

(2006) 08 DEL CK 0121

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3410 of 1997

Greaves Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 62(1)

Industrial Disputes Act, 1947 — Section 10, 10(4), 12, 33, 33C(1)

Citation : (2006) 08 DEL CK 0121

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : D.R. Thadani, for the Appellant; B.K. Pal, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—This writ petition raises fundamental issues of first principles of jurisdiction of the authorities u/s 33 of the Industrial Disputes Act, 1947 and the difference between the scope of consideration u/s 36 A and Section 33 (C) (1) of the same enactment.

2. Respondent No. 4, Mrs.Parveen Bahl, in the instant case was appointed as a temporary Steno pursuant to an order dated 14th October, 1980. This letter of appointment contained the following stipulation:

2. You will be on probation for a period of 12 (twelve) months or for such further extended period as the Management may in its sole discretion decide. You will continue to remain on probation till a letter of confirmation is issued to you. Both during and after the probationary period, your services will be terminable by 30 days (thirty days) notice, in writing, on either side, or salary in-lieu thereof.

3. On completion of the probationary period or the extended period, as the case may be , you may be considered for confirmation on a suitable salary/grade provided your services are found satisfactory and subject to your being found medically fit by a doctor nominated by the Company.

3. The probationary period of respondent No. 4 were extended up to 30th April, 1982, by the petitioner on the ground that her work was not satisfactory. The relevant extract of the letter dated 30th April, 1982 reads as under:

Since your work was not found satisfactory by the Management during the abovementioned period of probation, vide our letter No. D.13/HRG:PV dated 17th Nov. 1981, as clarified vide our letter No. D.13/HRG:VKA dated 19th Nov. 1981, the probationary period was extended up to 30th April, 1982. We regret to inform you during the extended probationary period also your work has not been found satisfactory. We have, Therefore, to inform you that your services will stand terminated on expiry of the extended probationary period i.e. on 30th April, 1982.

The petitioner further informed the respondent No. 4 that in view of the length of her service i.e. from 21st October, 1980 to 30th April, 1982, it had been decided to pay her an amount equivalent to one month's wages as compensation, besides one month's wages as notice pay and her other dues. Respondent No. 4 was required to settle all accounts with the petitioner before closing of the office on 30th April, 1982.

4. Respondent No. 4 complained to the authorities under the Industrial Disputes Act, 1947 against her termination being illegal and that the same was on account of her involvement in trade union activities in the establishment. She asserted that the extension of her probation vide letter dated 17th November, 1981 was also without any basis. Conciliation proceedings before the authorities under the statute culminated in a failure report.

5. By an order dated 10th March, 1983, the Secretary (Labour) Delhi Administration, Delhi passed in exercise of powers under Sections 10 and 12 of the Industrial Disputes Act, 1947, the following disputes were referred for adjudication to the Labour Court-II:

Whether the service of Mrs. Praveen Bahl was unjustifiably or illegally terminated and if so, what directions are necessary in this regard.

6. The workman stated that despite the management informing the Conciliation Officer that she would be confirmed, her services were peremptorily terminated by the letter dated 30.4.1982. The petitioner stated that she has not accepted the amount which was offered by the management.

7. The industrial adjudication culminated in an award dated 31st January, 1990 whereby the adjudicator arrived at a conclusion that respondent No. 4 being on probation, was not well conversant with the terminology of the technical words and was not so highly qualified so as to expect from her that she would have correctly typed all the letters. On this ground, the Labour Court arrived at a further conclusion that mere mistakes of spelling could not be a ground for dispensing with her services and that the management had terminated her services with ulterior motives and not by a bona fide exercise of powers under

the contract. In this view of the matter, it was held that termination of the services of respondent No. 4 was illegal and unjustified and she was directed to be reinstated from the date of termination of her service. It was further directed that she would be deemed to be in continuous service from the date of termination of her service. So far as back wages are concerned, in view of the fact that the workman had been gainfully employed for a certain period after the termination of her services by the petitioner, it was directed that respondent No. 4 would be entitled to the difference of wages which she had earned uptill the date of the award while working with other firms and the salary which she would have drawn when she was working with the petitioner.

8. This award was assailed by the petitioner by way of Writ Petition (C) No. 1416/90 which was dismissed in liming vide order dated 8th May, 1990 when the Division Bench of this Court passed the following order:

We have heard the learned Counsel for the petitioner at length. We have also been taken through the portions of the award as also the relevant evidence which has been made a part of this petition. We are satisfied that the findings of the Labour Court to the effect that the respondent has been victimised is based on evidence and is fully justified. As regards the back wages, the Labour Court has made clear provision in the award itself and the appropriate authority will naturally determine the arrears which are due to the respondents. We find absolutely no merit in this petition and dismissed the same in liming.

9. Aggrieved by the above dismissal order, the petitioner filed two special leave petitions in the Supreme Court being SLP(C) Nos.7198-99/1990 against the order of this Court as also impugning the industrial award in favor of respondent No. 4. The Special Leave Petitions were called up for hearing on 20th November, 1995 and dismissed with the following directions:

We see no ground to interfere with the Award of the Labour Court as upheld by the High Court. Mr.Rao states that Mrs.Praveen Bahl, respondent in the petition herein, shall join the duties in terms of the award within two weeks. We direct Mrs.Praveen Bahl to join between December 1 and December, 15, 1995. In case she fails to join during this period, she shall not be permitted to join thereafter. Needless to say that she shall be permitted to join in terms of the Award and she shall be entitled to all the benefits given to her under the Award. The Special Leave Petitions are dismissed.

Thus, the industrial award dated 31st January, 1990 attained finality and time bound directions were passed directing the respondent No. 4 to join duties.

10. The petitioner has contended that vide a letter dated 25th May, 1990 it called upon respondent No. 4 to join service but she did not do so. By this communication, the petitioner had inter alias informed the respondent No. 4 as under:

iii) You raised an industrial dispute to challenge the termination of your service.

The Hon''ble Labour Court-II, Delhi in its Award published on 30th April, 1990 has reinstated you in service. In compliance with the Award of the Hon''ble Labour Court, the Management is hereby reinstating you in service. You are required to report for duty latest by 1st June, 1990.

iv) Please note that you will remain on probation for a further period of six months from the date you report for duty.

v) In view of the revision of minimum rates of wages vide the Notification dated 28.4.90 issued by the Delhi Administration, your consolidated salary will be Rs. 1215/- (Rs.One thousand two hundred and fifteen) per month w.e.f. The date you report for duty. The other terms and conditions of your service as stipulated in your appointment letter No. D.13/HRG:Ns dated 14.10.80 shall remain unchanged.

11. Respondent No. 4 vide letters dated 29th May, 1990 and 6th June, 1990 stated that the terms were unfair and she could not have been appointed on probation. Despite these assertions, respondent No. 4 has contended that she reported for duty vide letter dated 31st May, 1990 but was not allowed to do so by the petitioner. Needless to say, the petitioner disputes this.

12. Thereafter, the respondent No. 4 filed an application dated 1st August, 1990 u/s 36 A of the Industrial Disputes Act, 1947 whereby she sought necessary action to be taken by the Secretary (Labour) and reference of the differences which had arisen between the parties with regard to interpretation of the award to the Labour Court concerned. This application of respondent No. 4 was rejected vide an order dated 26th November, 1990 whereby she was informed that in the view of the Competent Authority, there was no ambiguity in the award dated 30th April, 1990 which warranted no clarification/interpretation.

13. The petitioner assailed this order dated 26th November, 1990 by way of a writ petition being CWP No. 178/91. During the pendency of this writ petition, respondent No. 4 also made an application dated 20th March, 1995 before the Labour Commissioner-respondent No. 2 for implementation of the award.

14. Meanwhile, CWP No. 178/91 came up for hearing on 25th July, 1995 when it was brought to the notice of the Court that the respondent No. 4 had sought implementation of the award which was not being effected on account of pendency of the above writ petition. The Court disposed of the writ petition by an order dated 25th July, 1995 holding thus:

Without prejudice to the rights of the parties, it is decided that since the petitioner has invoked the jurisdiction of the authority concerned for the implementation of the award, Therefore, this writ petition is premature. At this stage when the request of the petitioner is pending for the implementation of the award, the question to determine or to interpret the award or to hold that it is clear or vague as required u/s 36-A of the I.D. Act does not arise.

