(2014) 07 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 528 of 2014

Hindustan Unilever Ltd. Research Centre — APPELLANT

Vs

Hindustan Lever Research Centre Employee Union — RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17A, 18(3)(d), 19, 19(2), 19(3)

Citation : (2014) 07 BOM CK 0081

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : K.M. Naik, Senior Advocate, R.N. Shah, Mahesh Londhe and Radha Ved i/b Sanjay Udeshi and Co, Advocate for the Appellant; Sanjay Singhvi i/b Bennet D''Costa, Advocate for the Respondent

Final Decision : Allowed

Judgement

N.M. Jamdar, J.—Rule. Rule made returnable forthwith. Respondent waives service. Taken up for final disposal.

2. The petitioner-Hindustan Unilever Ltd. Research Centre And FCU/Development Centre is aggrieved by the award of the Industrial Court dated 30 November 2013. The award arises from the reference made by the Additional Commissioner of Labour Mumbai under the Industrial Disputes Act 1947, to resolve dispute between the Petitioner and the Respondent Hindustan Lever Research Centre Employees Union.

3. Pursuant to the reference the Statement of Claim was filed by the Secretary of Hindustan Lever Research Centre Employees Union-Respondent (Union). The claim of the Union was in short as under-

1. The service conditions including basic wages and all allowances be protected and no adverse changes or any reduction whatsoever shall be made in the future in respect of workmen.

2. Without prejudice to the Demand No. 1 all the benefits and arrears arising out of Shri Mehendale Award, Shri Rothe Award as listed in Ref (IT) No. 11 of 1994 and benefits of Shri Shivankar Award as listed in Ref (IT) No. 56 of 1999 shall be extended to the workmen from the date of their transfer to the Research Centre and FCU/Development Centre, as is given to the hourly rated workmen of Hindustan Unilever Ltd., working at Research Centre and FCU/Development Centre,

3. Any future benefits arising from the Ref(IT) No. 56 of 1999, be simultaneously extended to the workmen together with Hourly Rated workmen working at Research Centre and FCU/Development Centre.

4. Without prejudice to the Demand No. 1 all the benefits and arrears arising out of Shri Mehendale Award part I and part II in Ref (IT) No. 94 of 1994 and benefits of the monthly paid workmen settlement dated 26th August 2005 between the Hindustan Lever Ltd., and Hindustan Lever Research Centre Employees Union shall be extended to the workmen from the date of his transfer to the Research Centre and FCU/Development Centre, as is given to the monthly paid workmen of Hindustan Unilever Ltd., working at Research Centre and FCU/ Development Centre.

4. The demand made by the Union was in respect of workers of Hindustan Unilever Limited, working at Research Centre and Fine Chemical Unit at Andheri. The concerned workmen were daily rated and monthly paid employees working in Andheri unit, who were employees of the erstwhile Tata Oil Mill Company Limited (Tomco) and Lakme factories. It was their case that their service conditions were governed by Y.D. Joshi award dated 14 October 1980 and a settlement dated 15 December 1986. A settlement was also signed on 14 June 1990 and these settlements govern the service conditions of workmen of erstwhile Tomco factory while service conditions of workmen in Lakme factory were based on settlement of 2 April 1997. It was also their case that the 27 workmen working in Tomco at Sewree were transferred to the Andheri unit in the year 1998, 4 working in Lakme at Deonar, Mumbai were transferred to Andheri in 1998. According to the Union, in 1993, Tomco merged with the Petitioner and upon merger all the employees became the employees of the Petitioner and their service conditions were protected. The scheme of amalgamation between Tomco and Petitioner provided that service of workers would remain continuous and basic wages and allowances would be protected and no adverse changes or any reduction would be made. It was contended that the workmen raised a demand on 25 February 2008 to have wage revision on the lines of Mehendale, Rothe, Shivankar and Thakre Awards (Four Awards) in respect of the other employees of the Petitioner doing similar work and this was not acceded to by the Petitioner and therefore, reference had to be made. The Union justified it''s demand for wage revision on the ground that there was no wage revision since 1990, in the case of erstwhile Tomco workers and since 1997-2000, for the erstwhile Lakme workers. It was their case that the financial condition of the Petitioner is

extremely sound and the Petitioner has capacity to bear the additional expenses. It was also their case that workmen similarly placed and doing similar work were getting various allowances and it was necessary to grant increase in wages in terms of the allowances to them, on the ground of parity. The Union contended that the concerned workmen though had a dearness allowance scheme however, it did not protect the wages from erosion and did not meet the increasing cost of living. The Union contended that the concerned workmen were doing similar work as other workers are covered by the Four Awards, and to bring parity amongst the workmen it was necessary to extend the benefits of these awards to them. The Union placed on record history of the service conditions of the Petitioner''s employees at Andheri unit and the services of the concerned workmen. Detailed calculations, which according to the Union, should have been extended to the concerned employees under these various awards, were placed on record. The Union also contended that Region-cum-Industry parity needs to be taken into consideration and comparison was made with various industries situated in Mumbai, Thane and Pune also with VI Pay Commission. It was also the contention of the Union that the other Companies were giving better wage packet and allowances than what the concerned workmen were getting. Accordingly, the Union prayed that the reference be answered in affirmative.

