

(2001) 05 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 926 of 2001 with Writ Petition No. 927 of 2001

Hindustan Coca Cola Bottling S/W Pvt. Ltd. and Another

APPELLANT

Vs

Narayan Rawal and Others

RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 42, 43, 43
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 10(1), 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 12, 24, 25, 28, 30

Citation : (2001) 4 ALLMR 302 : (2001) 4 BomCR 402 : (2001) 3 BOMLR 817 : (2001) 90 FLR 150 : (2001) 2 LLJ 502

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. J.P. Cama, for the Appellant; Mr. S.J. Deshmukh, Mr. S.Z. Choudhari and Mr. N.M. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The following two latest judgments of the Supreme Court have given rise to the present litigation under Article 226 of the Constitution of India before this Court.

(i) Vividh Kamgar Sabha v. Kalyani Steels Ltd. & Ann.

(ii) Cipla Ltd. v. Maharashtra General Kamgar Union.

On the basis of these two Judgments, the petitioners filed an application before the Industrial Court where the complaints on behalf of the employees/union were filed against the petitioners under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the M.R.T.U. &P.U.L.P. Act). These complaints are still pending before the Industrial Court. On 20th February, 2001 the Petitioners filed separate identical applications before the Industrial Court in the aforesaid complaints praying that in view of the

aforesaid Judgments of the Supreme Court, these complaints should be dismissed as the petitioners have disputed the employer-employee relationship with the employees on whose behalf the complaints were filed and are pending. By an order dated 27th March, 2001, the Industrial Court has passed the impugned order giving reasons in detail why the applications filed by the petitioners could not be entertained and why the complaints could not be dismissed as prayed for by the petitioners. The Petitioners have carried the said order before this Court and have prayed for quashing and setting aside the said order and have also prayed for dismissal of the said complaints following the aforesaid two judgments of the Supreme Court and also to vacate the interim orders which were passed in favour of the employees in the past in the same proceedings. I must observe that the dispute between the parties has threatened to become a perennial dispute keeping the Court's machinery busy forever.

2. Since the present proceedings involve the fate of about 400 toiling workers and the 400 families I have given preference to the matters to be heard finally at the stage of admission itself, by consent of learned Counsel on either sides.

3. Shri Cama, the learned Counsel for the petitioners has prayed for leave to amend the petition in terms of the draft amendments handed in Shri Deshmukh for the respondent employees has vehemently opposed the amendments. In my opinion, both the amendments are of formal nature of adding a ground in the petition and a prayer in the prayer clause. The amendments are allowed in terms of the draft amendments handed in and marked as "X" and "Y" respectively. The petitioners are directed to carry out the amendments within four weeks from today.

4. The employees in Writ Petition No. 926 of 2001 and the Bhartiya Kamgar Sena in Writ Petition No. 927 of 2001 filed complaints of unfair labour practices before the Industrial Court under Items 5, 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The respondents in both the petitions would be hereinafter referred to as the employees and the union. It was the case of the employees that they were in the employment of the petitioner Company for a period ranging from 2 years to 16 years as set out in the complaint, continuously without any interruption. It was specifically averred in the complaint that the respondent No. 3 in the complaint and respondent No. 45 in the writ petition was a person who was supplying man power to the petitioner Company. He being individual he was having no office but was operating from his residence. For sake of brevity the said person would be referred to as the contractor. The employees further averred that they were supplied by him to the petitioner Company and they were working under the supervision and control of the management of the petitioner Company. According to the employees their service records were maintained by the Company and that the nature of work done by the said employees was of permanent and perennial nature. It was the grievance of the said employees and the union that all such persons employed were labeled as contract labour engaged through the contractor. According to them as they were doing the same

work under the same roof and under the same management, they were entitled to be treated as the regular employees of the petitioner Company to get all the benefits available to the regular employees of the petitioner Company. The employees and the union both have laid emphasis on their contentions that the so called contractor and the so-called contract labour both were a sham paper arrangement and that there was no genuine and real contract labour engaged by the petitioner Company. In the aforesaid pleadings, the employees and the union sought relief from the Industrial Court as under :-