With the above observations, the petition is disposed of. Let appropriate

authority, who is competent, take steps to implement the award in accordance with the law after hearing both the parties.

15. Before the Labour Commissioner, respondent No. 4 had pleaded that she was entitled to a particular amount from the petitioner. The petitioner filed a reply dated 28th July, 1995 disputing the correctness of the amount claimed and also sought copies of the documents filed by respondent No. 4. The petitioner also pointed out that despite being asked to join, the respondent No. 4 had failed to join her duties.

16. On 13th September, 1995, the Labour Commissioner passed an order informing the respondent No. 4 that she should contact the concerned District Labour Officer for reinstatement with the Management as per the award and then to intimate the office of Labour Commissioner/respondent No. 2. So far as the claim of dues submitted by respondent No. 4 was concerned, she was directed to approach the labour court to get the amount computed in the first instance.

Thus, the respondent No. 4 was directed to explicitly join her duties in terms of the Award, between 1st and 15th December, 1995 and that in case she failed to join during this period, she would not be permitted to join thereafter.

17. Respondent No. 4 thereafter joined her duties on 11th December, 1995. In the joining report which she submitted, she had requested for pay fixation in the appropriate grade as was given to her colleagues and also demanded resultant benefits and arrears as per the award.

On the 16th of December, 1995, the respondent No. 4 again demanded amounts, which according to her were recoverable from the petitioner for the period w.e.f. 1st May, 1982 to 30th June, 1995.

18. Alleging violation of the order of the Supreme Court on account of non-payment of the amounts which she was demanding, respondent No. 4 also filed contempt petitions before the Supreme Court. These Contempt Petitions being Nos. 101-102/96 filed by the respondent No. 4 in SLP (Civil) 7198/90, were dismissed by the Supreme Court on 7th April, 1996 wherein the Court recorded that it was not satisfied that any case was made out for proceeding against the respondent for alleged contempt of the Court. The Court, however, clarified that the dismissal of these petitions would not come in the way of respondent No. 4 "in case she takes recourse to any other remedy available to her in law in an appropriate forum".

19. After dismissal of the Contempt Proceedings, the respondent No. 4 filed an application dated 16th May, 1996 u/s 36-A of the Industrial Disputes Act, 1947 before the Labour Commissioner submitting that she was reinstated in service w.e.f. 11th December, 1995 without being treated as confirmed and also no back wages and benefits in terms of the award have been provided to her.

According to the respondent No. 4 despite representations, the Management had failed to implement the Award. Therefore, according to the respondent No. 4,

prima facie disputes and differences had arisen between the parties with regard to interpretation of the award dated 30th January, 1990, in respect of non-confirmation of her service and payment of dues of wages including the arrears. On these pleas respondent No. 4 made the following prayer:

It is, Therefore, respectfully prayed that this learned authority may be pleased to make necessary reference u/s 36-A of the I.D. Act 1947 so that dispute or difference as exist between the parties with regard to interpretation of the Award is resolved by the learned labour court.

However, no copy of this application was ever served upon the petitioner.

20. It is important to note that the respondent No. 4 has admittedly been confirmed in service by the petitioner by an order dated 1st June, 1996. The respondent No. 4 has not raised any objection that she already stood confirmed and that consequently for this reason, this order was unnecessary and incorrect. This order dated 1st of June, 1996 has also not been assailed in any judicial proceedings.

21. So far as the second application dated 16th May, 1996 u/s 36A of the Act was concerned, the petitioner contested the same on several grounds including, inter alia, that the second application for the very relief, which stood rejected by 26th November, 1996, was not maintainable.

22. On 6th December, 1996, the Office of the Labour Commissioner issued a notice to the petitioner requiring it to submit a written clarification to the Labour Commissioner with regard to the payment of the dues to Smt.Praveen Bahl (respondent No. 4) in terms of the industrial award dated 31st January, 1990. It was stated therein that a report had been received by the Office of the Labour Commissioner that the petitioner had not complied with the Court's order. This notice was followed by a second notice dated 19th December, 1996.

It is noteworthy that the aforesaid notices were issued by the Labour Commissioner on the application filed by respondent No. 4, which was dated 16th May, 1996.

23. On 10th January, 1997, the respondent No. 4 addressed a letter to the Labour Commissioner- respondent No. 2 herein, which reads as under:

Sub : Implementation of Award Passed

in I.D. No.46 of 1983 dated

13th January 1990, u/s 33C(1)

of the I.D.Act, 1947.

Sir,

It is brought to your kind notice that my application dated 16.5.1996 u/s 36-A of the I.D. Act 1947 for interpretation of the Award may be treated as withdrawn.

It is Therefore requested that the above said Award be got implemented and my difference of wages be got paid to me in the pursuance of Section 33C(1) of the I.D. Act at the earliest.

Thereafter, respondent No. 2 addressed last and final notices dated 7th February, 1997 and 24th February, 1997 respectively requiring the petitioner to be present for discussions with regard to the implementation of the Labour Court's award No. 46/1983.

24. The petitioner protested against these notices by writings dated 5th March, 1997 and 15th July, 1997, setting out the complete details of the payments made and also the fact that the management had fully implemented the award and nothing further was payable to the workman.

However, apparently, dissatisfied with the submissions of the petitioner, the Labour Commissioner disregarded the same and issued a recovery notice dated 24th July, 1997 purportedly u/s 33-C(1) of the Industrial Disputes Act, 1947 for a sum of Rs. 2,48,376/60p holding that the same was payable to the workman/respondent No. 4 for the period from 1st May, 1982 to 30th November, 1996.

25. The petitioner is aggrieved by this recovery certificate and has impugned the issuance of the same by way of the present writ petition on the ground that the same is without jurisdiction and contrary to law. It has been contended that the provisions of Section 33-C(1) of the Industrial Disputes Act, 1947 are executory in nature and no certificate can be issued in such a matter where there had neither been adjudication of the issues raised by the petitioner nor any decision holding that respondent No. 4 was entitled to payment on the basis of which she was claiming the same. The other limb of the petitioner's challenge is based on the contention that respondent No. 4 had herself sought reference of the disputes/difference by way of an application u/s 36A of the Industrial Disputes Act, 1947 which amounted to an admission that the amount claimed by her had not been adjudicated upon. The Labour Commissioner-respondent No. 2 had passed an order dated 30th September, 1995 thereon informing the respondent No. 4 that so far as payment was concerned, in as much as the very facts were disputed, she would be required to approach the Labour Court by way of industrial adjudication.

It has Therefore been contended on behalf of the petitioner that a view having been taken as contained in the order dated 13th September, 1995, the respondent No. 2 did not have any power to review the decision taken. Consequently, the action of respondent No. 2 in entertaining the application u/s 36A and latterly treating the same application as an application filed u/s 33 (C) (1) of the Industrial Disputes Act, 1947, is contrary to law and without jurisdiction.

26. So far as the adjudication which culminated in the award dated 31st January, 1990 is concerned, the petitioner has contended that the only issue which was referred to adjudication related to the plea of illegality in the order of

termination. The issue with regard to extension of probation or denial of the confirmation was not even referred for consideration before the industrial adjudicator in the order of reference dated 10th March, 1983. For this reason, it is submitted that the claim of respondent No. 4 which is based on her plea that the extension of her probation was illegal, has not been adjudicated upon till date and Therefore, she shall not be entitled to any amount based on such a plea.

It is submitted that the amount which the respondent No. 4 has claimed, is an arbitrary amount and according to her is based on her claim of difference of wages between what has been paid by the petitioner to her and what she would have been entitled to as a confirmed employee. This issue was never adjudicated upon and was not admitted by the management. There was no basis for the same. Without giving an opportunity to the petitioner to contest the same in accordance with law, it is contended that the same could not have been directed to be paid.