5. The Petitioner filed it''s Written statement and contested the claim of the Union. It was contended that while considering the demand of the Union, the Tribunal is required to consider total wage packet to see whether demands are justified. It was contended that if the principle of region-cum-industry is to be applied then total wage structure must be considered. The Union cannot be allowed to seek benefits of various awards and settlements without taking into consideration the total wage packet drawn by the workmen. It was contended that the service conditions of the concerned workmen was covered by Y.D. Joshi award and settlements of 15 December 1986 and 14 June 1990, and during the adjudication of the references which culminated in to Four Awards, the concerned workmen concerned did not intervene, or raised any objection.

6. The Petitioner also contended that the principle of parity is well established within the employees of the Petitioner and without considering the total wage packet no piece-meal application of awards can be made. The case of the Union based on region-cum-industry was denied by the Petitioner on the ground that the activities carried on by the Petitioner are different. It was also contended that the parity only in the case of allowances cannot be sought, without considering all other aspects of wages. It was contended that the dearness allowances applicable to concerned workmen was linked with increase in consumer price index and the concerned workmen were already getting higher pay packet than the other similarly situated workers of the Petitioner. It was contended that since the concerned workmen already were better placed in terms of better basic pay and dearness allowance, if any future allowances are given, irrespective of consideration of total wage packet, it will cause disparity.

7. On behalf of the Union, one Rajendran Ramchandran was examined. He deposed that there was no wage revision for workers covered under the reference since the year 1990 for workers of erstwhile Tomco and from the year 2000 for erstwhile Lakme. He narrated the history of various awards and the decisions of this Court given in respect of the Petitioner''s establishment. He made a specific assertion that even if totality of wages of erstwhile Tomco and Lakme workers is considered, they were getting less than the workers of Petitioner working in Research Centre and Development Centre/Fine Chemical Unit. This witness was cross-examined. He admitted that the Four Awards were in respect of allowances and in these awards he and others were not the Concerned Workers. He also admitted that as per Y.D. Joshi award there was no ceiling on the basic wages of the concerned workmen. He also admitted that the contribution towards Provident Fund of concerned workers was higher than the workers covered by Four Awards. He also admitted that because there was no ceiling and higher contribution towards Provident Fund, they were more benefited than the workers covered under Four Awards.

8. On behalf of the Petitioner, one Mr. Raghavan Menon, Assistant Manager-ER, was examined. He asserted that concerned workmen were drawing higher wages than the ones covered by Four Awards. He deposed that the Union was seeking to increase the allowances on the ground of uniformity with malafide intentions, and if total wage packet is considered, it would show that the concerned workmen were already drawing more wages than the workers of the Petitioner. This witness was cross-examined. He admitted that the Four Awards were in respect of the allowances. He also admitted that the allowances are not linked with length of service, basis wages and DA of the workers and were not related to nature of work and grade. Questions were put to him regarding the promotions given by the Petitioner to the effect that the Petitioner was not making comparison with similarly situated employees. He also admitted that the Petitioner had not received any letter or protested any objection from any workers of Research Centre. He stated that if allowances of 31 concerned workmen is increased there would be disparity. He also admitted that there was some error in calculation statement filed by the Petitioner. This witness admitted that the Petitioner is in profit of more than Rs. 4,000/- crores in the year 2012-13.

9. Both the parties produced documents in support of their contentions, the decisions rendered by this Court and the Apex Court governing the Petitioner and it''s employees, were placed on record. Copies of Four Awards and the various documents, such as pay-slips were also produced on record.

10. The Industrial Court framed issues as to whether the workers in the present reference were entitled to reliefs prayed for, whether they were entitled to relief as per the Four Awards and the Tribunal by it''s award dated 30 November 2013 allowed the reference by the following order-

i) Reference is allowed.

ii) The service conditions including basic wages and all allowances be protected and no adverse changes or any reduction whatsoever shall be made in future in respect of the concerned workmen listed in Exhibit-A to the Schedule of Reference.

iii) It is hereby held and declared that the Second Party Workmen in this Reference, whose names are mentioned at Sr. Nos. 1 to 30 in Exhibit-A to the Schedule of Reference are entitled for the benefits/allowances and arrears arising out of Shri Mehendale Award in Ref.(IT) No. 11/94. Shri Rothe Award in Ref.(IT) No. 11/94, Shri Shivankar Award in Ref.(IT) No. 56/99 and Shri Thakare Award in Ref.(IT) No. 56/99.

iv) It is further held and declared that the workman concerned whose name is at Sr. No. 31 of Exhibit-A to the Schedule of Reference is also entitled to the benefits and arrears arising out of Part-1 Award, Part-II Award passed by Shri Mehendale in Ref. (IT) No. 94/94 and benefits of settlement dated 26th August 2005 between the First Party Company and Hindustan Lever Research Employees Union.

v) In the circumstances, no order as to cost.

