful scrutiny of the language employed in formulating clause (1) as above, it is rather crystal clear that the eligible criteria for retrial

allowance is the requirement of a minimum qualifying service of 30 years and such qualifying service need not he coterminous with the date of

superannuation. In other words, it cannot be said that the employees retiring on superannuation on completion of 58 years of age alone are eligible

to receive retiring allowance with a minimum qualifying service of 30 years. By way of further elucidation, it may be stated that employees retiring

otherwise than on superannuation, such as resignation, retrenchment, removal, dismissal, compulsory retirement by way of punishment for

misconduct, compulsory retirement in public interest and voluntary or early retirement under certain schemes, or provisions made by way of rules

relating to service conditions may have service more than 30 years.

(b) To bring home the point in a rather ex-plicit fashion, it may be explained by an illustration. Say, X enters into service at the age of 20. The

possibility of X completing minimum qualifying service of 30 years, much earlier to the date of superannuation, cannot at all be ruled out of

consideration. Such a person can have a qualifying service of 30 years on completion of 50 years of age, that is to say, he can have such minimum

qualifying service eight years ahead of his superannuation. Such an employee, if resigns or is terminated from service by another mode, can it be

said that he is not eligible to receive pension ? Our answer therefore is nothing but an emphatic ""no"", on the facts and in the circumstances of the

case. The one and only criterion required to be fulfilled by an employee for eligibility to pension is the acquisition of a minimum of 30 years of

service before he ever ceases to be an employee of the management by any other mode of retirement. Further, neither this nor any other clause

prescribes any other conditions to he fulfilled for eligibility to pension. Nor is there any prohibition in any of the six clauses forfeiting the eligibility of

the employee to claim pension not with standing the compliance of acquisition of 30 years of qualifying service. Above all, as we have already

stated, pension - a periodical payment, is a grant not in respect of any right, privilege or perquisite or office, but on Political consideration on

account of past services or present infirmities or as compassionate allowance.

(2) Clause (2) thereof reads as follows :

2. Until further notice, the basis on which monthly retiring allowances will be calculated will be the sum of thee following :

(a) 10 per cent of the last monthly basic salary drawn;

(b) A bonus for grade as follows :

(i) Non-covenanted staff (including lower grade employees) other than those categories specified under sub-clause (ii) below :

(ii) Senior stenographers, senior salesmen and senior or grade V clerks, erectors and service engineers, work staff grade WV and WX and cane

assistant inspectors and inspectors in grades A and B.

(c) A graded service bonus for service over 30 years.

(i) Non-covenanted staff (including lower grade employees) other than these categories specified under sub-clause (ii) below

Re 1 per year of service over 30 years.

(ii) Senior stenographers, senior salesmen and senior or grade V clerks, erectors and service engineers, work staff grade WV and WX cane

assistant inspectors and inspectors in grades A and B.

Rs. 1.8.0 per year of service over 30 years.

(d) One half of the average monthly dearness allowance drawn during the twelve months preceding retirement.

Clause (2) as extracted above, simply provides the methodology or guidelines for calculating the retirement allowance and the retirement allowance

(pension) as determined will be the same until further order. An employee having a qualifying service of 30 years is eligible to get the retirement

allowance as calculated under clause (2).

(3) Clause (3) runs as follows :

The Board reserves the right to alter the is scale of retiring allowances, either generally or in respect of individuals, in the light of circumstances that

may exist at any particular time.

Clause 3 as extracted above is only in a simple language, without giving any ambiguity. Under this clause, a right is reserved in favour of the Board

to alter the scale of retiring allowance. Such alteration may be made either generally or in respect of certain individuals. The power inhering in

favour of the Board to alter the scale of retiring allowance does not mean that such retiring allowance can he wiped out altogether and the scale of such allowance can either be increased or decreased in the light of circumstances that may exist at any particular point of time.

(4)(a) Clause (4) reads thus :

The Board may also grant proportionate retiring allowance to those retired on reaching the age of superannuation that is to say on completing the

age of 58 or those who have to retire on account of reasons beyond their control, and have completed more than 20 years of service, e.g., an

employee retiring after 25 years of service would be granted a retiring allowance calculated at 25/30ths of the amount arrived at as per para 2

supra.

(b) Clause 4 extracted above deals with the power of the Board to grant proportionate retiring allowance to the employees on fulfilment of certain

conditions. The Board may grant proportionate retiring allowance to two categories of employees :

(1) employees in the age of superannuation with a qualifying service of 20 years or more; and

(2) employees retiring on account of reasons beyond their control with a qualifying service of 20 years or more.