(a) It be decided and declared that the respondents have engaged in and are continuing to engage in the Unfair Labour Practices under Items 5, 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 and they be refrained from engaging in such acts of unfair labour practices;

(b) It be decided that the respondent No. 3 is a sham contractor and the complainants are employees of the respondent No. 1 Company;

(c) It be decided and declared that the complainants are entitled to all benefits and privileges available under the settlements/agreements entered into between the respondent No. 1 and Union of employees of respondent No. 1 and the respondents be directed accordingly."

They also sought interim orders to protect their existing position of employment which was granted by the Courts from time to time in different proceedings. As on today the position qua their employment continues as it is.

5. The petitioner Company filed its written statement to contest the complaint of unfair labour practice on the ground inter alia that the concerned persons were not the direct and regular employees of the petitioner Company but they were engaged through the labour contractor and that there was no master and servant relationship between the petitioner Company on the one hand and the contract labour on the other. The petitioner Company denied all other charges of unfair labour practices against it leveled in the complaint. Both the parties have filed their documents before the Industrial Court which is presently seized of the complaints, I am not mentioning the other events and facts and averments made by both the sides at different stages in different proceedings as for the present it is not at all relevant as I am called upon to decide the legality and validity of the impugned order passed by the Industrial Court on the applications filed by the petitioner Company before the Industrial Court seeking to dismiss the complaints following the aforesaid two judgments of the Supreme Court. The Industrial Court has declined to dismiss the complaints by the Impugned common order which is under challenge before me under Article 226 of the Constitution of India.

6. Shri Cama the learned Counsel for the Petitioner has strongly urged how the Impugned order of the Industrial Court was bad in law and was not sustainable at all in the light of the aforesaid two Judgments of the Supreme Court. Shri Cama has submitted that the Industrial Court ought to have dismissed the complaints as they were not maintainable under the provisions of the M.R.T.U.

and P.U.L.P. Act. Shri Cama has pointed out that the ratio of both these Judgments squarely apply to the facts of the present case and that there was absolutely no doubt that the said complaints were not maintainable under the said Act. Shri Cama has pointed out from the pleadings and the documents that the petitioners had disputed the factum of employer employee relationship between the petitioner Company and the contract laborers engaged by the Company through the contractor. (It appears that there were more than one contractors functioning in the petitioner Company). Shri Cama has pointed out that from the beginning in the written statement, it was stressed by the Company that there was no master and servant relationship and, therefore, the provisions of the M.R.T.U. & P.U.L.P. Act did not apply in the case. Shri Cama has taken me through the pleadings and the documents and he has nothing more to add except reading the aforesaid two judgments of the Supreme Court which appear to be the trump card in his hand.

7. Shri S. J. Deshmukh appearing for the employees and Shri A. V. Bukhari for the Union both have strongly refuted the submissions made by Shri Cama. Shri Deshmukh has read threadbare both the judgments to point out what exactly was the ratio of those judgments. He also cited certain judgments to explain what would amount to a ratio of a judgment. It is not necessary to refer to those authorities here. According to Shri Deshmukh the Supreme Court was satisfied on the evidence and material before the Industrial Courts in those matters that there was no employer-employee relationship between the Principal employers and the contract labour employed through the contractors. Those conclusions were based on the evidence and material adduced by both the parties in the full-fledged trial and not on the basis of the pleadings and not at the threshold of the complaints. According to Shri Bukhari the judgment of three Judges who had laid down the underlying principles to determine the questions of employer-employee relationship in the case of *Hussain Bhai v. Alath Factory Tezhilali Union*," was not brought to the notice of the Bench of two learned Judges. Shri Bukhari further submitted that the labour was merely supplied by the so-called contractors and that fact by Itself is not sufficient to throw the laborers out of employment. He further stressed the point that the Industrial Court would have to consider the effect of non-registration by the petitioners and non-obtaining of licence by the so-called contractor for a very long period under the mandatory provisions of the Contract Labour (R & A) Act. The point whether the absence of the aforesaid mandatory preconditions would go to create by implications ipso facto the employer-employee relationship would also be required to be decided by the Industrial Court, says Shri Bukhari. Both the learned Counsel have further pointed out that the moment their complaints are dismissed the employees would be out of employment and the contract labour would stand abolished in the process. Further they have submitted that the employees have no remedy under the Industrial Disputes Act, 1947 to get the point of employer-employee relationship adjudicated de hors the main grievance in the pending complaints; and thereafter get the complaints decided. Both have fervently urged that in this

