
(2006) 12 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 9865 (W) of 2005

Hindustan Lever Ltd.

APPELLANT

Vs

IVth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 10, 2, 2A, 7A

Citation : (2007) 113 FLR 1090

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : D.K. Ghosh, P.S. Sengupta and R. De, for the Appellant; K.H. Dasan, M. Chakraborty, C.S. Das and Amrita Sinha, for the Respondent

Judgement

Tapan Kumar Dutt, J.—This Court has heard the learned Advocate for the petitioner, the learned Advocate for the State-respondents and also the learned Advocate for the respondent Nos. 3 to 54, Briefly, the facts of the present case are as follows:

There is no dispute that the respondent Nos. 3 to 54 are persons who have retired from the employment of the petitioner-company. It also appears that there is no dispute that the respondent Nos. 3 to 54 are enjoying their pension in terms of the relevant settlement. It appears that an industrial dispute was raised by the respondent Nos. 3 to 54 and by an order of reference the following issues were referred to the respondent No. 1 for adjudication:

- (i) Whether the demand of the retired employees as per list enclosed for pension at higher rates as given to the subsequent retirees is justified?
- (ii) What relief, if any, are they entitled to?

Written statement was filed on behalf of the respondent Nos. 3 to 54 and written statement was also filed on behalf of the petitioner-company. The petitioner raised the question of maintainability of the order of reference and took the

standi that the said order of reference was without jurisdiction inasmuch as the concerned ex-employees having retired and availed of pension under the respective settlements applicable to them and there being separation of relationship with the management, such ex-employees cannot claim to be workmen as a contemplated u/s 2(s) of the Industrial Disputes Act, 1947 and the issues raised cannot be subject-matter of an industrial dispute u/s 2-A of the said Act of 1947. For ready reference the order of reference is quoted bellow:

Government of West Bengal Labour Department I.R. Branch

No. 247-IR Dated: 6.2.2002 ORDER

Whereas an industrial dispute exists between M/s. Hindustan Lever, Ltd., Brooke House, 9, Shakespeare Sarani, Kolkata-700 071 Sri S.K. Talukdar and 51 others (mentioned in the enclosed list) their retired employees C/o. Sri D.P. Banerjee-68, Maharani Indira Devi Rd. (on Biren Hoy's Ground) P.O. Parnashrce, Kolkata-700 060 relating to the undermentioned issues being matters specified in the Third Schedule to the Industrial Disputes Art, 1947 (14 of 1947); AND WHEREAS it is expedient that the said dispute should be referred to an Industrial Tribunal constituted u/s 7-A of the Industrial Disputes Act, 1947 (14 of 1947);

Now, Therefore, in exercise of the power conferred by Section 10, read with Section 2-A of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to refer the said dispute to the Fourth Industrial Tribunal constituted under Notification No. 808-IR/IR/3A-2/57, dated 11 March, 1957, for adjudication;

The said Fourth Industrial Tribunal shall submit its award to the State Government within a period of six months from the date of receipt of this order by the said Fourth Industrial Tribunal in terms of Sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), subject to the other provision or provisions of the said Act;

The said Fourth Industrial Tribunal shall meet at such places and on such dates as it may direct.

Issue(s)

(i) Whether the demand of the retired employees, as per list enclosed for pension at higher rates, as given to the subsequent retirees is justified?

(ii) What relief, it any, are they entitled to?

By order of the Governor, (Sd.) G.H. Chakraborty, Asstt. Secy. to the Govt. of W.B.

2. Some of the respondents-retired employees namely respondent Nos. 5, 14 and 28 adduced evidence in support of their claim and documents were exhibited on then behalf as would appear from pages 275 to 286 of the writ petition. On 29 July, 2004 an application was filed on behalf of the petitioner wherein the

following prayer was made:

It is, therefore, humbly prayed that since the evidence adduced on behalf of the retirees, both oral and documentary, conclusively establish the incompetence of the reference and lack of jurisdiction of the learned Tribunal to entertain the same, before the evidence of the company, be pleased to reject the instant reference and pass necessary order or orders in connection therewith.

An objection was filed on behalf of the respondent Nos. 3 to 54 against the said application, dated 29 July, 2004.