27. On behalf of the respondent No. 4, Mr. B.K. Pal, learned Counsel has submitted that the submissions of the petitioner proceed on an erroneous misconception. He places reliance on provisions of Section 10 (4) of the Industrial Disputes Act, 1947 to submit that the industrial adjudicator was fully competent to decide all matters which were incidental to the issue referred to it. According to Mr. Pal, the issue as to the confirmation of the respondent No. 4 and the illegality of the extension of a probation were inherent in the order of reference. According to learned Counsel, the industrial adjudicator has returned a finding that the services of the respondent No. 4 were satisfactory. Reliance has also been placed on the order dated 8th May, 1990 to contend that the Division Bench of this Court in Writ Petition (C) No. 1416/1990 had also recorded that it was satisfied that the findings of the Labour Court to the effect that the respondent has been victimized is based on evidence and is fully justified. The Division Bench had noticed that the Labour Court had made a provision in the Award itself with regard to back wages, and Therefore the appropriate authority would determine the arrears which were due to the respondent. The submission is that this order was finally affirmed by the Apex Court in its order passed on 20th November, 1995 whereby the respondent was permitted to join duty by the management. On behalf of the respondent reliance is also placed on the order dated 2nd April, 1996 in Contempt Petition No. 101 & 102/1996 in SLP (C) No. 7198-99/1990 which was filed by the respondent No. 4 whereby, though the contempt petitions were dismissed, the Apex Court directed that the dismissal of the petitions would not come in the way of the petitioner in case she takes recourse to any other remedy available to her in law in an appropriate forum.

28. Respondent No. 4 has also set up a plea that the industrial award had held that the action of the management was illegal and Therefore, there was no requirement of relegating the respondent No. 4 to filing of another industrial reference and seeking any further adjudication. It is contended that the respondent had set up a plea and raised a claim that the petitioner had assured

that she would be confirmed upon expiry of the probation and on this statement she had withdrawn the grievance made by her in this behalf before the labour authorities. According to learned Counsel for respondent No. 4, the petitioner was duly notified of the proceedings and was given a hearing. It has been contended that the labour authorities issued notices dated 6th December, 1996, 19th December, 1996, 7th February, 1997, 24th February, 1997 to the respondent. The petitioner is stated to have filed a reply which was also considered by the authorities before directing issuance of the recovery certificate.

29. It is Therefore, urged that the action of the Labour Commissioner in issuing the recovery certificate was justified and in accordance with law and that the respondent No. 4 could not be relegated to seeking adjudication of the dispute raised by the petitioner and to filing of another industrial dispute.

30. Having heard learned Counsel for the parties and perused the available record, to my mind, three fundamental questions arise for consideration in the instant case. The same can be enumerated as follows:

(i) whether the direction to reinstate into service a workman would ipso facto amount to a direction by the industrial adjudicator to reinstate the workman as a confirmed employee in the post she/he was holding as a probationer wherefrom he was terminated from service;

(ii) whether the appropriate government had any authority to pass an order for issuance of a recovery certificate for recovery of dues claimed by the respondent No. 4 without an adjudication by the Labour Court on the same as directed by the order dated 13th September, 1995; and

(iii) whether the appropriate government by its order dated 13th September, 1995 having held that the respondent No. 4 was required to go to the appropriate court for getting the amount of her dues computed, had authority or jurisdiction to review the same.

31. With regard to the issue No. 1, it is necessary to examine the prayers made by the respondent No. 4 in her complaints and claims before the Conciliation Officer/industrial adjudicator. Before the Conciliation Officer, the respondent No. 4 made a prayer that the Conciliation Officer may persuade the Management to reinstate the retrenched employee with all benefits.

32. By the order dated 10th of March, 1983, the only issue which was referred for adjudication was as to whether the services of the respondent No. 4 were terminated unjustifiably or illegally. In the statement of claim filed by the petitioner dated 28th May, 1983, the petitioner thus sought the following prayers:

9. Since the management promised to confirm the employee on expiry of extended period of probation the conciliation officer did not proceed with the matter further. As stated earlier the services of Mrs. Pravin Bahl were terminated on 30.4.82. A copy of the letter of termination is annexed (Annexure-III) the Union demands immediate reinstatement of Mrs. Bahl vide letter dated 3.5.82. A

copy of the representation made by the Union is annexed as Annexure-IV.

10. In view of the submissions aforesaid, the workman through its Union respectfully prays that this Hon"ble Court may be pleased to direct the management.

(i) To reinstate the workman, Mrs. Pravin Bahl.

(ii) to award her all backwages and other benefits under her service.

(iii) To confirm her to the post of Junior Stenographer.

33. Perusal of the entire record relied upon by the parties and placed before this Court would show that there was neither any claim nor any issue raised that the respondent No. 4 was entitled to be considered as a confirmed employee or that he/she was entitled to the same wages as those of confirmed employees. There was no such pleadings before the industrial adjudicator. There was no grievance even with regard to the extension of the probation made by the petitioner nor any adjudication sought on this aspect by her. The award dated 31st January, 1990 has directed payment of an amount to the respondent No. 4 bearing in mind "what she would have drawn had she continued in service". There is no finding anywhere in the award that the respondent No. 4 would be entitled to any particular wage or wage scale or that she was required to be considered as a confirmed employee.

34. It is evident, Therefore, that though the respondent No. 4 specifically prayed for a direction to be made to the petitioner to confirm her in service, this prayer was not pressed before the industrial adjudicator. There is no finding or direction in this behalf in the award dated 31st January, 1990.

35. The respondent No. 4 herself was conscious of the fact that there was neither any finding to the effect that the extension of the probation was illegal nor any award holding or directing that the respondent No. 4 was a confirmed employee and was required to be reinstated in service in such capacity. Conscious of this, the respondent No. 4 filed the application u/s 36 A of the Industrial Disputes Act, 1947 praying that the award be sent back to the industrial adjudicator for clarification. This application was dismissed as not maintainable by the Labour Commissioner by the order dated 26th November, 1990. Thereafter, the respondent No. 4 filed an application dated 20th March, 1995 seeking implementation of the award dated 31st January, 1990 which became enforceable on its publication with effect from 29th May, 1990. The respondent No. 4 had assailed the order passed by the Labour Commissioner on 26th November, 1990 in her application u/s 36 A of the Industrial Disputes Act, 1947. This court while considering Writ Petition (C) No. 178/1991 which was filed by the respondent No. 4 assailing the order dated 26th November, 1990 had noticed that the present petitioner had contended that there was no ambiguity in the award and that it was prepared to accept the respondent No. 4 in service on the terms mentioned in the letter issued to her to join duty. The court had also

noticed that the respondent No. 4 was objecting to the terms imposed by the petitioner on the contention that they were in infringement or in violation of the award published by the Labour Court. The court consciously held that in view of the request of the respondent No. 4 in the application dated 20th March, 1995 to the labour authorities seeking implementation of the award, the question to determine or to interpret the award or to hold that it is clear or vague as required u/s 36 A of the Industrial Disputes Act does not arise. This writ petition was disposed of with a direction to the appropriate competent authority to take steps to implement the award in accordance with law after hearing both parties.

36. In the light of the above, it is apparent that the respondent No. 4 was herself of the view that the award dated 31st January, 1990 had not given her the complete relief while only directing reinstatement into service. For this reason, the workman had herself sought reference to the Labour Court u/s 36 A of the Industrial Disputes Act, 1947.

The SLP was dismissed on 21st November, 1995 directing that the respondent No. 4 would be entitled to all benefits given to her under the award.

37. The petitioner claims to have issued letters to the respondent No. 4 to join duty on 25th May, 1990 but she did not do so. Again, letter dated 17th August, 1995 was issued to her, which also she did not comply. By the order dated 13th September, 1995, the Labour Commissioner directed the respondent No. 4 to contact the concerned District Labour Officer for reinstatement in terms of the award. So far as the claims of dues submitted by her on the basis of her being a confirmed employee was concerned, the Labour Commissioner clearly directed her to approach the appropriate labour court to get the amount computed in the first instance.

38. The petitioner made an application u/s 36 A of the Industrial Disputes Act, 1947, which was rejected by the appropriate government vide its order dated 26th November, 1990 holding that the same was not maintainable. The application of the petitioner seeking implementation of the award was disposed of by the appropriate government vide its order dated 13th September, 1995 directing that for the purposes of reinstatement, the respondent No. 4 could approach the District Labour Officer. For the purposes of dues which were being pressed by respondent No. 4 on the ground of her being a confirmed employee, the appropriate government relegated the petitioner to the appropriate Labour Court for getting the amount computed.

39. Respondent No. 4 did not assail the order dated 13th September, 1995 which has attained finality. On the contrary, she moved yet another application on 16th May, 1996 u/s 36 A of the Industrial Disputes Act, 1947. This application was withdrawn by her by the letter dated 10th January, 1997 wherein she stated that she may be paid her dues u/s 33 -C (1) of the Industrial Disputes Act, 1947.