long process the laborers would perish with no fault of theirs about the choice of forum for justice.

8. At one point of time I was contemplating an idea to direct the State Government to refer the whole complaint for adjudication u/s 10 of the Industrial Disputes Act, 1947 to the Industrial Tribunal (Courts) as it is as a pragmatic and practical solution in the long term Interest of both the parties. The Tribunal would decide the question of relationship as well as the issue of unfair labour practices as the very same schedules of the unfair labour practices are incorporated in the I.D. Act also. Such a course is not my original idea but it was followed by the Supreme Court in the case of H. R. Ahyantheya v. Sandoz (I) Ltd., while holding that the petitioner being a medical representative was not a workman u/s 2(s) of the I.D. Act and hence he could not file a complaint of unfair labour practice under the M.R.T.U. & P.U.L.P. Act. The Bench of Five learned Judges have found such a novel course to eliminate the procedural delay. It is observed thus :-

"Although we hold that the complaint filed by the workmen is not maintainable under the Maharashtra Act, we are of the view that taking into consideration the fact that a long time has lapsed since the filing of the complaint, It is necessary that we exercise our powers under Article 142 of the Constitution, which we do hereby and direct the State Government to treat the employees" said complaint as an industrial dispute u/s 10(l)(d) of the said Act to the Industrial Tribunal, Bombay within four weeks from today. The Industrial Tribunal shall dispose of the reference within Six months of the date of reference."

Obviously the Supreme Court could do so in exercise of its extra ordinary plenary powers under Article 142 of the Constitution, Whether I could do so under Article 226 was debatable and whether interim orders to continue the status quo in respect of the employment could be passed till the final adjudication was the other hurdle. I have therefore, refrained from adopting such a course, though It would have been appropriate for doing complete justice in the facts and circumstances of this case. Further difficulty was to hold on merits that the complaints were not maintainable, which was the main contention.

9. By the impugned order dated 27th March. 2001 the learned Member of the Industrial Court has not accepted the prayer of the petitioners to dismiss the complaints at the threshold. The learned member has set out in detail the pleadings and subsequent interim orders passed from time to time in this matters. The Industrial Court has relied upon its earlier order dated 7th September, 2000 that the petitioners had not filed any documents to show that they had registered themselves under the Contract Labour (Regulation and Abolition) Act, 1970 to enable the petitioners to engage contract labour. It appears that previously, M/s. Parle Brewereges Ltd. were the predecessors of the present petitioners and the petitioners appear not to have obtained a valid licence from the appropriate authority under the said Act. The Industrial Court has also observed that even the alleged contractor had not obtained valid licence. The Industrial Court has further observed in the said order that after the