3. According to the petitioner's case, the submissions were made on behalf of the petitioner in support of the application, dated 29 July, 2004, and 23 August, 2004, was fixed for further hearing of the said application, dated 29 July, 2004. But on 23 August, 2004 the respondent Nos. 3 to 54 filed an application stating inter alia that there is some technical defect in making the reference as it has been mentioned therein that the order of reference is made u/s 10 read with Section 2A and unless the order of reference is corrected by way of corrigendum, further proceedings cannot progress and as such the said respondents may be granted some time for bringing necessary corrigendum by adjourning the further hearing of the said matter. The petitioner filed an objection against the said application, dated 23 August, 2004, wherein it was stated that reference was made as far back as on 6 February, 2002 and the plea of technical defect after the completion of the evidence on behalf of the concerned retired employees is nothing but mala fide with the object of frustrating the points taken by the company in its written statement. The petitioner further look the stand in its said objection to the effect that any such correction would be supersession of earlier reference which is beyond the scope and ambit of the jurisdiction of the appropriate Government. It appears from Annexure-P-19 of the writ petition that during the pendency of the proceeding a letter, dated 7 September, 2004, was written by the respondent No. 14, on behalf of the respondent Nos. 3 to 54, to the Assistant Secretary to the Government of West Bengal, Labour Department wherein it was stated inter alia that on scrutiny of the order of reference it is found that at Para. 3 of the order of reference the power has been exercised u/s 10 read with Section 2-A of the said Act of 1947 even though in the present case there is no dispute regarding discharge, dismissal, retrenchment or termination of service of any workman. According to the said respondent the dispute was with regard to the revision of their pension on the basis of relevant settlements and, hence, the mentioning of "read with Section 2-A" in the order of reference is by mistake and is liable to be deleted from the said order of reference. The respondent No. 14 made a request in the said letter that a corrigendum to the above effect should be sent to the learned Tribunal. It appears from Annexure-P-20 of the writ petition that a letter, dated 15 September, 2004, was written by the petitioner to the Principal Secretary, Government of West Bengal, Labour Department with a request to reject the said prayer made by the respondent as contained in the said letter, dated 7 September, 2004. According to the learned

Advocate for the writ-petitioner, later it transpired that on 14 September, 2004 a corrigendum was issued by the respondent No. 2 deleting the words "read with Section 2-A" in Para. 3 of the order of reference. This would appear at Annexure-P-22 of the writ petition.

4. That on 30 September, 2004 an application was filed on behalf of the respondent Nos. 3 to 54 annexing a copy of the corrigendum and a prayer was made in the said application that a date may be fixed for hearing of the petition, date 29 July, 2004, filed by the company along with the objection, dated 18 August, 2004. The petitioner filed an objection to the application, dated 30 September, 2004. The petitioner in its objection took the stand that the said application is not maintainable since by virtue of the amendment through the corrigendum the original reference has been superseded which is not permissible in law and the said application was mala fide inasmuch as the same was intended to frustrate the points taken by the petitioner in its written statement and the said corrigendum has changed the dimension and the context of the order of reference and the said corrigendum has been issued without affording any opportunity to the petitioner and as such it is in violation of the principles of natural justice and that the State Government has acted beyond its jurisdiction and competence in issuing the corrigendum.

5. By order No. 60, dated 28 October, 2004, the learned Tribunal held that it has no hesitation to hold that there was no illegality in the issuance of the said corrigendum by the State Government and that the case before the learned Tribunal is maintainable even after the corrigendum has been issued by the State Government and the application filed by the respondent Nos. 3 to 54 was allowed. The Tribunal by the said order, dated 28 October, 2004, fixed a date for further hearing of the petitioner's application, dated 29 July, 2004.

6. The present writ petition has been filed by the petitioner challenging the said order No. 60, dated 28 October, 2004, read with corrigendum, dated 14 September, 2004. It appears on perusal of the writ petition, particularly Paras 19, 20 and 21 of the writ petition, that the order of reference has also been challenged by the writ petitioner. In Para 35 of the writ petition, it has also been alleged that the reference is incompetent and that the learned Tribunal lacks jurisdiction to entertain the same and that before the evidence of the petitioner is taken the learned Tribunal would be pleased to reject the reference.

7. The learned Counsel for the petitioner first submitted that the dispute raised by the respondent Nos. 3 to 54 is not an industrial dispute and such submission was made on the basis of the undisputed fact that the said respondent Nos. 3 to 54 are all retired employees. According to the said learned Counsel the dispute raised on behalf of the retired employees cannot be said to be an industrial dispute. The said learned Counsel relied upon the definition of industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947. Section 2(k) of the said Act is as follows:

2(k). "industrial dispute" means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

8. The said learned Advocate emphasised on the expression between "the employers and workman" used in the said definition and submitted that the definition does not contemplate a dispute between the employers and ex-workmen. The said learned Counsel submitted that the first part of the definition mentions the parties to the dispute and the second part of the definition mentions about the subject-matter of dispute. It was his contention that the demand for the increase in pension of the retired employees can be termed to be an industrial dispute if such dispute is raised by the union of the present workman or a substantial section of the workman in employment who are having an interest in the matter. So it appears that the said learned Counsel has argued, in effect, that a matter relating to the pension to be enjoyed by the retired employees can be the subject-matter of industrial dispute provided such dispute is raised by some of the workmen who are in employment or by the union representing such workmen but the retired employees themselves cannot raise an industrial dispute.