(c) By way of an illustration, it is explained in the said clause as to how quantification of Proportionate retiring allowance to employees of either of

the two categories, as above, is to be made. The use of the auxiliary verb ""may"" qualifying the main verb ""grant"" in the said clause in vesting power

with the Board for the grant of proportionate retiring allowance, is of signal importance. The meaning to be given to the auxiliary very, ""may"" in that

context, is determinative of the extent of the power inhering in favour of the Board.

(d) Ordinarily, the word ""may"" is not a word of compulsion. It is an enabling word and it confers capacity, power or authority and implies a

discretion.

The enabling word ""may"" is construed by the courts as ""compulsory"" whenever the object of power is to effectuate legal rights.

(a) The Apex Court in The Official Liquidator Vs. Dharti Dhan (P) Ltd., , while construing the meaning of ""may"" observed thus :

Thus, the question to be determined in such cases always is whether the power conferred by the use of word ''may'' has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the

statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal

context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to

exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and

a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word

''may'' indicates that annexes any obligation to its exercise but the legal and factual context of it. This, as we understand it, was the principle laid

down in the case cited before us : Frederic Guilder Julius v. Bishop of Oxford, [1880] 5 AC 214 (HL).

Dr. Julius, in the case mentioned above, had made an application to the Bishop of Oxford against the Rector of a Parish, asking the Bishop to issue

a commission under the Church Discipline Act to enquire against certain unauthorized deviations from the ritual in a Church by the Rector. The

relevant statute merely conferred a power by laying down that ''it shall be lawful'' to issue a commission. The Courts of Queen''s Bench and of

Appeal in England had differed on the question whether a mandamus from the court could go to the Bishop commanding him to issue a commission

for the purpose of making the enquiry. The House of Lords held that the power to issue the commission was not coupled with a duty to exercise it

in every case although it in a particular way on the fulfilment of certain specified conditions. The statute considered they (sic) had not specified

those conditions. Hence, it was a bare power to issue or not to issue the commission. Lord Blackburn said (at page 241) :

''I do not think the words ""it shall be lawful"" are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima

facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that

the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the

donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it. It by no means follows that because

there is a duty cast on the donee of a power to exercise it, that mandamus lies to enforce it; that depends on the nature of the duty and the position

of the donee.''

The principle laid down above has been followed consistently by this Court whenever it has been contended that the word ''may'' carries with it the

obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the power which has to be examined

in order to determine the scope of discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in

particular cases are also specified by a statue then, on the fulfilment of those conditions, the power conferred becomes annexed with a duty to

exercise it in that manner. This is the principle we deduce from the cases of this court cited before us : Bhaiya Punjalal Bhagwanddin Vs. Dave

Bhagwatprasad Prabhuprasad, , State of Uttar Pradesh Vs. Jogendra Singh, , Sardar Govindrao and Others Vs. State of Madhya Pradesh, ; Shri

A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., , Bashira v. State of U. P., : [1969]1SCR32 and Prakash

Chand Agarwal v. Hindustan Steel Ltd., AIR 1971 SC 2310.

(b) In L. Hirday Narain Vs. Income Tax Officer, Bareilly, , the Supreme Court, while dealing with the power of discretion of the Income Tax

Officer to exercise or not to exercise the power to rectify any mistake on the face of the record u/s 35 of the Indian Income Tax Act, 1922,

observed in para 12 as follows :

Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from

the record. If a statue invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his

authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for

exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the courts will readily infer a duty to exercise

power which is invested in aid of enforcement of a right - public or private of a citizen.

(c) In Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. 1984 I LLJ 223 (SC), an employee of the Tata Iron and Steel Company Ltd. filed a

suit claiming gratuity. The suit was decreed and the employee was held entitled to claim gratuity and recover gratuity with interest. The appeal filed

by the employer was allowed and the judgment and decree were set aside, inter alia, holding that under the rules, payment of gratuity is not in the

nature of an inchoate claim and not enforceable in a civil court and the employer has the absolute discretion to grant or not to grant gratuity. The

Supreme Court, on appeal, allowed it and directed the payment of gratuity to the employee with interest at the modified rate at 15 per cent. While

holding so, what their Lordships of the Supreme Court said in paragraphs 13 to 1 8, relevant for the purpose of this case, are as follows.