This award is challenged in the present petition. Petitioner was permitted to amend the petition to take the ground that whether Y.D. Joshi award was terminated and if not, whether present reference was maintainable. Amendment was allowed leaving open the objection of the Respondent that this ground was not taken in the Tribunal.

11. I have heard Mr. K.M. Naik, learned senior advocate for the Petitioner and Mr. Sanjay Singhvi, learned advocate for the Respondent. Both the learned counsel have made arguments in extension, referring to various decisions and the documents on record. The primary grievance of Mr. Naik is that the Tribunal has missed out the key issues and without any satisfactory reasons and without considering various propositions of law, proceeded to pronounce the award. Mr. Singhvi, on the other hand submitted that the award is just and proper and adequate reasons in support thereof are given.

12. Discussion by the Tribunal is in 13 short paragraphs. Paragraph 12 refers to examination of witnesses; paragraph 13 states that the Tribunal has gone through the pleadings; paragraph 14 records the submission of the advocate for the Union; paragraph 15 lists the authorities cited by advocate for the Union; paragraphs 16 and 17 reproduce the submissions of the advocate for the Petitioner; paragraph 18 reproduces the extracts from the decisions of the learned Single Judge of this court. In paragraph 19, after quoting the citation, the Tribunal directly reaches a conclusion, in three sentences, that in view of the ''aforesaid legal position'' and the ''principle of maintaining parity'', relief sought for extending the benefits of Four Awards should be given to the concerned workmen, otherwise it will amount to step-motherly treatment. In paragraph 20, Tribunal without adjudication, proceeds on the assumption that the concerned

workmen are drawing higher basic salary and holds that merely because of that other benefits cannot be refused. Tribunal then lists terms and conditions of scheme of amalgamation. In paragraph 21, Section 25-FF(a) is reproduced. In paragraph 22, Tribunal draws a conclusion that in view of provisions of Section 18(3)(d) the Petitioner is duty bound to extend benefits of awards to the employees employed and reproduces the section. In paragraph 23, the Tribunal states that in view of amalgamation scheme and Section 25-FF, the claim of the Union has to be granted. Paragraph 24, the Tribunal deals with financial capacity of the Petitioner and in paragraph 25, declares the award. That the manner in which the award is rendered is, to say the least, perfunctory.

13. The learned counsel for the parties have urged various issues in detail and the complexity of issues that they have placed for consideration merited far more scrutiny that it is done by the Tribunal. The Tribunal has found no contentious issues as if the matter was extremely clear and straight forward, for which no discussion was required. As the following narration, in which contentious issues are highlighted, would demonstrate that the Tribunal has passed an award so without reasons that it is perverse.

14. Broadly three issues arise for consideration. Firstly, whether while extending the benefit of the Four Awards total wage packet had to be considered. Secondly, whether Section 18(3)(d) was applicable and when the concerned employees became employees of the Petitioner. Thirdly, the question raised by way of an amendment, whether Y.D. Joshi award, by which the concerned workmen were to be governed, was terminated, and if not whether the reference could have proceeded.

15. The first issue arose as to whether entire wage packet needs to be considered, even for the purpose of allowances. The reasoning of the Industrial Tribunal is rather straight forward. The Tribunal has held if every other workmen is getting the allowances, there is no reason why the concerned workmen should be deprived of it and if the allowances are not extended to them there will be disparity. The issue is not as simple as that. Parity is a facet of equality which is an elusive concept. Equality may not always be discernible from bare perusal of facts. Extending a benefit to everyone equally may lead to inequality if the parties are already unequally placed. It is trite that treating unequals equally can lead to inequality. This is the area which needed serious adjudication. Tribunal has however simply sidestepped it. That the workers were already unequally placed was the foundation of the Petitioner''s case. It was important for the Petitioner as the concept of parity, in it''s establishment has a long history as judicially recognised in various decisions. The Industrial Court has looked at the grant of allowances to other workers and extended the same without reference to the larger perspective and the situation prevalent in the Petitioner''s establishment. Unless the survey was undertaken and concept of parity was looked at from all angles, real parity could not be achieved.

16. It is necessary to briefly recapitulate the historical background as regard the

concept of parity in the Petitioner''s establishment so as to appreciate various nuances which have been missed by the Industrial Tribunal. The history of various awards and the settlements in respect of the workers of the Petitioner have been narrated in the decision of two learned Single Judges of this Court.