40. My attention has also been drawn to an application bearing CM No. 67/1994 dated 16th December, 1993 filed by the workman in Writ Petition (C) No.

178/1991. The respondent No. 4 in this application has averred as follows:

11. That accordingly, the present application is being made before this Hon''ble Court for issuing necessary directions to the effect so that the petitioner is able to resume her duties as a confirmed employee of the respondent and also is allowed to draw the relevant grade salary which she is entitled to receive as a reinstated employee like other colleagues which the petitioner would have been receiving without break in service.

41. On the basis of these averments, the respondent No. 4, wanting that she should be taken back as a confirmed employee made the following prayer:

It is, Therefore, most respectfully prayed that this Hon''ble High Court may release to make appropriate necessary order to the effect that the petitioner is enable to resume her duties as a confirmed employee of the respondent drawing the salary as per relevant grade which the petitioner is entitled to receive as if she continues to be in service from the date of termination (i.e. 30.04.1982) as ordered by the Labour Court vide its Award dated 30.1.1990. This order may be made without prejudice to the rights of the petitioner of receiving all the necessary consequential benefits which the petitioner is legally entitle to receive. Any other order/orders may please be passed which this Hon''ble Court deems fit and proper in the circumstances of the case.

42. The request made by the respondent No. 4 in this application was never granted. The writ petition as noticed above, was disposed of by the order passed on 25th July, 1995.

43. It is noteworthy that the respondent No. 4 was also making a prayer that she should be given the same salary as was paid to other stenos which was not on the basis of her having been deemed to be confirmed on a particular date prior to the passing of the award.

44. In this behalf, it would be useful to notice the submission of respondent No. 4 in her joining letter dated 11th December, 1995 wherein after referring the order of the Supreme Court dated 20th November, 1995 and the dismissal of the writ petition and the SLP at the instance of the petitioner, the respondent No. 4 stated thus:

A medical certificate from the Doctor as well as relieving certificate dated from the previous employer is also being enclosed and annexed.

I request for being allowed to resume duty forthwith and accordingly may also be fixed in the appropriate grade as being given to my colleagues. The resulting benefits and arrears as per award may also be provided and paid to me.

The respondent No. 4 was thus insisting for the arrears as were paid to her colleagues without asserting any claim of confirmation.

45. It is noteworthy that neither the industrial adjudicator nor any of the courts has passed an order holding that the extension of the probation of respondent

No. 4 was an act of victimization. There is no direction that the respondent No. 4 stood confirmed. Assuming that the finding of the industrial adjudicator to the effect that the services of the respondent No. 4 was satisfactory and that termination of her services was illegal and unjustified amounted to an order against the petitioner-management holding that the extension of her probation was also illegal, the question would then arise as to what is the date from which she could be held to be confirmed and what would be the benefits, monetary or otherwise, to which she would be entitled. There has neither been any adjudication on this aspect nor any findings by any appropriate forum or court in this behalf.

46. The Supreme Court directed the respondent No. 4 to join duties between 1st to 15th of December, 1995 by its order dated 20th November, 1995. The respondent No. 4 has admittedly joined duties in terms of the offer made by the petitioner on the 11th of December, 1995. In continuation of her objection that she was a confirmed employee and contending that the action of the petitioner in reinstating her on the terms on which it had done so was contumacious, respondent No. 4 filed Contempt Petition Nos. 101 & 102/1996. This contempt petition was also dismissed by the apex court which clearly held that no cause was made out for proceeding against the present petitioner for allegedly committing contempt of court. The court clarified that the dismissal of the petition would not come in her way in case the respondent No. 4 "takes recourse to any other remedy available to her in law in an appropriate forum." This order was clearly based on the defense taken by the petitioner to the effect that respondent No. 4 could only be reinstated in the post wherefrom her services had been terminated. The respondent No. 4 has accepted the fact that there was no such finding/direction in the award dated 31st January, 1990 whereby it could have been held or directed that the respondent No. 4 was a confirmed employee. For this reason, she filed a second application dated 16th May, 1996 u/s 36 A of the Industrial Disputes Act, 1947. In this application after reproducing the findings returned by the Labour Court, the workman pleaded thus:

5. That earlier also the workman concerned moved an application u/s 36-A of the I.D. Act which was not considered as such the workman concerned filed civil writ petition No. 179/91 in the High Court of Delhi.

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8. That the Hon"ble Supreme Court vide its order dated 20.11.1995 has dismissed the Special Leave Petitions and directed the respondent management to reinstate the workman.

9. That accordingly the workman respondent was reinstated in service w.e.f. 11th December, 1995 without being treated as confirmed as well as no back wages and benefits in terms of the award has also not been provided to her.

xxxx xxxx xxxx

13. That in the aforesaid circumstances it is prima facie evident that a dispute or difference has arisen between the parties with regard to interpretation of the Award dated 30.01.1990 whereby the workman has been given the relief of reinstatement in service with difference of wages and the workman concerned deemed to be in continuous service.

14. That in the Award it has been made explicitly clear that the probation period of the workman was extended malafidely and accordingly termination so made has also been held to be malafide and illegal.

15. That non-confirmation of the petitioner even till date on resumption of duty w.e.f. 11.12.1995 as well as non-payment of difference of wages including arrears by the management is against the Award dated 30.01.1990 due to which the workman concerned is seriously aggrieved.

47. After reproducing the statutory provisions of Section 36 A of the Industrial Disputes Act, the respondent No. 4 sought the following prayers:

It is Therefore respectfully prayed that this learned authority may be pleased to make necessary reference u/s 36-A of the I.D. Act, 1947 so that dispute or difference as exist between the parties with regard to interpretation of the Award is resolved by the learned labour court.

48. From the foregoing facts, it is apparent that no direction had been made in the impugned award dated 31st January, 1990 holding that the respondent No. 4 was a confirmed employee or that she was entitled to wages on the basis of salary payable to regular employee. The respondent No. 4 has not assailed the order dated 13th September, 1995 directing her to seek computation of the amount payable to her by approaching the appropriate labour court.

49. It is noteworthy that the respondent No. 4 in para 9 of her claims noticed above, herself has set up a case that the petitioner had agreed to confirm her upon the expiry of the period of the extended probation. Therefore, to the extent that the respondent No. 4 has asserted that the industrial adjudicator had held that the extension of the probation was also an act of victimization is unsupported by the case set up by the respondent No. 4.

50. The respondent No. 4 was also conscious of the fact that there had been no adjudication nor any finding or direction returned by the Labour Court on her plea that she was a confirmed employee. The petitioner contested the application filed by respondent No. 4 u/s 36 A of the Industrial Disputes Act, 1947. In its reply dated 26th November, 1996, it was pointed out that there was no dispute/differences in the earlier industrial adjudication which required any clarification and for this reason, the order dated 26th November, 1990 has been passed declining to refer such matter to the Labour Court u/s 36 A of the Industrial Disputes Act, 1947. Additionally, it was pointed out in para 4 of the reply that:

...In any case and without prejudice, the Award has now been implemented after the judgment of the Supreme Court dated 20.11.1995, and the petitioner has

been reinstated in services with effect from 11.12.1995 and she joined her services without any protest. She has now been confirmed w.e.f. 11.6.1996.

This fact was reiterated elsewhere in the reply.

51. Section 36 A of the Industrial Disputes Act empowers the appropriate government, if in its opinion there is any difficulty or doubt arising as to the interpretation of any provision of an award, to make a reference of such question to the labour court, as it may think fit, the labour court is thereafter required to give the parties an opportunity of being heard, to decide such question which decision shall be final and binding on all parties.

52. The issue in the instant case, however, is even more fundamental. So far as the pleas raised by respondent No. 4 relating to the extension of her probation and confirmation are concerned, no issue in terms thereof was referred for adjudication to the labour court. The labour court also did not frame any such issue. The respondent No. 4 had earlier filed an application u/s 36 A of the Industrial Disputes Act, 1947 which was decided by the appropriate government by its order dated 26th November, 1990 holding that no such clarification was necessary.

53. This question assumes importance in view of the clear stipulation in her letter of appointment dated 14th October, 1980 wherein it was clearly stipulated that "the respondent No. 4 will continue to remain on probation till the letter of confirmation is issued to her." Confirmation was subject to the services being found satisfactory and subject to the respondent No. 4 being found medically fit by a doctor nominated by the company.