11. ""One more difficulty the High Court experienced in the way of the plaintiff maintaining the suit and recovering the amount of gratuity was that

under Rule 10 gratuity was payable at the absolute discretion of the company and cannot be claimed as a matter of right. Undoubtedly, Rule 10

confers discretion on the company to pay the gratuity even if the same is earned by satisfying the conditions subject to which gratuity becomes

payable. Rule 10 provides that ''all retiring gratuities granted under the rules shall be at the absolute discretion of the company irrespective of

whether an employee has or has not performed all or any of the conditions set out in the rules and no employee, howsoever otherwise eligible, shall

be deemed to be entitled as of right to any payment under the rules''. Such absolute discretion is wholly destructive of the character of gratuity as a

retrial benefit. It is satisfactorily established and the High Court has so ruled that payment of gratuity was a condition of service, albeit an implied

condition of service, which part does not stand scrutiny. The 1946 Act was amended specifically in 1956 by Amending Act 36 of 1956 by which

power was conferred upon the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any

standing orders. It is not clear whether Rule 10 which appears to have been framed in the heyday of laissezfaire has been recast, modified or

amended to bring the same in conformity with the modern notions of social justice and Part IV of the Constitution. Assuming it is not done, the

court while interpreting and enforcing the relevant rules will have to bear in mind the concept of gratuity. The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to

provide for payment of gratuity. On the enactment of the Payment of Gratuity Act, 1972, a statutory liability was cast on the employer to pay

gratuity.

12. Pension and gratuity coupled with contributory provident fund are well-recognised retrial benefits. These retrial benefits are now governed by

various statutes such as the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. The Payment of Gratuity Act, 1972, etc. These

statutes were legislative responses to the developing notions of fair and humane conditions of work, being the promise of Part IV of the

Constitution. Article 37 provides that ''the provisions contained in Part IV - Directive Principles of State Policy - shall not be enforceable by any

court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to

apply these principles in making laws''. Article 41 provides that ''the State shall, within the limits of its economic capacity and development, make

effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and

disablement, and in other cases of underserved want.'' Article 43 obligates the State to secure, by suitable legislation, to all workers, a living wage,

conditions of work ensuring a decent standard of life and full enjoyment of leisure ...... The State discharged its obligation by enacting these laws.

But, much before the State enacted relevant legislation, the trade unions either by collective bargaining or by statutory adjudication acquired certain

benefits, gratuity being one of them. Pension and gratuity are both retrial benefits ensuring that the workman who has spent his useful span of life in

rendering service and who never got a living wage, which would have enabled him to save for a rainy day, should not be reduced to destitution and

penury in his old age. As a return for long service he is should be assured social security to some extent in the form of either pension, gratuity or

provident fund whichever retrial benefit is operative in the industrial establishment. It must not be forgotten that it is not a gratuitious payment, it has

to be earned by long and continuous service.

13. Can such social security measures be denuded of its efficacy and

enforcement by so interpreting the relevant rules that the workman could be

denied the same at the absolute discretion of the employer not with standing the fact that he or she has earned the same by long continuous service

? If rule 10 is interpreted as has been done by the High Court, such would be the stark albeit unpalatable outcome. It is, therefore, necessary to

take a leaf out of history bearing on the question of retrial benefits like pension to which gratuity is equated : Burhanpur Tapti Mills Ltd. Vs.

Burhanpur Tapti Mills Mazdoor Sangh, , wherein this court observed that : ''A scheme of gratuity and a scheme of pension have much in common.

Gratuity is a lump sum payment while pension is a periodic payment of a stated sum.'' Undoubtedly both have to be earned by long and continuous

service.

14. For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered

depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court.

This view held the field and a suit to recover pension was held not maintainable. With the modem notions of social justice and social security,

concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the

discretion of the employer, nor can it be denied at the sweet will or fancy of the employer : Deokinandan Prasad Vs. The State of Bihar and

Others, ; State of Punjab and Another Vs. Iqbal Singh, , D.S. Nakara and Others Vs. Union of India (UOI), . If pension which is the retiral benefit

as a measure of social security can be recovered through a civil suit, we see no justification in treating gratuity on a different footing. Pension and

gratuity in the matter of retiral benefits and for recovering the same must be put on par.