17. The Petitioner has three establishments in Mumbai. The Head Office. The factory at Sewree, which was relocated to Andheri. The Research Centre at Andheri. Various categories of workers are employed in these three establishments. Some time in the 1950s a dispute arose between Lever brothers Limited and Hindustan Vanaspati Manufacturing Company Limited and its workers which was referred for adjudication to the Tribunal which declared an award on 29 February 1952 as ''Thakare Award'', which was a composite award in respect of the workmen. The settlement thereupon was arrived at on 27 September 1956 and the terms of settlement were extended to the factory as well as head office by another settlement dated 6 June 1957. Further settlements took place in August 1964. In the year 1967, the Petitioner relocated the Research centre at Andheri and another settlement was arrived at and the award was also declared in June 1974 known as ''Chitale'' award. On 5 October 1977 another award known as ''Bhojwani'' award was given in respect of extending the benefits given in the Chitale award for the head office clerical and sub-ordinate staff. In 1979, another settlement took place in respect of Hourly Rated staff in Research Centre at Andheri. Another Award came to be passed pursuant to the reference made in 1979 and 1977 which was firstly remanded back by Division bench to the Industrial Tribunal and the subsequent award passed was set aside by the Supreme Court and remanded back to the Tribunal. Further a settlement was arrived at on 21 December 1983 whose benefits were extended to Research centre of sub-ordinate staff. Thereafter the settlement of 1979 and 1983 became part of the ''Dongre'' award which was in respect of parity between Head office and clerical and technical staff and the Hourly Rated and Subordinate Staff. Thereafter there was a further settlement and an award was passed by the Industrial Tribunal known as ''Mehendale'' award. Part 1 Award was published on 26 April 1995. A challenge came to be made to the Part 1 Award. The award was based on principles of parity. However, the Tribunal did not grant parity as regards arrears. Thereafter Part-II award came to be passed on the basis of comparison with another company with the factory workers and Research Centre workers over and above the benefits already granted by Part 1 Award. The award was challenged by the Petitioner by way of Writ petition. It was argued on behalf of the Petitioner that the award could not have been made on the basis of parity alone and principles of parity could not have been applied in case of categories of workmen at Head office, factory and Research centre. The challenge was considered by the learned Single Judge of this Court (Dr. Radhakrishnan, J.) in the case of Hindustan Lever Ltd. v. Hindustan Lever Employees'' Union & ors. in W.P. No. 1335 of 1995. Dr. Radhakrishnan, J. examined the concept of parity in the petitioner''s establishment in detail.

18. Dr. Radhakrishnan, J. in his decision dated 29 October 2002 observed as

under-

16....... With regard to the above objection, one has to clearly bear in mind that right from 1952 (in) the Thakare Award which was a composite Award dealing with Office Staff as well as Factory Staff the parity was maintained. Subsequent thereto, even in Bhojwani''s Award such a parity was maintained. Apart from both the aforesaid Awards, the employer and the employees'' Union have arrived at the Settlement in 1979 with regard to Sewree Factory and the same parity was adopted in the settlement with regard to the Head Office. Thereafter if one were to analyse the Dongare Award, the same parity was maintained in fixing the pay as well as the allowances. After that in the year 1983 the Settlement which was arrived at with regard to the Head Office was again followed with regard to the Factory. Under the aforesaid facts and circumstances, specially from 1952 to 1983 consistently for the period of almost 30 years, such a parity has been followed. Even the Division Bench of our High Court while delivering the judgment in Writ Petition No. 864 of 1986 dated 6.9.1989, has held that such a parity has always been maintained, and in fact, if such a parity was not to be there, it would cause injustice, and the Industrial Court by maintaining such a parity was held to be proper, as clearly observed in paragraph 45 of the aforesaid judgment.

...... In fact, as indicated hereinabove, the employer themselves has consistently extended the Settlement, once entered into between the Head Office and thereafter extending it to the Factory and the Research Centre or vice-versa. Based on the above, for almost 30 years, the same parity was maintained. Even the Division Bench order has stated that if there is deviation from the same, that would cause the injustice. Hence, I am clearly of the view that there is nothing perverse or illegal in adopting parity principle in the above awards.

As above observations would show that for almost 30 years consistently concept of parity was maintained in the petitioner''s establishment.

19. Question of parity in the Petitioner''s establishment again fell for consideration of this Court in the year 2007 in the case of Hindustan Lever Limited V Hindustan Lever Employees'' Union & Ors. 2007 I CLR 737. This petition was filed challenging the award passed pursuant to a reference made in respect of the demands of the Union on the basis of region-cum-industry principle. The Tribunal had formulated the issues as to whether principle of region-cum-industry so also parity should be taken into consideration or only parity and not the principle of region-cum-industry. The Tribunal had disposed of the application filed by the Petitioner seeking disposal of the reference on the basis of parity, holding that while revising the pay-scale it is not merely the principle of parity but region-cum-industry principle will have to be applied.

20. In the Writ petition the Petitioner had specifically contended that parity between establishment of the same employer has to be considered by taking into account the total wage packet. On behalf of the Union, it was inter-alia

contended that parity can exist between different categories of workmen, with regard to such pay components which are applicable to all workmen irrespective of grades. The learned Single Judge (Dr. D.Y. Chandrachud J.) remanded the proceedings back to the Industrial Tribunal. While remanding the proceedings he observed in paragraphs 15, 21 and 22 as under-