Therefore, in the face of such stipulation being contained in the appointment letter, undoubtedly, even if it were to be held that the findings of the industrial adjudicator amounted to setting aside the letter extending her confirmation, the respondent No. 4 could not be held to be confirmed without further directions in this behalf.

54. Adjudication before the industrial adjudicator under the Industrial Disputes Act, 1947 can commence only if the appropriate government makes an order of reference referring the dispute which requires adjudication to the industrial adjudicator. The adjudication and the decision of the industrial adjudicator has to be confined to the question referred to it. In fact, jurisdiction is derived by the industrial adjudicator from the order of reference passed by the appropriate government u/s 10 of the Industrial Disputes Act, 1947. It is not open to the industrial adjudicator to enlarge the scope of jurisdiction beyond the terms of reference. Thus, in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, the reference included the issue as to whether the strike and the lockout at the Delhi Cloth Mills as well as the strike at the Swatantra Bharat Mills was justified and legal and whether the workmen were entitled to wages during the period of the strike. It was held by the Apex Court that the Industrial Tribunal must look to the pleadings of the parties to know the exact nature of the dispute,

however, it could not enlarge scope of its jurisdiction and decide that there was no strike or lockout at all. In this behalf, the court observed thus:

17. On behalf of the respondents, Mr. Chari put before us four propositions which according to him the Tribunal had to consider before coming to a decision on these two issues. They were : (i) The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute; (ii) The order of reference only limited the Tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute; (iii) Not every recital of fact mentioned in the order of Government was irrebutable; and (iv) In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first two points. The correctness of the third proposition would depend on the language of the recital.

18. So far as the fourth proposition is concerned, Mr. Chari argued that the Tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the various point about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. u/s 10 (4) of the Act it is not competent to the Tribunal to entertain such a question.

55. In the instant case, the order of reference was explicit and clear. Respondent No. 4 was conscious of the same while drafting the claims and even sought a prayer in respect of the confirmation which it appears, was not pressed. The industrial adjudicator strictly directed reinstatement into service.

56. For the purposes of consideration of the issue as to whether the award passed by the industrial adjudicator directing reinstatement has been implemented or not it become necessary to examine the meaning of the expression "reinstatement". In the Collins Concise Dictionary 3rd Edition at page 1129 "reinstatement" is defined as "to restore to former rank or condition".

The meaning given to the expression in the Legal Glossary published by the Government of India, 1988 Edition at page 285 is "to reinstall; to re-establish, to place again in former state, condition or office, to restore to a state or position from which the object or person had been removed."

57. This expression has also fallen for judicial interpretation in several pronouncements. In 1981 (1) LLJ 386 Surendra Kumar Verma and Ors. v. The Central Government Industrial Tribunal, New Delhi, in para 7 of the

pronouncement, the Supreme Court held thus:

...The Labour Court appears to have thought that the award of the relief of reinstatement with full back wages would put these workmen on a par with those who had qualified for permanent absorption by passing the prescribed test and that would create dissatisfaction amongst the latter. First, they can never be on par since reinstatement would not qualify them for permanent absorption. They would continue to be temporary, liable to be retrenched.

58. Similarly, in 1995 LLR 924, *Government of NCT of Delhi v. Kamlesh and Ors.*, it was held that reinstatement means to restore status quo ante and this Court observed thus:

However, the third contention has to be upheld. Having adjudged the termination to be illegal, the Labour Court could have directed the status quo ante to be restored but could not also have allowed relief which was beyond the scope of the terms of reference made to it. The question referred to the Labour Court was : Whether the termination of the services of Smt. Kamlesh is illegal and unjustified and if so what relief is she entitled and what directions are necessary in this respect? It is apparent that while answering the question and making the Award, the Labour Court could not have further entered into and decided the question whether the employee was entitled to regular pay-scale along with DA and additional DA.

59. In 2002 SCC (L & S) 1010, *Deep Chandra v. State of U.P. and Anr.*, the Apex Court in para 2 of the report held that such an employee would be reinstated in his original service on the same terms and conditions in which he was working earlier.

60. It would be useful to notice the observations of the Bench in 1943 K.B. 462, *Hodge v. Ultra Electric Ltd.* In this case, the arguments on behalf of the appellant were noticed thus:

The natural and prima facie meaning of the word "reinstate" as applied to a person who has been dismissed is to replace him in the position from which he was dismissed in such a way as fully to restore the status quo ante the dismissal.

In the judgment of the Bench rendered by Charles, J (page 465) of the report, it was observed thus:

The respondents did not exhibit any desire to evade their responsibilities or in any way to flout or disregard the direction given lawfully by the national service officer under the Essential Work (General Provisions) Order, 1942. They took Mrs. Birch back into their service. They put her again on the pay-roll at the same rate of wages. They paid her those wages. They insured her under the National Health Insurance Act, and they treated her in every way as she had been treated before, that is to say, as an employee in their service, save only, that they gave her no work. The reason for that, as the justices have found as a fact, was that, when she attended at the respondents' premises on August 10, there was no

work available for her to do. It appears to me that in a case of this kind the word "reinstatement" connotes the putting back, so far as is possible, of the person dismissed into the same position as that which he occupied when the dismissal took place. I cannot give accord to the submission that the idea of giving work is not to receive any consideration. I think it must; because work and wages are very closely knit together under the regulations and the Essential Work Order. Equally do I feel, however, that when employers are directed to reinstate an employee and they do all that the respondents did here to put that employee back in his previous position and only fail to provide him with work because there is no work for him to do, those employers have, in fact, reinstated the employee. I, Therefore, think that the justices were right in dismissing the information, and the appeal must be dismissed with costs.

In the concurring judgment rendered by Croom Johnson, J, it was further observed thus:

The duty to reinstate must be a duty to put the employee back in the same job and under the same terms and conditions. I assume that there was an obligation on the respondents to find some work for Mrs. Birch, but I cannot think that there was an obligation to find work every day or to find what was described in one of the cases to which we were referred, as continuous work. Without citing them I may refer to the observations of A.L. Smith M.R. in *Turner V. Sawdon & Co. (I)*. If there were an obligation to find continuous work, an action would lie at the suit of the servant for not being given enough work or a fair share of the work. In other words, the obligation on the employer is an obligation to give work if there is work available, and not an absolute obligation to give work then there is none in fact. That being so, the word "reinstatement" not being a term of art and having no specialized meaning but being a word to be accorded its ordinary sense, I can see no trace of the justices having proceeded on any wrong basis in law in arriving at the conclusion which they reached.

61. Undoubtedly, in the case of the petitioner the Labour Court in its award dated 31st January, 1990 has held that the respondent No. 4 would be reinstated into service and further would be paid wages which were equivalent to the difference in the wages which she had earned up till the passing of the award with other firms and the salary which she would have drawn if she had been working with the present management. It was specifically directed that she would be reinstated from the date of termination of her services. There was no finding and no direction that she was a confirmed employee or the date from which she was confirmed in service or the wages which she would have drawn as a confirmed employee.

62. At this stage, it is necessary to examine another argument on behalf of the respondent No. 4 in support of the submission that respondent No. 4 was a confirmed employee and Therefore entitled to all benefits. It has been contended that respondent No. 4 has been held to have completed her probationary period satisfactorily. Therefore, merely because the petitioner has not passed an order

of confirmation, would not have any impact on her services which would be deemed to have been confirmed or that there would be implied confirmation of the same. Mr. B.K. Pal, learned Counsel for the respondent No. 4 has submitted that the respondent No. 4 was entitled to the relief granted to her in view of the principles laid down by the Apex Court in 1987(Supp) SCC 1363 , State of Gujarat Vs. Akhilesh C. Bhargav and Others, State of Gujarat v. Akhilesh C. Bhargav and Ors and AIR 1988 SC 1673, Shiv Kumar Sharma v. Haryana State Electricity Board.

Unfortunately, perusal of the law on this aspect of the matter does not support the submissions of learned Counsel for respondent No. 4. In M.K.Aggarwal v. Gurgaon Gramin Bank (supra), the rules provided the maximum period of probation. The same could be for one year in the first instance and could be extended by a further period of six months. Thus, there was a limitation on the part of the employer to extend the probation beyond 18 months coupled with the further requirement that at the end of it, the services of the probationer should either be confirmed or discharged. It was in the face of such a position in the rules that if the probationer was not discharged at or before the expiry of maximum period of probation, that the Apex Court held that there would be implied confirmation as there was no statutory indication as to what should follow in the absence of express confirmation at the end of the maximum permissible period of probation.