15. The question then is : can the court ignore rule 10 ? If gratuity is a retiral benefit and can be earned as a matter of right on fulfilling the

conditions subject to which it is earned, any rule conferring absolute discretion not testable on reason, justice or fair play must be treated as utterly

arbitrary and unreasonable and discarded. If rules for payment of gratuity became incorporated in the standing orders and thereby acquired the

status of statutory condition of service, an arbitrary denial referable to whim, fancy or sweet will of the employer must be rejected as arbitrary.

Section 4 of the 1946 Act, which confers power on the certifying officer or appellate authority to adjudicate upon the fairness or reasonableness of

the provisions, would enable this court to reject that part of Rule 10 conferring absolute discretion on the employer to pay or not to pay the gratuity

even if it is earned as ulterly unreasonable and unfair. It mustbe treated as ineffective and unenforceable. It is well-settled that if the certifying officer

and the appellate authority under the 1946 Act while certifying the standing orders has power to adjudicate upon the fairness or reasonableness of

the provisions of any standing orders, this Court in appeal under article 136 shall have the power to do the same thing when especially it is called

upon to enforce the unreasonable and unfair part of the standing order. It, therefore, follows that the part of Rule 10 which confers absolute

discretion on the employer to pay gratuity even if it is earned, at its absolute discretion is ineffective and unenforceable. This approach does not

require any precedent but if one is needed the decision of this court in Western India Match Company Ltd. Vs. Workmen, , clearly rules to that

effect. In that case, the company relied on a special agreement which was to some extent in derogation of the provisions of the certified standing

order. The court observed that to uphold such special agreement would mean giving a go-by to the principle of three party participation in the

settlement of the terms of employment, as represented by the certified standing orders and, therefore, the inconsistent part of the special agreement

is ineffective and unenforceable. The claim to absolute discretion not to pay gratuity even when it is earned is a hangover of the laissez faire days

and utterly inconsistent with the modern notions of fair industrial relations and, therefore, it must be rejected as ineffective and hence unenforceable.

16. Viewed from a slightly different angle, our Constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by

guidelines which may permit denial of equality before law is the antithesis of the rule of l@w. Absolute discretion not judicially reviewable inheres

the pernicious tendency to be arbitrary and is, therefore, violative of article 14. Equality before law and absolute discretion to grant or deny benefit

of the law are diametrically opposed to each other and cannot co-exist. Therefore, also the conferment of absolute discretion by rule 10 of the

Gratuity Rules to give or deny the benefit of the rules cannot be upheld and must be rejected as unenforceable.

In the light of the exposition of law propounded by the Supreme Court, as above and the concept of pension, as earlier explained, being a right

earned by the employee on rendering required number of years of service, it cannot be said that there was any discretion left with the employer for

the payment of pension to the employees on their fulfilling the conditions prescribed therefor. The power of the employer to grant pension to the

employee is coupled with a duty towards the employee, who is entitled to pension on fulfilment of conditions prescribed for pension. In other

words, we put it positively by stating that the employees will be entitled to pension as a matter of right on fulfiling the to condition prescribed for

pension and no discretion is left with the employer. Therefore, it follows that in the context in which the word ""may"" is used in clause 4 of G.O.O.

26, it has to be interpreted as ""shall"" as otherwise the very object of the pension scheme embodies in the said G.O.O. will be defeated.

We have thus far considered the clause by clause interpretation of the first four clauses of G.O.O. 26. In the process of such a discussion, we are

unable to find that the language employed either in clause (1) or clause (4) does indicate their co-existence together in such a way as is not possible

for either of those clauses to have independent existence and operation in the respective spheres or areas.

In view of the above legal and factual position, we shall endeavour to give a legal fitment as respects the claim of retiral allowance to various

categories of employees covered by contentions, which gave rise to these points - 8 to 11 - now under discussion.

For the determination of the question as to whether the employees retired before superannuation either under voluntary retirement scheme or early

retirement scheme with a minimum qualifying service of 20 years and 30 years, are entitled to pension, necessary it is for us to have a glimpse or

glance of such schemes introduced by the management.

The management introduced the voluntary retirement scheme in the year 1975. In the said scheme, it is stated that on account of enormous growth

in the wage bill of the group and apparent need to effective utilisation of man-power and the growing constraints of the company for various reasons beyond their control, a necessity arose to reorganise the company''s operations with a view to economise in all sectors. With that object,

the 1975 scheme was introduced. The said scheme covered the employees in four groups with reference to their age :

(1) 50 to 52 years.

(2) 53 to 56 years.

(3) 56 to 57 years.

(4) Above 57 years.