15. While considering the question of parity, it would, as a matter of first principle, merit emphasis that the object of the principle is to ensure that workmen engaged in similar categories in various establishments of the same employer in the same region do not suffer an imbalance of service conditions. A clerk in the establishment of HLL at the Head Office at Churchgate must, under the principle of parity, be similarly placed in the determination of his service conditions as a clerk at the Factory or the Research Centre. This equivalence reflects a principle of horizontal parity: parity in service conditions as between corresponding categories of workmen. Aside from horizontal parity which extends similar conditions to workmen falling in similar categories in different establishments of the same employer in the same region, the second principle of equivalence is that of vertical parity. Vertical parity applies independent of the categories involved in respect of those conditions of service or allowances which apply to all workmen irrespective of the categories in which workmen may be engaged. Parity in the establishments of one and the same employer particularly when they fall in the same region has a striking appeal in industrial jurisprudence because the raison d''etre is to ensure against an imbalance in wages and service conditions which will otherwise result in industrial unrest. The question of parity, however, cannot depend only upon a priori considerations since the overall pattern of industrial relations and the long standing practice followed in the establishment of the employer quite often does have a material bearing on the pattern of wage fixation.

* * *

21. The basic approach of the Tribunal suffers from a manifest error. The Tribunal has applied sporadic elements of parity (such as when it dealt with the allowances that were granted by the industrial settlement) and elements of industry-cum-region with regard to other elements of the wage package. Both the employer and the Union having accepted the fundamental precept of parity, it was for the Tribunal to consider as to whether the employer was justified in denying the benefits of Part-B of the Head Office settlement relating to the settlement of past dues on the ground that the demand of the Union was for a revision with effect from 1st January 1996 upon the expiry of the earlier settlement and that during the term of the earlier settlement dated 10th January 1992, clause 15 ruled out such a demand. On the other hand, the plea of the Unions is that the industrial settlement constitutes a package deal of which portions should not be severed. The Unions contend that when certain demands were given up in the Head Office settlement, such as for revision of basic wages, the benefits granted by the settlement including past arrears comprised integral

elements of the overall package. An answer to these rival submissions was part of the adjudicatory function of the Tribunal which it has manifestly failed to discharge. Instead, the answer which the Tribunal has found, does not do justice either to the principle of parity or, as this judgment would subsequently explore, to the principle of industry-cum-region. A mismatch of the two principles does not allow for consistency in industrial adjudication or foster the object of industrial peace. The entire approach of the Tribunal to the issue of parity was thus completely unsustainable.

* * *

22. A remand of the proceedings to the Industrial Tribunal would be warranted in order to enable the Tribunal to reconsider the whole issue of parity afresh having regard to the observations contained both in the judgment of the Hon''ble Dr. Justice S. Radhakrishnan and in the present judgment. If the Tribunal comes to the conclusion that the observance of parity amongst the three establishments of the same employer must continue to be preserved in order to secure industrial peace, it would be essential for the Tribunal to lay down in the course of its adjudication an appropriate package of service conditions and benefits that would ensure existence of parity. It is for the Tribunal to have regard to the overall wage packet and to the benefits which the workers have received in the meantime. It is only appropriate and proper that a factual determination should be made by the Tribunal in the first instance. Wide as the powers of this Court under Article 226 of the Constitution are, it is necessary that an initial determination involving factual determinations be made by the Tribunal. The issues, as the previous discussion shows, involve drawing a balance between conflicting claims. The primary determination must be made by the Industrial Tribunal in the exercise of the broad powers which are conferred upon the Tribunal in matters of industrial adjudication.

As the above observations would show that the learned Single Judge did make a reference to overall wage package. The learned Single Judge left this issue to be considered by the Tribunal as the primary decision is needed to be taken by the Tribunal which the Tribunal had failed to do.

21. Both the learned Single Judges followed the decision of the Apex Court in the case between Polychem Limited Vs. R.D. Tulpule, Industrial Tribunal, Bombay and Another, In this case the issue was regarding validity of the part of the award by which demand of wage packet of workmen was allowed. The employer was aggrieved by grant of vacation allowance and had contended that no such vacation allowance was granted in similar industries and the workmen in their industry were getting other amenities like dearness allowances according to revised textile rates, overtime wages, lunch etc. It was the contention of the Union in that case that there should be no discriminatory treatment. The Supreme Court allowed the appeal and set aside the award and remanded the proceedings back to the Tribunal in light of what was observed in the decision. The Apex Court observed as under-

9. Turning now to the facts of the present case we are clearly of the view that the Tribunal has committed a serious error in not considering the other allowances and amenities allowed to the respondents-workmen, and comparing their total wage packet with the total wage packet of those employees to whom the allowance in question has been allowed, when determining this question. The Tribunal has virtually decided the question in issue exclusively on the basis that the employer has the financial capacity to stand the burden of such allowance being granted to the workman at the same rate as the higher staff, with the same conditions. The difference between the, amenities allowed to the workmen and to the staff to whom the vacation allowance is granted must in Law and justice be looked into and the question then decided whether or not the present workmen''s demand is justified. The principle of region cum-industry has no doubt to be kept in view out then the comparable industries in the region have to be considered from all the relevant aspects Which have been laid down by this Court in various decisions to which it is unnecessary to refer, the principle being well settled. The fact that in the refineries in the region similar allowance is granted as a result of settlement cannot, on that account alone, be considered to be irrelevant because that may appropriately indicate that the demand; of the workmen in those industries was not considered/unjust. But to what extent that should weigh with the Tribunal is for the Tribunal to decide in the light of all the relevant circumstances. The total wage packet of the various categories of employees in the appellant''s industry itself, including the question of their nature of duties and functions, however, deserves to be given primary importance so that there is no reasonable chance of heart burning and discontentment amongst the different categories of workmen on account of the differential treatment which, though seemingly justifiable, may; in real effect, be discriminatory. The importance of appropriate standardization of wages in the appellant-industry on a proper consideration of the duties and functions of the different categories of employees must be kept in view in deciding the present dispute.