So far as the respondent No. 4 is concerned, the appointment letter dated 14th October, 1980 contained a clear stipulation that the respondent No. 4 would be on probation initially for a period of 12 months or for such further period as the management would decide in its sole discretion. There was a further stipulation that respondent No. 4 would "continue to remain on probation till a letter of confirmation is issued" to her.

Such being the position, so far as the conditions of service of respondent No. 4 are concerned, it cannot be contended that merely because the period of probation provided had expired, there would be implied or deemed confirmation.

63. The position in 1987 (Supp) SCC 1363, State of Gujarat v. Akhilesh C. Bhargav and Ors. was similar. The applicable rules provided that no probationer should be kept on probation for more than double the normal period of two years, in the applicable administrative instructions. Since the rules did not contain any specific provision, these administrative instructions were held to be binding and consequently a probationer continuing in service for five years without any written order was held to be deemed to have been confirmed.

64. Similarly, in AIR 1988 SC 1673, Shiv Kumar v. HSEB, Chandigarh, the Court was concerned with arbitrariness and illegality in fixing the seniority list, after delay in passing an order of confirmation in favor of an employee. The issues raised before the Apex Court in this pronouncement do not arise in the instant case and for this reason, the same does not apply to the facts and circumstances

of the instant case.

65. In this behalf, the petitioner has also placed reliance on the pronouncement dated 21st January, 1964 of the Apex Court in *Kesho Ram Cotton Mills Ltd. v. Gangadhar*, reported in AIR 1963 SC 7031. In this case, it was held by the Apex Court that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of a service, unless of course, the rules under which he is appointed expressly provide for such a result. Therefore, even though a probationer may have continued to act in the post to which he is appointed on probation for more than the initial period of probation, he cannot become a permanent servant merely because of the efflux of time unless the rules of service which govern him specially laid down that the probationer will be automatically confirmed after the initial period of probation is over.

66. To the same effect are the principles laid down by the Supreme Court in *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*,

In this case the, the matter related to an employee who was appointed on probation for six months. The Court held that there can be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. The court held that without anything more, an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired, except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer.

67. In *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, the Court held thus:

6. Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. If the rules do not empower the appointing authority to extend the probation beyond the prescribed period, or where the rules are absent about confirmation or passing of the prescribed test for confirmation of probation and inaction for a very long time may lead to an indication of the satisfactory completion of probation. But in this case R.8 expressly postulates otherwise. The period of probation is subject to extension by order in writing for another period of one year. Passing the prescribed examinations and successful completion of probation and to make an order of confirmation are condition precedent. Mere expiry of the initial period of

probation does not automatically have the effect of deemed confirmation and the status of a deemed confirmation and the status of a deemed confirmation of the probation. An express order in that regard only confers the status of an approved probationer. We are of the view that note of Sub-rule (2) read with Sub-rule (6) of Rule 8 manifests the legislative intent that confirmation of the probation of the respondent would be made only on successful completion of the probation and the passing of the prescribed examinations. It is not the respondent's case that he passed all the examinations. He shall be deemed to be continued on probation. Before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calendar month's notice in writing and on expiry thereof the service stands terminated without any further notice. Within three months from the date of expiry of original two years period of probation and within one year's period, the order of termination was made. In this view the question of conducting an inquiry under the Classification, Control and Appeal (Rules) after giving an opportunity and that too for specific charges does not arise. The High Court, Therefore, committed manifest error of law in decreeing the suit. By an interim order passed by this Court, the respondent received a sum of Rs. 5,000/- from the appellant. The appellant shall not recover the same from him. The appeal is accordingly allowed. The judgment and decree of the High Court is set aside and that of the trial Court and the 1st Appellate Court are confirmed. But in the circumstances parties are directed to bear their own costs.

68. In view of the principles laid down by the Supreme Court in these cases and having regard to the terms and conditions of the letter of appointment, I have no manner of doubt that in the instant case the respondent No. 4 cannot be held to have been confirmed impliedly.

Reference can also be appropriately made in this behalf on the pronouncements of the Apex Court reported at Dr Amritlal Dharshibhai Jhankharia Vs. State of Gujarat and Another, entitled Dhanjibhai Ramjibhai Vs. State of Gujarat, entitled Dhanjibhai Ramjibhai v. State of Gujarat.

69. For this reason as well, it has to be held that the direction to reinstate the workman into service would not amount to a direction ipso facto by the industrial adjudicator to confirm the workman in the post he was holding as a probationer at the time of termination of his service.

70. In these circumstances, it has to be held that the respondent No. 4 had to be restored to status quo ante and had to be put back in the place occupied by her when her services were terminated on 30th April, 1982. Admittedly, respondent No. 4 was not a confirmed employee on this date. She was on probation and she could not have been reinstated in any other post, position or capacity. So far as the first question is concerned, it is Therefore held that the direction to reinstate the respondent No. 4 into service did not ipso fact amount to a direction to reinstate the workman as a confirmed employee in the post wherefrom she was terminated.

71. So far as the second question is concerned, it is submitted on behalf of the respondent No. 4 that under the provisions of Section 33 (C) (1), labour authorities were entitled to direct payment of wages on the higher rate to the workman inasmuch as the same only involved an arithmetical calculation. Reliance has been placed on the pronouncement of the apex court in 1966 SC 616, *Sawatram Ramprasad Mills Co. Ltd., Akola v. Baliram Ukandaji and Anr.* and the pronouncement of the High Court of Judicature at Kolkata reported at AIR 1953 SC 613, *Bilash Chandra Mitra v. Balmer Lawrie & Co. Ltd.*

72. In *Sawatram Ramprasad Mills Co. Ltd., Akola v. Baliram Ukandaji and Anr.* (supra), the workmen were claiming from the mills compensation for the period of lay off. The objection of the management to the application u/s 33 (C) (1) was not on account of any issue with regard to entitlement but it was on the ground that in a petition u/s 33 (C) (1) of the Act, the claim for lay off is not a claim for money due because calculations have to be made before the money due can be found. In this behalf, the Apex Court held that "it is not essential that a claim which can be brought before the government or its delegatee u/s 33 (C) (1) must always be for a predetermined sum. The government or the labour court may satisfy itself about the exact amount and then take action under that section."

In this case, the dates of the lay off were known and each workman would show the Labour Court that he was qualified to receive the compensation for the lay off which would be shown from the muster roll which was maintained by the management. It was thus held to be a simple arithmetical calculation, which the Apex Court permitted u/s 33 (C) (1) of the Act.

73. To the same effect are the observations of the apex court in *Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others*, . The court held thus:

7. ...Every case of calculation, however simple, would have to go first before a Tribunal. In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second....

The observations of the apex court in its judgment in fact, lend support to the submission on behalf of the petitioner.

74. Similarly, in AIR 1953 SC 613 entitled *Bilash Chandra Mitra v. Balmer Lawrie & Co. Ltd.*, the Calcutta High Court held that:

17. The next question relates to the scope and effect of the Award. It is contended by Mr. De that as the company did not at any time reinstate the plaintiff, the plaintiff cannot claim any salary or allowance. It appears to me that the contention of Mr. De cannot be accepted. The Award declares that the plaintiff is reinstated to his previous service and post with effect from the date on which the Award would become effective and as consequences of reinstatement

the plaintiff would get arrears of pay and allowances. Further, a time limit was fixed within which the amount had to be paid. It is thus clear that nothing was left to be done by the defendant company. The plaintiff was restored to his service by the Award itself and he was declared entitled to arrears of pay and allowances. There was automatic reinstatement by virtue of the Award. The award fixed the liability of the company to pay the arrears of salary and allowances. In other words, a sort of decree for a sum to be calculated arithmetically had been passed against the defendant and in favor of the plaintiff.

Therefore, there was no issue, as in the instant case, as to the status in which the workman was required to be reinstated or the wages to which he would be entitled.