(a) Clause (V) of the scheme provided for the payment of one month''s wages, in lieu of notice, is exgratia payment and souvenir on service,

eligibility as per the rules applicable to retirement on normal superannuation and gratuity as per rules to those, who opt for voluntary retirement.

(b) Clause (VI) provided for an additional retirement compensation at the rates specified in the scheme.

Another scheme called ""Early Retirement Scheme"" was brought into force on August 20, 1980. The grouping of age in that scheme was as follows

:

(a) 40 to 50 years;

(b) 51 to 52 years;

(c) 53 to 54 years; and

(d) 55 to 56 years.

The 1980 Scheme provided for payment, of monthly allowance by way of additional compensation, instead of lump sum payment.

There was a similar scheme introduced in the year 1983.

(a) In any of the schemes introduced by the management, there is no provision in an explicit fashion that the employees retiring under any of the

said schemes, are not entitled to claim retirement allowance under G.O.O. 26 even if they fulfil the necessary and requisite conditions prescribed

under the said G.O.O. It is to be remembered here that voluntary retirement or early retirement scheme or the scheme by whatever name it is

called, had been introduced only in the years 1975, 1980 and 1983, long subsequent to the frarning of G.O.O. 26, dated December 1, 1943.

Such being the case, the absence of any specific provision in the schemes so introduced stating that the employees voluntarily retiring under the scheme before their superannuation, are not entitled to claim tension, even if they fulfilled the necessary conditions for their entitlement to pension

under G.O.O. 26, is a point to be reckoned with in the process of consideration of the question of their entitlement to pension under G.O.O. 26.

(b) Worthy it is to note at this juncture, as we have already indicated, a necessity arose for the management to reorganise the company''s

operations with a view to economise in all sectors on account of three principle reasons :

(i) enormous wage growth in the wage bill of the group;

(ii) apparent need to effective utilisation of manpower; and

(iii) growing constraints of the company for various reasons beyond their control.

It is because of the compelling or impelling factors, as above, voluntary retirement schemes or early retirement schemes, as the scheme by

whatever name it is called, had been introduced in the years 1975, 1980 and 1983 with a subtle modification on each occasion with the sole

objective of reducing the work force without resorting to retrenchment. The effect of resorting to the various schemes, as above and retrenchment

is one and the same in so far as it is relatable to the reduction of the work force. By resorting to such process, the work force is sent out of

employment long before superannuation and their entitlement to future services till up to their date of superannuation is foreclosed. For such a

forclesure in retrenchment, retrenchment compensation is paid, while in voluntary retirement scheme or early retirement scheme, a certain amount,

either in lumpsum or periodic payment, is made. The payment in both the cases, is made to give partial protection to the employees and their

families to enable them to tide over the hard period of unemployment. There is no prohibition for either of the retrenched employees or employees

retired under the voluntary retirement schemes or early retirement schemes, to seek and get employed in profitable positions. If they get

employment, it is well and good for them, in the sense, that such employees have the benefit of retrenchment compensation or lumpsum or periodic

payment, as a case maybe, besides new-found employment. It is also beneficial to the employer-management in reducing the huge wage bill,

besides the effective utilisation of the manpower by the reduction of labour force. Such being the case, the benefit of retrial allowance to such retrenched employees or employees retired under the voluntary retirement schemes or early retirement schemes, cannot at all be denied, if such

employees happened to fulfil the necessary and requisite conditions for their entitlement to such retrial allowance as per G.O.O. 26, in as much as

such retrial allowance, that is to say, pension is earned by such employees for their long past service.

As to real intentment, purport and import of the second limb of clause 4, relatable to payment of proportionate retiral allowance to employees,

who have to ""retire on account of reasons beyond their control"" with a qualifying service of 20 years, divergent hues of views ace sought to be

projected. The need, therefore, arises for us to find out the true intentment, purport and import of the second limb of clause 4. It is contended on

behalf of the management that the employees, who retired under the voluntary retirement scheme or the early retirement schemes with 20 years of

qualifying service, cannot be said to have retired on account of reasons beyond their control, as contemplated in clause 4 of G.O.O. 26. Voluntary

retirement, it is said would not amount to retirement on account of reasons beyond their control inasmuch as the expression ""voluntary retirement

is inconsistent with ""retirement on account of reasons beyond their control"". Support for such an argument is sought to be derived from paragraphs

V(2) to V(4) of the voluntary retirement schemes, marked before the Labour Court as an exhibits, which read as below :

(2) Employees are required to note that the scheme is completely devoid of any element of compulsion and the employee is completely free of his

own will and desire to opt for this voluntary retirement scheme.