22. In the present case an issue arose before the Tribunal as to whether claim of allowance should be considered in light of the total wage packet. This was squarely put into issue in the pleadings and in the evidence. There is no however reference to this concept in the entire impugned Judgment nor there is any application of mind to this criteria by the Tribunal. Mr. Singhvi has sought to make a distinction in respect of allowances on the ground of vertical parity. According to him for extending vertical parity there is no need to keep the total wage packet in mind. He found support in the observation of Dr. D.Y. Chandrachud J. reproduced in the preceding paragraph. The learned Single Judge no doubt has made a reference to these two types of parity. Horizontal parity and vertical parity would be distinct. He has observed that the vertical parity means that if something is given to other employees irrespective of their grades, then it should be extended to all. Concept of vertical parity would be thus a departure from the test of total wage packet. Though it is argued across the bar by Mr. Singhvi, this concept is not even referred to in the impugned award. Though Mr.

Singhvi has placed reliance on the statement made by the witness of the Petitioner that the allowances would be paid irrespective of the grade, primary adjudication of this issue will have to be done by the Tribunal.

23. The ramification of departure from the concept of total wage packet for allowances, would mean the total wage packet criteria will no longer apply in certain cases. The apprehension of the Petitioner that this may lead to similar claims by other employees cannot be said to be an unfounded apprehension. The issue of parity is thus not as simplistic as the Tribunal found. In the case of Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, an issue regarding parity and wages arose. The Supreme Court observed that the settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the Dearness allowance it cannot be said that settlement is on the whole unfair. The Supreme Court further held that it is not possible to scan the settlement in bits and pieces and hold that some parts are acceptable and some parts are bad and totality of advantages and disadvantages need to be considered.

24. Mr. Singhvi submitted that it is a matter merely of 33 employees and all that has been done is to bring them on par with 3000 employees and the financial burden by the award is negligible and since interest of justice has been served this Court should not interfere in it''s equitable jurisdiction. Learned counsel relied upon decision in the case of The Hindustan Construction Co. Ltd. Vs. Shri G.K. Patankar and Another, In this decision the Apex Court refused to interfere with the decision of the High Court on the ground that substantial justice was done and the decision of the High Court not to interfere on that count was correct. The High Court had found that extension of benefit to the workers therein was on principle of uniformity, which served to maintain industrial peace and therefore, the High Court did not interfere, which was approved by the Supreme Court. The moot question is whether substantial justice has been done or not. Merely because the employees have been granted certain amount which the Petitioner has capacity to pay it cannot be said that substantial justice has been done. The issue still arises whether this has created disparity or it has removed disparity. The Apex Court in the case of Remington Rand of India Ltd. v. The Workmen in Civil Appeal Nos. 856, 1475 and 2119 of 1968 decided on December 10, 1968, observed as under-

As regards the first ground it is true that in the present case there was no question of the company being unable to bear the additional burden of lunch allowance. But the fact that an employer is able to bear the burden is not the criterion. The foundation of the principle of industry-cum-region is that as far as possible there should be uniformity of conditions of service in comparable concerns in the industry in the region so that there is no imbalance in the conditions of service between workmen in one establishment and those in the rest. The danger otherwise would be migration of labour to the one where there are more favourable conditions from those where conditions are less favourable.

Therefore, the mere fact that a particular concern can bear an additional liability would by itself be no ground to impose upon it such extra obligation. Equally important is the fact that the wage structure prevailing in the appellant company is undisputably fair and the dearness allowance paid to the workmen has been, as aforesaid, linked with the index of cost of living. These must take care of the rise in the cost of living from time to time. If, therefore, the company were to be compelled to pay lunch allowance to all workmen including those who work at the offices it would in tact mean a double provision for the constituent of the cost of food already provided for in the wage scales and the rates of dearness allowance. The force of this aspect was recognised by this Court in Mcleon & Co. Ltd. v. Workmen.

(These observations are reproduced in case of Messrs. Polychem (supra)). The Apex court emphasized that it is not the question of only wages but if disparity exists it will lead to migration of labour to more favourable conditions.

25. The jurisdiction of Industrial Tribunal and need to correct the Tribunal when awards are passed without application of mind was dealt with by the Apex Court in the case of Mukand Ltd. Vs. Mukand Staff and Officers'' Association, In this case also the issue was as regards charter of demands in respect of service conditions and wages. The Apex Court noted that parties had adduced detailed evidence documentary as well as oral, and the Tribunal passed an order without adverting to the factual material and considered the legal position.