75. In order to appreciate the contentions of the parties, it would be appropriate to consider the provisions of Section 33 (C) (1) and (2) and Section 36 A of the Industrial Disputes Act, 1947 in extenso which read thus:

Section 33 C) (1) Recovery of Money Due from an Employer - Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months.]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

Section 36 A. Power to remove difficulties - (1) If, in the opinion of the

appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

76. The question as to the scope and nature of proceedings u/s 33 (C) (1) also arose for consideration before this Court in *Weston Electronics Ltd Vs. Union of India and Others*, . The Division Bench of this Court authoritatively laid down the principles thus:

37. From the aforesaid discussion, we conclude that the proceedings u/s 33-C (1) are in the nature of execution proceedings providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award or the provisions of Chapter V-A or Chapter V-B. Section 33-C (1) does not vest any power of adjudication on the appropriate government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate government has been taken by the employer simply with a view to oust the jurisdiction of the appropriate government under the said Section and deprive the workman of money due to him. On the interpretation of Section 33-C (1) of the Act and scope of power of the appropriate government under this Section, we summarise our conclusions as follows:

(i) Proceedings u/s 33-C (1) of the Act are in the nature of execution proceedings.

(ii) The appropriate government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry.

(iii) In case the management raises bona fide dispute/s on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate government has no right of adjudication of such dispute/s.

(iv) In case of bona fide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/ Industrial Tribunal.

(v) The appropriate government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or mala fide taken with a view to deprive the workman of the money due to him.

(vi) The appropriate government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision u/s 33-C (1) and is also required to make a

speaking order giving reasons so that the aggrieved party - management or workman may seek judicial review of the decision of the appropriate government in accordance with law.

77. In *Union of India Vs. Amar Singh*, , the learned single Judge of this Court was called upon to consider the jurisdiction of the court while considering an application of the workman filed u/s 33-C (2) of the I.D. Act. The workmen had claimed difference of wages from the date they acquired temporary status till they were appointed on regular pay scale. The court held that the claims of the workmen, who were daily rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognised by the employers and such claims were disputed by the management. In these circumstances, it was held that there could be no computation of the benefit u/s 33-C (2) of the statute. This petition was held to be not maintainable.

78. The apex court was called upon to consider a similar question in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, wherein it was held that the power of the Labour Court u/s 33-C (2) extends to interpretation of the award or settlement on which the workman's right rests, as the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. Where the basis of the claim or the entitlement of the workman to ascertain the benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute which relates to entitlement was held to be not incidental to the benefit claimed. In these circumstances, the apex court held that such a dispute was clearly outside the scope of proceedings u/s 33-C (2) of the Act, which provision would be applicable only where the entitlement has been earlier adjudicated or recognized by the employer.

It is noteworthy that this case also related to the claims of the workmen, who were daily rated/casual workers seeking same wages as a regular workman.

79. On behalf of the respondent No. 4, reliance has also been placed on *Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others*, The court was called upon to consider provisions of Section 6 (H) (1) and (2) of the U.P. Industrial Disputes Act, 1947 which are in pari materia to Section 33 (C) (1) and (2) of the Industrial Disputes Act, 1947. The court pointed out the contrast between "money due" on the one hand and a benefit which is not "money due". In both the statutes, the cognate section is divided into two parts. The first part deals with recovery of "money due" to a workman under an award and the second deals with a "benefit" computable in terms of money. A "benefit" can become "money due" after the money equivalent is determined on the other marks out the areas of operation of the two sub-sections. It was held by the Apex Court that:

7. ...If the word "benefit" were taken to cover a case of mere arithmetical calculation of wages, the first sub-section would hardly have any play. Every case of calculation, however, simple, would have to go first before a Tribunal. In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money". The contrast in the two sub-sections between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the "amount due" and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due. But the antithesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government under the first sub-section. It is verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit.

The claim of respondent No. 4 is not "money due" nor is it a "benefit" which involves merely arithmetical calculations. The same would entail fixation of the date of confirmation, her wages, determination and quantification of the dues of the respondent No. 4, all of which are disputed by the petitioner.

80. In *The Malout Transport Company (Private) Ltd. Vs. The State of Punjab and Others*, it was stated that a certificate could only be issued in a case where the money due had already been ascertained and the Labour Commissioner could not, on his own, proceed to ascertain the amount and issue the recovery certificate.

On the question under consideration, the following passage from *Bengal Nagpur Cotton Mills Ltd. Vs. State of Madhya Pradesh and Others*, is of irrefutable topicality:

6. In our opinion, the contention advanced by the learned Counsel for the petitioner must be given effect to. The argument of the learned Advocate-General does not seem to us, to be in accord with the language of Sections 25FFF and 33C. Section 33C (1) speaks of recovery of any money due to a workman from an employer under a settlement or an award or under the provisions of Ch. VA. Now, an amount "due" means an amount which has been ascertained and has become payable. Section 33 C (1), Therefore, deals with the recovery of an amount which has already been ascertained and not with the

ascertainment of any amount payable to the employee. The amount due to a workman from an employer under a settlement or an award may be an ascertained amount.

But the same cannot be said of an amount due to him under the provisions of Ch. VA. This has to be determined in accordance with the relevant provisions of Ch. VA before the recovery of it can be ordered u/s 33 C (1). Section 33 C (1) no doubt says that the appropriate Government if satisfied that any money is due, shall issue a certificate for the recovery of that amount. But this satisfaction of the appropriate Government is not for the purpose of the ascertainment of the amount. It is with regard to the question whether any ascertained amount payable to the worker has or has not been paid to him, or whether any balance is still due to him. That the question of recovery of any amount cannot arise unless it is first ascertained is a proposition obvious enough.

That the amount of compensation payable to workmen in case of closing down of an undertaking is not always a mere matter of calculation from the muster-rolls maintained by the undertaking becomes plain from the provisions of Section 25FFF. The amount of compensation payable under the said provision has to be ascertained with reference to the continuity of service of the workman during the prescribed period and in accordance with the provisions of Section 25 F and also with reference to the question whether the undertaking was closed down on account of unavoidable circumstances beyond the control of the employer. Where the undertaking is closed on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to workmen cannot exceed his average pay for three months.

Again, under the Explanation to Section 25FFF, an undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stock is not taken to have closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to Sub-section (1) of Section 25FFF. Without an adjudication on all these points, the compensation payable to workmen u/s 25FFF cannot be determined, and unless it is determined there cannot be any recovery of that amount u/s 33C. Here, admittedly, there was no ascertainment of the amount of compensation payable to workmen u/s 25FFF. Consequently, the Labour Commissioner had no jurisdiction to issue certificates for the recovery of the amount of compensation calculated by himself on the basis of the registers maintained by the petitioner-mills.

81. In 1995 LLR 924, Government of National Capital Territory Through Medical Superintendent Guru Teg Bahadur Hospital, Shahdara, Delhi v. Smt. Kamlesh and Anr., vide an ex-parte award dated 21st July, 1994, the Labour Court held that the termination of the services of the respondent/workman was illegal and directed reinstatement with continuity of service. The Labour Court further directed payment of full back wages as per the regular pay scale along with DA and additional DA to be paid to the workman. In this case, the management

assailed the ex-parte award on the ground that the award directing payment of regular wages was wholly beyond the terms of reference inasmuch as the appropriate government had only referred the issue relating to the claim of wrongful termination of service. The Division Bench of this Court upheld the finding relating to the termination of service being illegal and also approved the finding of the Labour Court to the effect that the termination being illegal and wrongful, and the workman not being gainfully employed elsewhere during the period was entitled to back wages. However, it accepted the challenge to the award of regular pay scale to the workman holding thus:

9. However, the third contention has to be upheld. Having adjudged the termination to be illegal, the Labour Court could have directed the status quo ante to be restored but could not also have allowed relief which was beyond the scope of the terms of reference made to it. The question referred to the Labour Court was : Whether the termination of the services of Smt. Kamlesh is illegal and unjustified and if so what relief is she entitled and what directions are necessary in this respect? It is apparent that while answering the question and making the Award, the Labour Court could not have further entered into and decided the question whether the employee was entitled to regular pay-scale along with DA and additional DA.

10. For the foregoing reasons, the petition is allowed in part. The directions contained in the operative part of the award whereby the employee/respondent No. 1 has been allowed reinstatement with continuity of service and full back wages is maintained. Rest of the award allowing as par the regular pay scale along with DA and additional DA to the respondent No. 1 is set aside. The result is that the employee/respondent No. 1 shall be entitled to be reinstated back in service with full back wages calculated at the same rate at which she was being paid on the date of impugned termination subject to revision of rates under the minimum wages act as may be applicable to her.