(3) Any employee choosing of his own accord to opt for the voluntary retirement scheme, should subkt a letter accordingly to the management

duly signed by him.

(4) If he wishes, the employee may withdraw his application during the above period without assigning any reason.

On our part, we are unable to affix our seal of approval to the projection of such an argument. No doubt true it is that there is no element of to

compulsion on the employee and the employee is completely free of his own will and desire to opt for the voluntary retirement scheme. The

employee, of course, after fully understanding the implications of the voluntary retirement scheme or the early retirement scheme, exercises his

option. There is nothing wrong in doing so. By the introduction of such schemes, the management offers a bait to the employees saying that if they

go out of employment before their superannuation by opting to retire under the voluntary retirement scheme or early retirement scheme, they will be

paid some lump sum or periodic payment, as the case may be, with a view to reduce the labour force by dispensing with their services and to

enable them to have effective utilisation of man power with added profit margin, with the result that both the capital and labour get some extra

benefit without suffering any detriment on their part on either side. We have already indicated that there is nothing in either of the schemes

prohibiting the employees, who exercise their option to retire voluntarily, to claim retiral allowance, despite their fulfilling the necessary and requisite

conditions for entitlement to claim pension under G.O.O. 26. Further, the retiral allowances, that is to say, ""pension"", which is earned for the past

services of longer duration, cannot at all be denied to the employees, of course, if they fulfil the requisite conditions for entitlement to claim pension.

It is to be remembered here retrial allowance is paid for the past service rendered while lump sum payment or periodic payment or allowance is

paid to the employees retiring under voluntary retiring scheme or early retirement scheme for dispensing with their future services till up to their

superannuation. If this sort of distinction is allowed to be kept in mind, there may not be any problem at all in understanding the signal import of the

expression ""retirement on account of reasons beyond their control"".

Keeping in mind the social security sought to be provided for to the employees by such a benevolent provision, a liberal - contextual meaning, if

given to such an expression, we rather feel, the problem may get solved with ease and grace. A meaning can be ascribed to the expression

retirement on account of reasons beyond their control"", in the context, in which such an expression figures in the second limb of clause 4 as

retirement on account of unavoidable reasons"". The word ""retire"" followed by the phraseology ""on account of reasons beyond their control"" does

not indicate the mode of retirement of employees. Retirement of employees may be by different modes, as already catalogued. An employee may

retire by resignation or by voluntary retirement before he reaches the age of superannuation on account of certain unavoidable reasons. By way of

illustration, it may be stated that such unavoidable reasons may take the shape of situs of the family in a place far away from the locale of the place

of work of the employee, who is, by reason of certain circumstances and situations existing in the fanlily, compelled to be with the family members,

forcing him to resign or voluntarily retire from the services of the management. In such a predicament situation, the employee is forced to the

necessity of weighing in golden scales - the family situation and the employment prospects - present and past - and his decision gets titled to the

heavier side of the scale and such an employee cannot at all be denuded of the retiral allowance, in case he has the qaulifying service of 20 years

for claiming the proportionate retiral allowance under the second limb of clause 4 or 30 years of qualifying service for claiming full retiral benefits

under clause 1 of G.O.O. 26 on the date of his voluntary retirement, besides fulfilling the requisite condition - the fulfilinent of condition in this

illustration being either resignation or voluntary retirement on account of unavoidable reasons.

Even otherwise, that is to say, even accepting the interpretation as projected by the management, noticed by us earlier, the management cannot be

expected to have this issue decided in their favour. The reason is this. To uphold the voluntary retirement of an employee under the voluntary

retirement scheme or under the early retirement scheme, not tantamounting to ""retirement on account of reasons beyond his control"" would mean

giving a go-by to the retiral benefits of such employee under G.O.O. 26, which contains terms of conditions of service and in such a situation, the

inconsistent part of the voluntary retirement or early retirement schemes must have to be construed as ineffective and unenforceable. The rationale

for such a construction is this. Denial of retirement benefit, that is to say, ""pension"", which is earned to such an employee on account of the

inconsistent part of the voluntary retirement or early retirement schemes, is a ""hangover of the laissez faire days and utterly inconsistent with the

modern notions of fair industrial relations and, therefore, it must be rejected as ineffective and hence unenforceable"" as observed by the Supreme

Court in Sudhir Chandra Sarkar''s case. (Supra)