agreement dated 31st March, 2000 between the petitioners and M/s. Parle Brewereges Ltd., there was no valid licence obtained by the alleged contractor and the petitioners had also not registered themselves under the said Act too enable them to engage contract labour in accordance with the provisions of the law. At this stage, the Industrial Court found a strong prima facie case in favour of the employees and the union and ordered status quo to be maintained by both the parties. According to the Industrial Court, it was mandatory for the petitioners as the subsequent principal employer to have registered themselves with the appropriate authority u/s 12 of the Act. The Industrial Court found that the petitioners as well as the alleged contractors both had violated the mandatory provisions of the said Act and, therefore, the employees were granted Interim orders in their favour. The Industrial Court having considered the aforesaid order has observed in the impugned order that there was no contract factually and actually signed between the alleged contractor and the petitioners. The Industrial Court has found that the predecessors of the petitioners had signed the contract which had expired in March, 2000 and was further extended by two months. The Industrial Court has, therefore, postponed consideration of the objections raised by the petitioners. The Industrial Court, in view of the peculiar facts and circumstances of the case in its hand, has specifically recorded that It desired to err on safer side perhaps to wait for evidence to be adduced by both the sides to apply the ratio of the aforesaid two judgments of the Supreme Court. The Industrial Court has specifically recorded its finding that the petitioners as the principal employer had not registered themselves u/s 7 of the Contract Labour (Regulation and Abolition) Act., nor was there any valid licence u/s 12 of the said Act obtained by the alleged contractor. The Industrial Court has, therefore, observed that "if the respondents" by leading evidence establish that there is no relationship of employer and employee between the parties, the same issue will be framed and will be decided on merit."

10. At the outset I must express my inability to accept the contention of Shri Cama, the learned Counsel for the petitioners that the proceedings under M.R.T.U. & P.U.L.P. Act are of summary nature. From the preamble to the last item of the schedules it would be crystal clear that the enactment contemplates a full-fledged trial of the complaint filed by the parties before the appropriate courts u/s 28 read with Section 30 of the Act. The appropriate Court has to accept the pleadings and documents from both the parties and record evidence and have to hear both the sides and decide the complaints u/s 28 or references u/s 24 and 25 of the Act in accordance with law. The Courts under this Act are empowered to decide all the incidental issues arising during the course of the proceedings. The Act further provides a revision u/s 44 of the Act from the orders of the Labour Court to the Industrial Court. Section 59 of the Act puts embargo on the parties to file any other proceedings relating to the same cause of action decided by the Courts under this Act either under the Industrial Disputes Act or the Bombay Industrial Relations Act, as the case may be. The decision of the Courts under this Act are regarded to be final. Violation of any

provisions of the Act and disobedience of the orders attract penalties and attract penal consequences. I am, therefore, not able to agree with Shri Cama that the complaints filed under the Act are of summary nature and that the Industrial Court has no powers and jurisdiction to decide the employer employee relationship in the narrow jurisdiction being of summary nature.

11. It is also not possible for me to agree with Shri Cama that the moment the principal employer whispers an objection in respect of employer employee relationship, the complaint should be dismissed at the threshold. I am afraid, that is not the ratio of the aforesaid two judgments of the Supreme Court. It is pertinent to note that in both the matters the Lower Courts had decided the complaints finally after recording evidence and on completion of full-fledged trial before the Court. These Complaints were not dismissed at the threshold on the objection raised by the respondents that the concerned employees were contract labour and that there was no employer employee relationship. In those matters, both the sides had produced sufficient evidence and material on record to enable the Industrial Court to hold that there was no employer employee relationship. In the aforesaid circumstances, the Supreme Court has held that if the employees failed to establish employer employee relationship by adducing sufficient material, it cannot be held that the principal employer was guilty of any unfair labour practice alleged by the employees. In the peculiar facts and circumstances of this case such evidence and material is necessarily required as the crucial status of the employees hangs on the thread of the strong and mandatory provisions of the Contract Labour (Regulation and Abolition) Act i.e., the registration by the principal employer and a valid licence to be obtained by the contractor to engage contract labour in the establishment of the petitioners. This case is not as simple as is tried to be made out to take the benefit of the aforesaid two judgments of the Supreme Court that the petitioners have disputed the employer employee relationship with the alleged contract labour. No doubt it is true that in the body of the complaint, the complainants have set out the true facts that they were supplied by the so-called contractor to the predecessors of the petitioners and they continued in the same position even after the petitioners stepped in the shoes of their predecessors without complying with the mandatory provisions of the Act. The Industrial Court will have to go into all these aspects of the matter and will have to decide the issue of real relationship of the alleged contract labour i.e., the employees with the principal employer i.e., the petitioners. The Industrial Court will also have to address itself to the issue whether the supplier of the labour had become a contractor and what would be the deeming effect of non-registration by the petitioners and non-obtaining valid licence under the Act on the relationship.