26. The Apex Court set aside the award on the ground of non-application of mind to the material on record. The Apex Court dealt with the lack of reasoning on the part of Tribunal in following paragraphs-

64. It is argued that individual items in the wage packets can, and often do, vary very considerably among comparable concerns. Hence, estimation/computation of the total wage packets for different categories of employees and comparison of the total wage packets among comparable concerns is essential. As rightly pointed out by learned counsel for the appellant that none of the Courts below have admitted to estimate/compute the total wage packets resulting from their awards/judgments for any of the categories of employees. This is a fatal omission in the award/judgment. There has been no acceptable reply from counsel for the respondent-Association on this issue.

65. The basic pay and increment structure, found to be higher than in comparable concerns by the Learned Single Judge, remain unchanged by the Learned Single Judge himself or by the Division Bench. Along with the high rate of Dearness Allowance granted by the Order of the Division Bench, these have cascading effect on other items or emoluments like House Rent Allowance which is already high at 12.5% of Basic pay plus DA and Leave Travel Allowance which is fixed at one month''s basic pay the amounts specified in the Award.

66. The Tribunal had granted in toto the demands relating to scales of basic pay and increment structure except the demand for the merger of grades 12 and 11

into grade 09. The result has been a disproportionate increase in the basic pay and annual increments. Neither the Learned Single Judge nor the Division Bench attempted to remedy the situation. There is no discussion or analysis in support of the decision to grant the demand in respect of scales of basic pay in toto, as has been done by the Courts below.

67. The Learned Single Judge has observed vide paragraph 38 of his judgment, which is at page 167 of Vol. II of the Company''s Appeal, that "the revised basic wage and the increment structure is comparatively higher than the comparable concerns" but has left the situation unchanged. The Division Bench, too, has left it unremedied. While doing so, the Courts below totally ignored the cascading effect of the high basic wage and dearness allowance not only on Provident Fund, Gratuity and Superannuation but on other items of emoluments viz., one component of DA which is related to basic pay, House Rent Allowance and Leave Travel Allowance.

69. The rate of variable DA now stands raised from Rs. 1.72 to Rs. 3.00 for every change of 5 points in the Consumer Price Index which is disproportionately high but has been left unchanged by the Division Bench.

70. The ''CHARTS ON INCREASES IN EMOLUMENTS GRANTED BY THE COURTS BELOW tendered by the Appellant Company as directed by this Court during the hearing of the present Appeal contain the relevant particulars of the demands in dispute and the Orders by the Courts below thereon.

71. The time-tested system and practice of allowances linked to grades has been changed by the Award and the change, which is drastic, continues under the impugned Order of the Division Bench.

72. For decades in the pre-Award period, the allowances like House Rent Allowance, Leave Travel Allowance etc. were higher for the higher grades and there were thus financial benefits because of promotions when the employees were promoted from the lower to the higher grades and entrusted with higher responsibilities. Under the Award of the Tribunal, the allowances are linked to basic pay and are delinked from the grades, a situation that has been left without any modification by the learned single Judge as well as by the Division Bench. There is no application of mind or any discussion or analysis or any reason adduced in support, of the abovementioned change in the time-tested system and practice anywhere in the Award/Judgments of the Courts below. As a result, financial benefits arising from promotions are rendered nugatory-in fact, the Award has virtually abolished the financial benefits on account of promotions.

27. The perusal of the above mentioned passages would show that the Apex Court took note of the cascading effects of grant of such amounts, the very concern raised by Mr. Naik. In light of these observations it is not possible to sustain the award only on the ground that workmen have been granted monies which the Petitioner employer can afford to pay. Since it could be seen from bare perusal of the award that there is a complete non-application of mind, confirming

this finding would be in perpetuating non-application of mind.

28. The next contentious issue that arose was applicability of Section 18(3)(d) of Industrial Disputes Act. Section 18(3)(d) reads as under-

18(3)(d) Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

The Tribunal recorded a finding that u/s 18(3)(d), since concerned workers became subsequently employed in the establishment, they were governed by the Four Awards which were rendered earlier to their employment.

29. In this context there was a serious factual dispute that had to be resolved first, as to the date of employment of the concerned workmen. According to the Union, the employment was subsequent in the year 1998, while it is the case of the Petitioner that the Union has itself agreed that the concerned workmen were employed in the year 1993.

30. Firstly, it has to be seen whether the case as regards Section 18(3)(d) was pleaded in the Statement of claim.

31. Perusal of Statement of claim would show that it was not so specifically pleaded. Mr. Singhvi contended that it is not necessary to specify a section when all ingredients of applicability of that section are already present on record. But the applicability of Section 18(3)(d) would arise if it was a case of the Respondent Union that the earlier award by which they were bound i.e. Y.D. Joshi award continued and in addition the Four Awards were applicable u/s 18(3)(d). Prima facie that does not seem to be the case pleaded in the Statement of claim. According to the Respondent Union notice of termination of Y.D. Joshi award was given and on the ground of parity Four Awards should be extended to them.