In the case of retrenched employees of the management, the second limb of clause 4 is not posing any problem or difficulty in the matter of grant of

retiral allowance to such retrenched employees as in the case of employees retired under the voluntary retirement or early retirement scheme. In

retrenchment, the management takes the decision to reduce the work force for achicying certain objectives. On taking such a decision, the

employee has no say at all except to receive retrenchment compensation legally due to him for dispensing with his future service thereby dashing to

pieces his expectation of a rosy future arising out of his employment. The fact that he had been paid retrenchment compensation for dispensing with

his future services, does not mean that he is entitled to get retiral benefits, that is to say, pension, in as much as it is well-settled that pension is a

right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer in case

he fulfils the necessary and requisite conditions for his entitlement to claim pension, if any prescribed, in the terms and conditions of service as

G.O.O. 26, in these actions. Clause 4 prescribes that employees, who have to ""retire on account of reasons beyond their control"" must have a

qualifying service of 20 years for entitlement to claim retiral allowance. In the case of retrenchment, as we have already indicated, the employees

have no part at all to play except the receipt of retrenchment compensation paid by the employer and such being the case, it goes without saying

that retrenched employees ceased to be employees of the management on account of reasons beyond their control. We are, therefore, of the view

that retrenched employees cannot benied the benefit of retiral allowance under clause 4 in case they have the requisite qualifying service of 20

years on the date of retrenchment.

17. There is no problem at all employees retiring on superannuation with a qualifying service of 30 years to get their retiring allowance under the

first limb of clause 4 in view of the dictum laid down by their Lordships of the Supreme Court in Sudhir Chandra Sarkar''s case, (Supra).

In view of the discussion of ours, as above, we have no hesitation in holding that :

(i) the employees, who served for twenty years and above, but below thirty years and who retired under the voluntary retirement scheme (covered

by point No. 8);

(ii) the employees, who served for twenty years and above, but below thirty years and who retired on reaching the age of superannuation (covered

by point No. 9);

(iii) the employees, whose services were terminated by way of retrenchment (covered by point No. 10); and

(iv) the employees, with thirty years of service and more and who retired under the voluntary retirement scheme (covered by point No. 11);

are all entitled to receive the retiral allowance under G.O.O. 26. These points, i.e., points Nos. 8 to 11 are, thus, answered in favour of the

employees and against the management.

12. Point No. 12 : The question, which fails for determination herein is as to whether the employees are entitled to insist upon annual review of

retirement allowance"".

Clauses 5 and 6 of G.O.O. 26, which speak of annual review of ""retiral allowance"" read as follows :

(5) All retiring allowances must receive the formal sanction of the Board, when first granted and thereafter, they will be subject to an annual

review.

(6) For purposes of the annual review, the average rate of dearness allowance paid during the preceding twelve months and applicable to the

grade of each retired employee will be taken into consideration and the necessary upward or downward adjustment will be made accordingly.

We have recorded a finding in a categorical fashion on point No. 1., viz., the argument of the management that the rights and liabilities of the parties

are to be carved out or determined on the basis of G.O.O. 26 containing the first four clauses under the caption ""retiring allowance"", which was

attached to as an annexure to the 1956 settlement, cannot at all be countenanced. The basis of this finding, as we have already stated, is again

reiterated for the sake of emphasis - restsupon upon two factors :

(1) G.O.O. 26 containing six clauses under the caption ""retiring allowances"" has been subjected to interpretation in all claim petitions filed by the

employees right from the lowest forum - Labour Court - to the highest forum - Supreme Court - in route the High Court - in all such litigative fights

between the management and the employees spread over a period of more than two-and-a-half decades till upto the remit order made by the

Supreme Court, which event happened on September 13, 1995 - and during the pendency of the litigative duel, no whisper or murmur had ever

been made as respects the absence of annual review clause in the said G.O.O. at any stage of the proceedings.

(2) Clause 1 of G.O.O. 26 sheds flood of light as to the existence of clauses 5 and 6 relatable to annual review even at the time of the 1956

settlement and, therefore, it is, the omission of those clauses in the copy of G.O.O. 26 attached as an annexure to the 1956 settlement, is of no

consequence.

Clause 1, as already adverted to, speaks of eligibility of full retiral allowance to employees having a qualifying service of 30 years on the date,

when they cease to be employees of the management by any one of the modes of retirement referred to and discussed earlier.

Clause 2 simply provides the methodology or guidelines for calculating the retiring allowance and the retiring allowance (pension) as determined,

will be the same until further orders.