12. In the judgment before the Supreme Court, the whole evidence and entire material was placed before the Industrial Court on the basis of which it was found that there was no employer employee relationship between the contract labour and the principal employer. The Industrial Court will have to undergo the same exercise to find out exact and actual status of the alleged contract labour

i.e., the concerned employees in both the above petitions. A more serious thought will have to be given by the Industrial Court to these matters as there are not a few employees who are concerned with the matter but the livelihood, bread and butter of more than 400 families is involved in both these complaints, which cannot be thrown away at the threshold on the application of the petitioners that the complaints should be dismissed as the Supreme Court has allegedly said so. In fact the Supreme Court has not said so that such complaints should be dismissed and thrown out at the threshold on the whisper of the employer that there was no employer employee relationship. In this respect the observations of the Supreme Court in the case of Hussain Bhai v. Alath Factory Tezhilali Union and Ors.," must be remembered all through out while deciding such matters. The Bench of three Judges has observed in paras 3, 4, 5, 6 and 7 as under :

"Para 3 : Who is an employee, in Labour Law? That is the short, die hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shrift to the contention that the petitioner has entered into agreements with intermediate contractors who had hired the respondent-Union's workmen and so no direct employer employee vinculum juris existed between the petitioner and the workmen."

"Para 4: This argument is impeccable in laissez fair economics "red in tooth and claw" and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social Justice proclaimed in the Preamble to the Constitution. This Court in Mangalore Ganesh Beedi Works v. Union of India, has raised on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian justice beyond Atlantic liberalism, has a rate of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succor for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner."

"Para 5 : The true test may, with brevity, be indicated once again. Where a worker of group of workers labours to produce goods or services and these goods or services are for the business of another, that other is. In fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have Immediate or direct relationship ex contractu is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment, we

discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Arts. 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the may of legal appearances.

"Para 6: If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious Intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the Inference defies ingenuity. The liability cannot be shaken off."

"Para 7 : Of course. If there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

13. It appears that the aforesaid Judgment of the three Judge's Bench was not brought to the notice of the learned two Judges of the Supreme Court who have decided the aforesaid appeals on which a very strong reliance is placed by Shri Cama.

14. In exactly similar situation my learned brother Rebell, .J. has held in Writ Petition No. 1365 of 2001 between Raigad Mazdoor Sangh and Vikram Ispat as under :-

"Para 3 ;- in so far as the first contention is concerned. In my opinion considering the provisions of the M.R.T.U. & P.U.L.P. Act and the judgment of the Apex Court in the case of Vividh Kamagar Sabha v. Kalyani Steels Limited., (supra), and the subsequent Judgment in the case of Cipla Limited v. Maharashtra General Kamgar Union, the Tribunal under the M.R.T.U. & P.U.L.P. Act in case where admittedly there is a contractor registered under the Contract Labour Registration Act would have no jurisdiction to entertain the complaint. It may however, be made clear that what the Apex Court has held is in a case where the Contractor is a contractor registered under the Contract Labour Regulations Employment Act. There are situations wherein the employees are made contractors, and may in situations be registered under the Contract Labour Regulations Employment Act whether on the facts of such cases would the Courts under the M.R.T.U. & P.U.L.P. Act would cease to have Jurisdiction to my mind is an issue which has not been decided.