9. The said learned Counsel has made another submission in this regard and has submitted that the matter may be viewed from another angle. The said learned Counsel submitted that only such number of workmen can raise industrial dispute as can affect the industry. His contention was that some retired employees or ex-employees cannot impede the production unless the "workmen" employed at large are involved in it. The decision at *Burn and Company Ltd. v. Their Employee* 1957 L.L.B. SC 226 was referred to, particularly, the observations of the Hon'ble Supreme Court in the following lines:

...Legislation regulating the relation between capital and labour has two objects in view. It seeks to ensure to the workmen who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might not be adversely affected and the larger interests of the society might not suffer.

10. Another decision in *Indian Oxygen Ltd. v. Workmen* 1979 (1) L.L.N. 340, was referred to by the petitioner's learned Counsel and the attention of this Court was drawn to the observations of the Hon'ble Supreme Court in the following lines which appear in Para, 10, at page 344 of the said reported decision:

...It is enough if there is a potential cause of disharmony which is likely to endanger industrial peace, and a substantial number of workmen raise a dispute about it, for then it is permissible to take the view that it is an industrial dispute within the meaning of Clause (1) of Section 2 of the Uttar Pradesh Act and to refer it for adjudication to a Tribunal.

11. The said learned Counsel submitted that a dispute can be termed as an

industrial dispute if the workmen who raise such dispute can affect the production and that such dispute has to be raised by a substantial number of workmen since, otherwise, it cannot affect the production.

12. The petitioner's learned Counsel next submitted that the concept of workmen does not include retired employees. Reference was made to Section 2(s) of the said Act of 1947. Section 2(s) of the said Act defines workmen as follows;

(s). "Workmen" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.

13. Citing the said definition of the word "workman," the learned Advocate submitted that the said definition includes a person who is employed and not a person who was employed at a certain point of time. The decision in *Bilash Chandra Mitra v. Balmer Lawrie and Company, Ltd.* 1953 (I) L.L.J. 337 was referred to by the said learned Advocate, particularly, to the observation of the Hon'ble Court at page 340 of the said report where the Hon'ble Court was pleased to observe

...In my view when an employee retires or is forced to retire on a pension he cannot be said to be still in employment. He ceases to be an employee or a workman but he receives the pension in consideration of his past services.

14. The next decision cited is *Workmen of Hoare Miller and Co., Ltd. Vs. State of West Bengal and Others*, and reference was made to the following observations of the Hon'ble Court appearing at page 723 of the said report:

The question then arises, can existing workmen of the respondent-company raise an industrial dispute as to bonus on behalf of the retired workmen of the company?

So as to answer the question, it is necessary for me to remind myself of the definition of "industrial dispute" as in Section 2(k) of the Act:

"Section 2(k) --- "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

On a plain reading of Section 2(k) it appears that in order to be an industrial dispute, the disputes must be raised by existing workmen and must concern the employment, non-employment, terms of employment or conditions of employment of "any person."

15. The Hon^{ble} Court at page 725 of the said report was pleased to make the following observations:

To say, in the facts of the instant case, that the existing workmen of the respondent-company cannot espouse the cause of the retired workmen and raise an industrial dispute as to non-payment of bonus to them, is to say that the dispute as to non-payment of bonus to workmen for the last year of their service, which may be declared in the year following their retirement can never be raised as an industrial dispute. In my opinion, the dispute though primarily concerning retired workmen of the respondent-company is a dispute which ultimately concerns the existing workmen as well and that entitles them to espouse the cause of their quondam workers.

It is true that the workmen cannot espouse the cause of the persons who never came within the definition of "workman" as in Section 2(s) of the Industrial Disputes Act, and who could not themselves be parties to an industrial dispute. But workmen can, nevertheless, espouse the cause of persons, who at one time were workmen and only ceased to be so on retirement, if the dispute as to them concerns a matter which is bound to or likely to arise when the existing workmen retire. These retiring workmen will fall within the meaning of expression "any person" as in the definition clause of workmen, Section 2(k) of the Industrial Disputes Act. I, therefore, uphold the first branch of the contention.