11. We may make it clear that we have expressed no opinion on merits of the question whether the respondent No. 1 is entitled to regular pay scale or not. She may raise that question before an appropriate forum if she may be inclined to do so.

82. It is noteworthy that the facts of this case are similar to the case laid before the industrial adjudicator. The management has challenged the very entitlement of the workman to her claim that she was a confirmed employee and was entitled to payment of wages on this ground. There is neither adjudication on this issue nor any finding or direction made by the labour court in this behalf. Therefore, in the light of the principles laid down by the Apex Court in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, and by the Division Bench of this Court in *Weston Electronics Ltd Vs. Union of India and Others*, as well as in 1995 LLR 924 entitled *Government of NCT of Delhi v. Kamlesh and Ors.*, the petition u/s 33-C (1) of the Industrial Disputes Act, 1947 seeking a claim which was neither adjudicated nor admitted by the management was not maintainable.

Furthermore, by the order dated 13th September, 1995, the appropriate government had already held so.

83. It has been urged that the Division Bench of this Court in *M/s Weston Electronics Ltd. v. Union of India* (supra) has clearly held that the appropriate government is required to afford a reasonable opportunity to the management and the workman and comply with the principles of natural justice before taking a decision u/s 33-C (1) and is also required to make a speaking order giving reasons so that the aggrieved party - management or workman may seek judicial review of the decision of the appropriate government in accordance with law.

84. It has been pointed out that in the award dated 31st January, 1990, no figures were mentioned. The workman filed an application dated 16th May, 1996 u/s 36-A of the Industrial Disputes Act, 1947 which has been noticed hereinabove. Vide a letter dated 10th January, 1997, the respondent No. 4 had withdrawn this application and by one single line in the same letter, requested that the award be got implemented and difference of wages be paid to the respondent No. 4 at the earliest. Neither the application dated 16th May, 1996 (under Section 36-A of the statute) nor the letter dated 10th January, 1997 contained any computation or the amount which the respondent No. 4 was claiming. In its reply dated 5th March, 1997 and 15th July, 1997, the petitioner had vehemently objected, not only to the maintainability, but even had made objections to the amounts which were being claimed by the respondent No. 4.

85. The respondent No. 4 has placed reliance on a notice dated 24th July, 1997 addressed by the Assistant Labour Commissioner to the District Collectorate (Collector), Tis Hazari, Delhi which reads as follows:

As per Labour Court Award dated 31.1.1990 in I.D. No. 46/83, a sum of Rs. 2,48,376.60 (Rupees Two Lakh Forty Eight Thousand, Three Hundred Seventy Six and Sixty Paide) for the period from 1.5.82 to 30.11.96 is payable to the workman concerned Smt. Pravin Bahl by M/s Greaves Cotton & Co. Ltd., Thapar House, 124, Janpath, New Delhi.

The aforesaid amount is to be recoverable u/s 33-C (1) of the Industrial Disputes Act, 1947 and there is no separate account as such this amount shall be payable to Smt. Pravin Bahl.

86. It is pointed out that pursuant to this communication, the Tehsildar has issued the notice dated 24th July, 1997 to the petitioner requiring it to deposit a sum of Rs. 2,48,376.60/- to the account of the respondent No. 4 by the 19th of August, 1997. Undoubtedly, no speaking order in terms of the directions of the Division Bench in *Weston Electronics Ltd.* (supra) has been passed.

There is no basis as to how the figure was arrived at by the Labour Commissioner nor any justification for the demand by the Collector for the recovery of this amount. The Government has been arrayed as a party

respondent before this Court but has also opted not to appear in the present proceedings. No counter affidavit has been filed. The petitioner has placed before this Court the recovery certificate while the respondent No. 4 is placing reliance on the communication dated 24th July, 1997 whereby the Government wrote to the District Collector to effect the recovery of the amount.

87. Form K-I to the Industrial Disputes (Central) Rules, 1957 provides the format in which an application under sub-Section 2 of Section 33 of the statute is required to be made. The details of the amounts to be claimed have to be set out in the annexure. The respondent No. 4 has submitted that as per Rule 62(1) of the Industrial Disputes (Central) Rules, 1957, the workman is only required to submit an application which may be in the form of a letter and details of the money to which he is entitled and that such formality has been completed by the workman.

88. The request of the workman has been noticed herein above. It has been contended on behalf of respondent No. 4 that she had enclosed details of the amounts which she was entitled to, Along with its letter dated 16 November, 1995 and further that the legal notice dated 23rd May, 1997 had also been served on the petitioner Along with calculations. It has also been contended that the respondent has also placed calculations of the amounts due to her before this Court. Therefore, according to the respondent No. 4, the petitioner cannot object to the order passed by the Labour Commissioner.

89. The order dated 24th July, 2005 placed before this Court has erroneously recorded that the Labour Court award dated 31st January, 1990 had held that the workman was to be paid a sum of Rs. 2,48,376.60 for the period 1st of May, 1982 to 30th November, 1996. It is noteworthy that the respondent No. 4 had sought reference of the issue to the Labour Court in its letter dated 16th May, 1996. The petitioner has also urged that there was no application u/s 33(C) (1) of the Industrial Disputes Act, 1947. The only application before the labour authorities was the application afore-noticed dated 10th January, 1997 by the petitioner which contains no prayer relating to confirmation and which gave no details of the dues, their basis or the period.

90. Respondent No. 4 had filed an application bearing CM No. 67/93 dated 16th December, 1993 in CWP 78/91 asserting that she was entitled to resume duty as a confirmed employee. This Court in the order dated 25th July, 1995 had not given the relief in this behalf to the workman. The Assistant Labour Officer vide its order dated 14th September, 1995 had directed the respondent No. 4 to approach the Labour Court to get the amount computed. Undoubtedly, there was no material whatsoever before the authorities when the order dated 24th July, 1997 has been issued directing recovery of the amount. In these circumstances, I find that the petitioner has been denied an opportunity to contest the claim made.

91. It is now necessary to examine the third question noticed above which

relates to the jurisdiction of the labour authorities to review an order once passed. Mr. D.R. Thadani, learned Counsel for the petitioner has contended that the Industrial Disputes Act, 1947 confers no power on the labour authorities to review the orders passed by them.

92. Undoubtedly the Industrial Disputes Act, 1947 does not confer any such power on the authorities. Power to review is derived from specific statutory power in this behalf. In *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, the Court held that the Court was required to consider a question as to whether an official Shri Monkodi had the legal competence to quash the order made by the Saurashtra Government on 22nd October, 1956. It was noticed that Shri Mankodi was functioning as a delegate of the State Government and that the order passed by him in law amounted to a review of the order made by the Saurashtra Government. In this behalf, the Court held that the power to review was not an inherent power and that it must be conferred by law either specifically or by necessary implication.

93. No provision in the statute in question was placed before the Court from which the Court could gather that the Government had the power to review its own order. In these circumstances, it was held that if the Government has no power to review its own order, it was obvious that its delegatee could not have reviewed its order. The question as to whether the Government's order was correct or valid in law did not arise for consideration in the proceedings before the Apex Court so long as that order was not set aside or declared void by a competent authority and hence the same could not be ignored.

94. By the order dated 13th September, 1995 on the earlier application filed by the workman for implementation of the award, the authority had directed the workman to get the amount computed from the appropriate Labour Court. The respondent No. 4 thereafter had sought nothing new. She has not assailed the order dated 30th September, 1995. On the contrary, she has filed the application dated 16th May, 1996 u/s 36 A of the Industrial Disputes Act and had withdrawn the same by a communication dated 10th January, 1990 and sought payment of the same dues u/s 33(C) in respect of which an order dated 13th September, 1995 was passed by the authorities. Therefore, the impact of the order which was issued by the Labour Commissioner on 24th July, 1997 was in fact to review the earlier order.

95. So far as the power to review is concerned, it is well settled that the same has to be explicitly provided by the statute either specifically or by necessary implications.

The order issued on 21st July, 1997 Therefore is clearly without jurisdiction and contrary to law. The same is not sustainable for this reason as well.

For all the foregoing reasons, the writ petition deserves to be allowed. The order of the respondent No. 2 computing the amount demanded from the petitioner and the notice dated 11th of August, 1997 are hereby set aside and quashed.

There shall be no order as to costs.