It may be, however, made clear that as the decision would be a decision as to the maintainability of the complaint, the Tribunal will be duty-bound to frame an Issue as a preliminary Issue on that count and after framing the preliminary

Issues to decide that point. It is not a case of no cause of action. It is a case of want of jurisdiction. This is necessitated as the decision on the issue would become final between the parties and it will not be open to the parties to reargue the same issue before another forum. In that light of the matter following the judgment in the case of Cipla Limited (supra) the Court/Tribunal functioning under the M.R.T.U. & P.U.L.P. Act is directed to frame an issue as to Jurisdiction of the Labour Court/Tribunal to hear the complaint and after framing such an issue to dispose of the complaint according to law. In the Instant case though an issue was not framed It can be deemed that, the Issue arose and consequently, the issue has been answered against the petitioners. The petition on that count, therefore, would not be maintainable."

I am in respectful agreement with the course of action suggested by the learned Single Judge of this Court.

15. There is yet another important angle to this dispute. In case, now the employees are driven to raise an Industrial dispute under the Central Act, the very same petitioners would perhaps try to slam the doors of that Act pointing out a complete ban u/s 59 of the M.R.T.U. & P.U.L.P. Act, 1971. Section 60 shuts the doors of the Civil Courts also. In these helpless and hapless circumstances of being left without any lawful remedy, the employees might perforce resort to undesirable remedies in the streets. We should not reduce their position to that of a cat in the corner of a closed room. Are the employers not inviting such a situation by taking such extremist stand on the point of Jurisdiction of the Courts under the Act which are not totally alien to the disputes ?

16. The employees can be relieved of all such agencies of avoidable multiple litigation easily if the Industrial Disputes Act, 1947 is amended by Incorporating the provisions like Section 28 and Section 30 of the M.R.T.U. & P.U.L.P. Act. It needs to be noted that both the Acts have mutually amended each other when the M.R.T.U. & P.U.L.P. Act was enacted in the year 1971. Similar steps can be taken by the State Government pursuant to the aforesaid Judgments of the Supreme Court. Even the M.R.T.U. & P.U.L.P. Act can be suitably amended to clarify that the Courts have powers and Jurisdiction to decide the question of employer employee relationship and also to add one item of unfair labour practice in Schedule IV of the Act to the effect that it would be an unfair labour practice "to employ or engage contract labour in any process, operation or other work in any establishment" in tune with Section 10 of the Contract Labour (R. & A.) Act, 1970. Even the definitions of "employer" and "employee" should be and can be amended on par with those under the Bombay Industrial Relations Act, 1946. It is pertinent to note that on account of the perfect and complete definitions and other provisions of the Bombay Industrial Relations Act, including the all inclusive definitions of "employer" and "employee", there has been no such frivolous litigation under that Act. Under that Act contract labour is included in the definition of an employee and the principal employer is made "employer" of such contract labour. And the well defined provisions of the Act vests powers

and confers jurisdiction on the Courts in such a manner that they can really adjudicate and decide all the disputes to do complete justice between the contending parties. Framed in 1946, this beautiful piece of legislation is a complete code of Industrial Relations between the employers and the employees. It must also be remembered that this was the first labour enactment which has made the employers accept the institution of Trade Unions of employees as sole bargaining agent of the employees. The State Government should seriously consider to apply and extend this Act to the whole of the State with suitable amendments, if thought proper. Such a progressive step would be in the Interest of all, the employers, employees and the industry and the community at large.

17. In the present case, the Industrial Court has merely postponed the decision on the issue of relationship of employer employee and according to me rightly so. The Industrial Court is directed to frame proper issues in this respect and decide the issue on the basis of the evidence and material adduced by the parties before the Industrial Court following the ratio of the aforesaid two judgments of the Supreme Court. Both the petitions therefore, fail and are, therefore, dismissed with no costs.