16. Another decision cited is at *Everestee v. District Labour Officer* 1999 (83) FLR 152 (Ker) : 1999 (3) L.L.N. 678 and the following observations of the Hon^{ble} Court were referred to by the learned Counsel for the petitioner, in Para. 9, at page 682:

...In our opinion, the appellant, having voluntarily rendered his resignation pursuant to a scheme for voluntary retirement, the resignation having accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a "workman" coming u/s 2(s) of the Industrial Disputes Act. As already noticed, the definition only includes persons who are presently employed, or who have

been dismissed, discharged or retrenched from the service of the employer. In fact, dismissal, discharge or retrenchment is an act of the employer, whereas terminating the contract of service by way of resignation by the workman is his own act. We are, therefore, of the opinion that the claim of the appellant is misconceived and beyond the scope of Section 2(s) of the Industrial Disputes Act....

17. Another decision in *Purandaran Vs. Hindustan Lever Ltd.*, was cited by the petitioner's learned Counsel and reference was made to the following observations of the Hon'ble Court appearing in Para. 6, at page 1189 of the said report as follows:

What is clear from the said definition is that in order that a person can be a workman under the deeming provision, he has to be one dismissed, discharged or retrenched. Dismissal, discharge and retrenchment are all voluntary acts on the part of the management, whereas the case of resignation or voluntary retirement is an act of volition on the part of the workman. That absence of the terms "resignation" and retirement in the aforesaid definition, according to me, is very conspicuous. When a person claims the status of a "workman" under the deeming provision, he has to establish that he comes within the four corners of the definition provided therefore under the statute. In the present case the petitioners have no case that they were forcibly thrown out of employment or that they were forced to accept the terms of voluntary retirement. Their case is only that they were tempted to accept the scheme. That according to me, is not a sufficient ground to find that the petitioners left the service on dismissal, discharge or retrenchment. I find considerable support for the said finding from the decision in *Everestee 1999(83)FLR 152 (Ker.)* case (vide supra) where an employee who had resigned from service was found to be disentitled to raise dispute claiming status of a "workman" under the I.D. Act.

18. The learned Counsel for the petitioner submitted that the corrigendum issued by the respondent No. 2 has changed the nature and character of the dispute, The petitioner's case is that the management in its written statement challenged the maintainability of the reference on the ground of invoking Section 2-A of the said Act and the issues mentioned in the said reference cannot be a subject-matter of an industrial dispute u/s 2-A of the said Act. According to the petitioner's case the written statement was submitted in October, 2002 and thus all concerned were aware that the order of reference has been questioned by the petitioner but in spite of such stand taken by the petitioner evidence of the retired employees were taken and also completed. The petitioner's learned Counsel, submitted that only after the petitioner's argument was over and a date was fixed for the argument on behalf of the respondent Nos. 3 to 54, it was only then that the said respondents prayed for adjournment for bringing a corrigendum. The petitioner's learned Counsel submitted that the State Government being the appropriate Government had exercised its power under a specific provision of the statute and the deletion of a statutory provision by way

of corrigendum has made the entire reference incompetent. The next submission made on behalf of the petitioner is that in the absence of any power relating to the corrigendum, the appropriate Government should have exercised its discretion reasonably. It is the petitioner's further case that after a long period of about 2 years the corrigendum has been issued to frustrate the defence taken by the petitioner which is not permissible and the corrigendum is also not maintainable in law. The said learned Advocate also submitted that the corrigendum does not disclose any reason and that such corrigendum was issued on extraneous consideration. The petitioner's learned Counsel laid much emphasis on the point that the retired employees are not workmen and hence cannot raise any industrial dispute in the manner such dispute has been raised and that the order of reference is not maintainable in law on the face of it.

19. The learned Advocate for the respondent Nos. 3 to 54 submitted that the Order No. 60, dated 28 October, 2004, and the said corrigendum only are under challenge in the writ petition. The said learned Advocate submitted that the petition, dated 29 July, 2004, challenging the order of reference as a preliminary issue is pending hearing before the Tribunal and the order of reference can be challenged before the High Court or be raised as a preliminary issue before the Industrial Tribunal. According to the said learned Advocate the Tribunal should be allowed to decide "the said preliminary issue first and if the writ petitioner feels aggrieved by the decision of the Tribunal, if can challenge the same before this Court but such challenge cannot be made before this Court when the said preliminary issue is pending hearing before the Tribunal. The said learned Advocate submitted that as to whether the respondent Nos. 3 to 54 are workmen or not has not been decided by the learned Tribunal as yet and therefore this Court cannot decide whether the order of reference is maintainable or not.