Under clause 3, a right is reserved in favour of the Board to alter the scale of retiring allowance. Such alteration may be made either generally or in

respect of certain individuals. The power inhering in favour of the board to alter the retiral allowance does not mean that such retiring allowance

can be wiped out altogether and the scale of such allowance can either by increased or decreased in the light of the Circumstances that may exist at

any particular point of time.

Clause 4 provided that the Board may also grant proportionate retiring allowance to certain categories of employees on fulfilment of certain

conditions. Pertinent it is to point out at this juncture that in the process of arena of discussion revolving points Nos. 8 to 11, we have recorded a

finding that there is no discretion left with the management in the matter of grant of retiral allowance and the employees can claim such allowance as

of right, provided they fulfil the necessary and requisite conditions to claim retiral allowance as per G.O.O. 26, in as much as the retiral allowance

(pension) is earned by the employees by rendering long tenure of service.

Clause 5 simply prescribed that all retiral allowances must receive the formal sanction of the Board when first granted and thereafter they will be

subject to annual review, while clause 6 deals with the factors to be taken into consideration for fixing the annual review.

A reading of clauses 1 to 6 of G.O.O. 26 in the light of interpretation of clause 4, which deals with discretionary power of the management to grant

retiring allowances, - that too proportionate retiring allowance and not full retiral allowance, as we have made earlier, in the process of discussion

of points Nos. 8 to 11 - it is rather crystal clear that the retiring allowance, when once granted - as a matter of fact, the same had been granted all

along, besides annual review having been made once or twice earlier to 1972 - it goes without saying that annual review of the retiring allowance is

automatic, in the sense of such review not depending upon the sweet will and pleasure of the management.

This apart, some of the employees of one of the units of E.I.D. Parry (India) Ltd. located at Ranipet, claimed annual review of retiral allowance,

among other claims, in Claim Petitions Nos. 603, 604, 652, 862 of 1981 and 27 and 234 of 1982 u/s 33-C(2) of the Industrial Disputes Act,

1947, before the Second Additional Labour Court, Madras, and the claims so made culminated in an award being passed in favour of the

employees by the said Labour Court. The award so passed was agitated by filing writ petitions, reagitated by filing writ appeals and ultimately the

Supreme Court in civil appeals, admitted by way of special leave, confirmed the award so passed by the Labour Court. This aspect of the matter,

we have referred to, in the process of discussion relatable to point No. 3 revolving on the question as to whether the contentions of the

management in opposition to the claim of the employees praying for computation of retrial benefits as per G.O.O. 26 are, or, are not barred by the

principles of constructive resjudicata in view of the decision of the Supreme Court in E. I. D. Parry (India) Ltd. v. Labour Court, (Supra). It is to

be remembered here that Point No. 3, has been answered against the management and in favour of the employees.

It is thus crystal clear that if the question of annual review of retiral allowance is looked at either from the angle of a finding recorded consequent on

the independent discussion we have entered into on point No. 12 or from the angle of finding recorded consequent on the arena of discussion we

have made on point No. 3, the employees'' right to insist upon annual review of retiral allowance, cannot at all be denied. We, therefore, answer this point - point No. 12 - also in favour of the employees and against the management.

18. Point No. 13 : This point takes in its purview the question as to whether the employees are entitled to claim interest on the amount payable to

them. Whatever amount remains due and payable to the employees, after deducting the amount paid to them as per the interim orders of the

Supreme Court, it is but appropriate for the management to pay interest at a reasonable rate on the amount so due to them. It is not as if the

management had not utilised the amounts due to the employees in its commercial ventures. Such being the case, it would not be besides justice to

direct the management to pay simple interest at 12 per cent. - a reasonable rate - on the amount so found due to the employees from the date of

the common order of the concerned Labour Court. This point too is answered in favour of the employees.

In view of the fact that we have answered all the points in favour of the employees and against the management, it goes without saying that all the

writ petitions and the writ appeal as well, deserve to be dismissed.

In fine, all the writ petitions and the writ appeal as well are dismissed, confirming the respective common order, except as relatable to interest made

by the concerned Labour Court. As respects interest, we direct the management to pay simple interest at 12 per cent. per annum on the amount

due and payable to the employees, after deducting the amount paid, if any, as per the interim orders of the Supreme Court from the date of

common order of the concerned Labour Courts. We, however, make no order as to costs. on the facts and in the circumstances of the case.