20. The next submission of the learned Advocate for the said respondents was that the said order, dated 28 October, 2004, is an interlocutory order and it cannot be challenged before this Court. The said learned Advocate referred to the decision in *National Council for Cement and Building Materials v. State of Haryana and Ors.* 1996 (2) CLR 234 : 1996 (2) L.L.N. 49 and drew the attention of this Court in Para 16, at page 51 of the said report. Reading the said two paragraphs it appears that the Hon'ble Supreme Court was pleased to observe that in the facts of the said reported case "the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits..." It further appears that in the facts of the said reported case the Tribunal first passed an order that it would be heard as a preliminary issue but subsequently it decided to hear the Issue along with the other issues on merits at a later stage of the proceedings. Thereafter, "...the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as the preliminary issue, could not change its mind and decide to hear that issue along with other issues on merit..."

The Hon'ble Supreme Court was pleased to observe that "The High Court rightly

refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution." The Hon'ble Supreme Court was pleased to dismiss the appeal by observing that "we do not see any occasion to interfere with the order passed by the High Court."

21. The learned Advocate for the respondents Nos. 3 to 54 also referred to the decision in All India Reserve Bank Retired Officers Association and Ors. v. Union of India and Anr. 1992 (64) FLR 16 (SC) : 1992 (2) L.L.N. 635 and relied upon Paras. 5 and 8 of the said reported case. In Para. 5, at page 639, the Hon'ble Supreme Court was pleased to observe:

The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution....

22. The following observation of the Hon'ble Supreme Court in Para 8, at page 642 of 1992 (2) L.L.N. 635 (vide supra) of the said report was relied upon by the said learned Advocate:

...The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Article 14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution.

23. The learned Advocate for the said respondents submitted that serious discrimination and deprivation have been meted out to the said respondents by the writ petitioner. It was further submitted that there is no separation of relationship as the respondents Nos. 3 to 54 are enjoying pension as per settlements and there is no cessation of master and servant relationship on retirement of the employees who are enjoying pension as per settlements arrived at.

24. Reference was also made in Para. 10, at page 643 of 1992 L.L.j. 635 (vide supra), of the said reports. The following observation of the Hon'ble Supreme Court in the said Para 10 was relied upon by the said learned Advocate:

10... It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether....

25. The said learned Advocate also referred to the decision in Subrata Sen and

Ors. v. Union of India and Ors. 2001 (91) LR 7 (SC). It appears that in the said decision the Hon"ble Supreme Court was also pleased to consider All India Reserve Bank Retired Officers Association and Ors. 1992 (64) FLR 16 (SC) case (vide supra), and the Hon"ble Supreme Court in Para 19, at page 11 of Subrata Sen and Ors. case (vide supra) was pleased to observe:

Same is the position in the present case. As observed in the aforesaid case, in case of an employee governed under the pension scheme, relations with the employer merely undergo a change, but are not snapped at together. There is no new scheme of payment of pension, but it is only a revision of existing pension scheme....

26. The said learned Advocate for the said respondents also referred to a decision in ICI India Ltd. v. Presiding Officer and Ors. 1993 (1) CLR 753. In para 45 of the said reports it was observed:

...It would be erroneous to assume that the cessation of the contract of employment or the snapping of the master servant relationship spells an end to industrial dispute. As has been pointed out by this Court in Mayekar case (vide supra) and by the Supreme Court in Dimakuchi case (vide supra), an industrial dispute can legitimately arise even after the service of the workman has come to an end and the master servant relationship has ceased. Though both decisions were concerned with relief to a dismissed workman, the principle can be extended to the case on hand also. For the purpose of pensionary rights, The pensioner or retiree would as much be as workman as other workman whose contracts of employment are still subsisting. I am unable to accept the contention of the learned Counsel for the petitioner that after retirement or demitting office the pensionary right of the retiree could be enforced only by resort to a civil suit and not by resort to the adjudicatory machinery available under the Act. If, as pointed out by this Court in Mayekar case (vide supra) and the Supreme Court in Dimaktuchi case (vide supra), the expression "workman" used in Section 2(s) applies to all workmen past, present and future, I see no difficulty in holding that, even after retirement, a retiree has the right to take recourse to the adjudicatory machinery made available under the provisions of the Act.

27. Paragraph 47 of the said reports is also quoted as follows:

47. One formidable objection raised to the tenability of the reference was on the ground that the expression "any person" used in the definition of the industrial dispute in Section 2(k) of the Act necessarily postulates community of interest between the workmen raising the dispute and the person who is entitled to relief, this did not exist between the workmen and retirees, and, therefore, there could be no legitimate industrial dispute with regard at least to the employees who had already retired from the service of the petitioner-company. This argument too is fallacious in my view. In Dimakuchi case (vide supra), while pointing out that a dispute or difference, merely ideological or philosophical, would not fall within

the ambit of the definition, the Supreme Court pointed out, firstly, that it must be a dispute or difference with regard to which the employer is in a position to give relief or could be directed to give relief and secondly, that the dispute could only be with the employment, non-employment, conditions of service or conditions of labour of any person - not necessarily a workman-in whom the workman had a community of interest. Obviously, in the instant case, the difference or dispute is not ideological or philosophical, it is one in respect of which the employer can-if he is so inclined-grant relief. It is not possible to accept that there is no community, of interest between the body of workmen in service and the pensioners who have ceased to be in service To start with, both are workmen in the light of the interpretation given In Section 2(s) both by Narendra case (vide supra) and Dimakuchi case (vide supra). Secondly, every workman of today is a pensioner or retiree, after his date of retirement. Conversely, every retiree or pensioner was a workman at some earlier point of time. The workmen, therefore, have sufficient community of interest ensuring that the pensionary benefits available to past employees, present employees, as well as future employees, are suitably revised from lime to time. I, therefore, reject the contention based on the non-existence of community of interest between the workmen represented by respondent Nos. 2, 3 and 4 and the pensioners represented by respondent Nos. 5, 6, 7 and 8.

28. The learned Advocate for the said respondents submitted that the Tribunal should be directed to hear the preliminary issue regarding the validity of the order of reference within a specified time that may be fixed by this Court.

29. The learned Advocate for the State-respondents submitted that the writ petition has been filed against an order allowing the corrigendum, and the initiation of the industrial dispute and the reference should not be adjudicated by the Writ Court and also no prayer to such effect has been made in the writ petition though certain statements have been made in the writ petition on the question of maintainability of the reference. The said learned Advocate also submitted that the hearing of the preliminary issue is also pending before the Tribunal and as such this Court should not deal with such issue on the present writ application. The said learned Advocate also submitted that the corrigendum in question does not change the nature and character of the reference because, according to the said learned Advocate, Section 2-A of the Industrial Disputes Act envisages only the category of the dispute whether it is with regard to an individual or group of employee. The said learned Advocate submitted that in the reference itself it has been mentioned that the dispute is with regard to the 52 employees and as such the deletion of Section 2-A does not change the nature and character of the reference and as such the writ application should be dismissed.

30. After having heard the learned Advocates for the respective parties it appears to this Court that a very basic question is required to be answered. The question is whether or not the dispute raised by the respondent Nos. 3 to 54 can

be termed as an "industrial dispute" and whether or not the respondent Nos. 3 to 54 can be said to be workmen as per the definition of the word "workman" in the Industrial Disputes Act, 1947. It has been submitted by the learned Advocates for the respondents that the question of maintainability of the reference in question has already been raised by the petitioner by way of an application before the learned Tribunal and such question is yet to be decided by the learned Tribunal and that since the matter is pending before the learned Tribunal this Court should not deal with such question at this stage. The said learned Advocates have also submitted that in the prayer portion of the writ petition no such prayer for any declaration with regard to the reference has been made and therefore this Court also should not deal with such question. It is true that in the prayer portion of the writ petition there is no prayer with regard to the said reference but in Paras 19, 20, 21 and in some other paragraphs the writ-petitioner has challenged the order of reference. The question of maintainability of the reference is a question which goes to the root of the matter and unless this Court finds it really difficult, on the materials and/or records placed before this Court, to decide such question, this Court does not find any reason why the decision on such issue should be delayed,

31. In the case in ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others, The Hon'ble Supreme Court in Para 13, at page 27 of the said report was pleased to observe that:

It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference u/s 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised.

32. Thus, if on an admitted fact the issue of maintainability of the reference can be decided and when no further evidence is necessary, this Court is of the view that the question of maintainability of the reference is required to be taken up for consideration. The basic admitted fact in this case, in respect of which there is no dispute in between the parties, is that the respondent Nos. 3 to 54 are persons who have retired from their services and may be termed as ex-employees of the petitioner. The question is whether such ex-employees can come within the definition of "workman" and whether the dispute raised by them can be said to be an "industrial dispute" as the said term has been defined in the said Act of 1947. If the answer to such question is that the respondent Nos. 3 to 54 cannot

be said to be workmen and the dispute raised by them cannot be said to be an industrial dispute, then in that event the reference has to be declared as bad in law. According to the definition of the term "workman," quoted above, it would appear that the said definition contemplates any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory works for hire or reward, whether the terms of the employment are express or implied. This shows that the person concerned has to be "employed in any industry" that is to say such person must be in employment. In the second part of the definition of the term "workman" persons who have been dismissed, discharged or retrenched have been included. The third part of the definition deals with the exclusion part. The respondent Nos. 3 to 54 are neither in employment at present nor were they in employment when the dispute was raised and the reference was made. It is also not the case of the respondent Nos. 3 to 54 that they were dismissed, discharged or retrenched from their service. There is no ambiguity in the said definition. If the words "any person" in the said definition was intended to include a person who was employed at any point of time and had subsequently retired then the latter part of the definition, which contemplates a discharged, dismissed or retrenched employee, would have become redundant and useless. Thus this Court is of the view that a plain reading of the said Section 2(s) would indicate that a retired person was not intended to be included in the said definition.

33. In *Bitash Chandra Mitra* case (vide supra) our Hon'ble Court was pleased to hold that when an employee retires he ceases to be an employer or a workman but he receives the pension in consideration of his past services.

34. In *Workman of Hoare Miller and Company Ltd.* case (vide supra), our Hon'ble Court was pleased to hold that in order to be an industrial dispute, the dispute must be raised by existing workmen and must concern the employment, non employment, terms of employment and conditions of employment of any person. Our Hon'ble Court was also pleased to hold that workmen can espouse the cause of persons, who at one time were workmen and only ceased to be so on retirement, if the dispute as to them concerns a matter which is bound to or likely to arise when the existing workmen retire.

35. In *Everestee* 1999 (83) FLR 152 (Ker.) case (vide supra), a Division bench of the Hon'ble High Court of Kerala was pleased to hold that a person having voluntarily tendered his resignation and such resignation being accepted and all benefits arising out of such resignation having been paid by the management and received by such person, cannot be treated as a "workman" under the Industrial Disputes Act. The said Hon'ble Court was pleased to observe that the definition only includes persons who are presently employed or who have been dismissed, discharged or retrenched from the service of the employer.

36. The decision rendered in *Purandaran Vs. Hindustan Lever Ltd.*, case (vide supra) the observations of the Hon'ble Court, as quoted above, may also be noted.

37. The definition of the term "industrial dispute" has already been quoted above. In *Burn and Company Ltd. case* (vide supra), the Hon''ble Supreme Court was pleased to observe as has been already quoted above. It will appear from the said observation that the legislation regulating the relation between the capital and labour has two objects in view. One object is to ensure that workmen have fair returns for their labour and the other object is to prevent disputes between the employer and employees, so that production might not be adversely affected and the large interests of the society might not suffer. Obviously, the retired employees have no part to play in the present production of the industrial unit and the dispute sought to be raised by the respondents Nos. 3 to 54 cannot be said to be in the larger interest of the society.

38. In *Indian Oxygen Ltd. 1979 (1) LLN 340 case* (vide supra), the Hon''ble Supreme Court was pleased to observe as already quoted above.

39. The decision reported in the case of *All India Reserve Bank Retired Officers Association and Ors. 1992 (64) FLR 16 (SC) case* (vide supra), was with regard to fixation of a cut-off-date for the purpose of making applicable a pension scheme and such fixation of cut-off-date was under challenge in the said reported case. The Hon''ble Supreme Court was pleased to observe that the differential treatment accorded to those who retired prior to the specific date and those who retired subsequent thereto must be justified on the touchstone of the Article 14 of the Constitution. In the context of that case the Supreme Court was also pleased to observe in Para, 10 of the said reported case that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and the receipt of the GPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. Such observations have already been quoted above. But it is difficult to appreciate as to how the said reported case can be made applicable to the facts and circumstances of the instant case. In the instant case the question is whether the retired employees can come within the definition of the word "workman" as defined in the said Act of 1947 and whether the dispute raised by them can be termed as an "industrial dispute." For the purpose of deciding such question, the said reported case cannot be of any help.

40. In *Subrata Sen and Others Vs. Union of India and Others*, cases (vide supra), the Hon''ble Supreme Court was pleased to consider the case of *All India Reserve Bank Retired Officers Association 1992 (64) FLR 16 (SC)* (vide supra) and was pleased to hold in Para. 19 that same is the position in the said reported case. The relevant portion of the said Para. 19 has already been quoted above. This reported case also does not come in the aid for answering the question that has arisen in the instant case.

41. In *ICI India Ltd. case* (vide supra), the Hon''ble Single Judge of Bombay High Court was pleased to hold in Para 45 of the reports that "for the purpose of pensionary rights, the pensioner or retiree would as much be as workman a

other workman whose contracts of employment are still subsisting" and subsequently His Lordship was pleased to hold that "I see no difficulty in holding that, even after retirement, a retiree has the right to take recourse to the adjudicatory machinery made available under the provisions of the Act" It appears from the same paragraph that His Lordship was pleased to rely upon a judgment of a Division Bench of Bombay High Court in P.L Mayekar case (vide supra), and also a judgment of the Hon"ble Supreme Court in Dimakuchi case (vide supra), but His Lordship was also pleased to observe that though "both the decisions were concerned with relief to a dismissed workman, the principle can be extended to the case on hand also." It will appear from the definition of the term "workman" in Section 2(s) that a person who has been dismissed from his service is included in the definition of the term "workman" but a retiree does not find place in the definition of the term "workman." In Para 47 of the said reports His Lordship was pleased to hold that "every workman of today is a pensioner or retiree, after His date of retirement. Conversely, every retiree or pensioner was a workman at some earlier point of time." With respect, such observation indicates that a retiree does not continue to be a workman after retirement but that he was a workman at some earlier point of time. This Court is of the view that the meaning of the word "workman" in the present context will have to be understood as it has been defined in the said Act of 1947. In the present case had the respondents concerned been dismissed or discharged employees or retrenched employees the situation would have been different. In the instant case, concerned respondents are all retirees, In such circumstances, this Court finds, that the said ICI India Ltd, case (vide supra), cannot be made applicable to the facts and circumstances of the instant case.

42. In view of the discussions made above and considering the reported cases cited at the Bar and the facts and circumstances of the instant case, this Court is, of the view that none of the respondent Nos. 3 to 54 can be described as "workman" under the said Act of 1947 and the dispute raised by them cannot be termed to be an "industrial dispute" as defined in the said Act of 1947. In the order of reference, dated 6 February, 2002, which has been quoted above, it will appear that the word "workman" has not been used but the expression "retired employees" has been used. Therefore it also appears that the authority concerned was also aware of the distinction between the two terms and being conscious, of the definition of the word "workman" the authority concerned chose not employees do not come within the definition of the word "workman." Being aware of such distinction between the two terms it is surprising how the authority could use the expression "industrial dispute" in its order of reference since the said expression "industrial dispute" has a specific connotation in the said Act of 1947.

43. The learned Advocate for the State-respondents submitted that the writ petition has been filed against the order allowing the corrigendum and as such the validity of the order of reference cannot be adjudicated in the writ proceeding and the said learned. Advocate also submitted that no specific ground

challenging the order of reference has been taken, in the writ application and no prayer has been made in the writ application to that effect. The said learned Advocate also submitted that since the writ-petitioner has raised the objection with regard to the validity and/or maintainability of the reference before the Tribunal itself and such objection is pending hearing before the learned Tribunal, this Court should not interfere.

44. The learned Counsel for the petitioner cited a decision in Justice Sri Justice S.K. Ray Vs. State of Orissa and Others, and referred to Para 12 of the said reports. Paragraph 12, at page 784 of the said reports is quoted below:

The learned Counsel for the respondents further submitted that the appellant had not presented his case or claimed compensation for loss of future employment but has claimed only the loss for the present tenure and therefore, we should not grant any relief to him. A writ petition, which is filed under Article 226 of the Constitution, sets out the facts and the claims arising therefrom. May be in a given case the reliefs set forth may not clearly set out the reliefs arising out of the facts and circumstances of the case. However, the Courts always have the power to mould the reliefs and grant the same.

45. The said learned Counsel also cited a decision in Employees' Employees State Insurance Corporation and Others Vs. Jardine Henderson Staff Association and Others, and relied upon Para. 63, at page 97 of the said report. The said paragraph is quoted below:

The High Court under Article 226 and this Court under Article 136 read with Article 142 of the Constitution of India have the power to mould the relief in the facts of the case.

46. In such circumstances, this Court is of the view that even if a specific prayer has not been made in the writ petition but necessary pleadings have been made in the writ petition itself, necessary materials on record have been placed before the Court and the issue has been addressed by both the sides, there can be no difficulty in moulding the relief for ends of justice.

47. Now, with regard to the corrigendum this Court is of the view that, considering the facts and circumstances of the instant case as discussed above, it was not proper for the State-respondents to issue the corrigendum at such belated stage and at the stage at which the matter stood, without assigning any reason. The way the corrigendum has been issued by the State-respondents was not proper and such manner of issuing corrigendum, as it has been done in the instant case, cannot be encouraged.

48. However, since this Court holds that the order of reference itself was bad in law and illegal, no further discussion on the dispute with regard to the issuance of the corrigendum is required.

49. This Court therefore holds that the order of reference, dated 6 February, 2002, is illegal and bad in law and the said order of reference is set aside and the

proceedings before the learned Tribunal which have taken place so far are quashed.

50. This order will not, however, prevent the respondent Nos. 3 to 54 to approach the appropriate forum for redressal of their grievance if any. The writ petition is accordingly disposed of. There will, however, be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties on compliance of usual formalities.

Writ petition disposed of.