32. In the affidavit of evidence the witness of the Union deposed that in the year 1993, the Tata Oil Mills merged with the Petitioner and consequent upon merger all employees became employees of the Petitioner. Same is the contention made in the Statement of claim. It was the case of the Union that the concerned employees were deemed to have been joined in the year 1998. In the Statement of claim, while describing the date from which demand is sought, the Union stated that the concerned workmen were transferred to other unit in the year 1998. Thus issue arose for consideration, whether the concerned workers became employees of the Petitioner in the year 1993 and were transferred to Andheri in the year 1998, or they became employees in the year 1998.

33. This aspect was crucial as the Four Awards, of which the benefit is sought, are all subsequent to the year 1993. Mehendale award is of the year 1997. Rothe award is of the year 2004. Shivankar award is of the year 2003, and Thakare award is of the year 2008. If the concerned workmen were already in the

employment of the Petitioner then they may not be covered by Section 18(3)(d). In that case the concerned workmen should have intervened when the four awards were passed. On the contrary, the witness of the Respondent Union has asserted that they were not concerned. In any case this is not to draw a conclusion regarding applicability of Section 18(3)(d) at this stage but to emphasize that there was a serious factual adjudication that needed to be undertaken before applying Section 18(3)(d). Transfer, Employment and Deputation are all different concepts and require factual adjudication. The Tribunal also referred to Section 25(FF) of the Industrial Disputes Act and that a going concern was transferred but no further discussion as regarding exact date of employment is found in the 13 paragraph of the reasoning of the Tribunal. Again the Industrial Court straightaway drew conclusions without ascertaining the factual foundation. It is also contended by Mr. Naik that case u/s 18(3)(d) was not part of the reference. This was also one of the issues that arose for consideration.

34. There is one more issue that was completely left out of consideration by the Industrial Tribunal i.e. from which date the benefit under the award should have been given. From the date when the Four Awards were declared; from the date the concerned employees became the employees of the Petitioner; from the date of notice of termination was given; from the date reference was instituted; from the date the award was declared.

35. Mr. Naik submitted that award cannot be declared with retrospective effect. Mr. Singhvi submitted that there is no such embargo in law and the earlier awards were issued giving retrospective effect. Mr. Singhvi relied upon the decision of Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another, to contend that the Tribunal has powers to grant relief retrospectively. Perusal of this decision would indicate that the Apex Court was dealing with a submission that the power of a Tribunal is limited to grant relief only from the date of raising the industrial dispute. The Apex Court negatived this contention by observing as under-

7. We find it difficult to agree with Shri Pai. In principle we find no basis for the said contention. The Industrial Disputes Act does not provide for any such limitation. The definition of the expression "industrial dispute" in Clause (k) of Section 2 of the Act does not contain any such limitation. We are unable to see on what basis can such restriction be inferred or implied. It must-be remembered that the Industrial Tribunal/Labour Court is supposed to be a substitute forum to the Civil Court. Broadly speaking, the relief which the Civil Court could grant in an industrial dispute can be granted by the Industrial Tribunal/Labour Court. Indeed the Industrial Tribunal/Labour Court is not bound by technical rules of procedure which bind the Civil Court. J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others, In such circumstances we see no justification for holding that the Industrial Tribunal-or for that matter a Labour Court-has no jurisdiction to grant relief from a date anterior to the date on which the dispute is

raised. Take a case where the Labour Union raises a dispute on a particular date but says that the said relief should be granted from an anterior date. We seen no reason why the Industrial Tribunal should be held to have no power to grant relief with effect from such anterior date if it is found to be warranted by the facts and circumstances of the case. Here it is necessary to emphasize the distinction between the existence of power and its exercise. It is one thing to say that the Tribunal has no power to grant such relief and it is an altogether different thing to say that in a given case it ought not to grant such relief. We are only emphasizing the aspect of power. Whether in a given case relief should be granted with effect from a date anterior to the date of raising the dispute is a matter for the Tribunal to decide in the facts and circumstances, of that case.

36. The Apex Court held that the Tribunal does have power to grant relief from anterior date, if it is found warranted in facts and circumstances. This would mean there will have to be a scrutiny of facts and circumstances followed by reasons. Again such discussion is completely missing in the impugned award. The Tribunal has straightaway granted reliefs from the dates of the Four Awards.

37. There was also a serious dispute as to whether the basic wages of concerned workmen are higher than other workers, or on par, or lower. Again there is no discussion on this issue. The Tribunal simply proceeds to assume that the wages are higher.

38. The conclusion is that the Tribunal has failed to address itself to various nuances of this controversy and has over-simplified the dispute. Serious apprehension was raised by senior advocate Mr. Naik that the award will have a cascading effect which will upset the tradition of parity in the Petitioner''s establishment. He submitted that once these allowances are given to the concerned workmen irrespective of total wages, they will have all the concession plus better wages. Then next will be demand from other workers will be for higher wages, to bring themselves on par with concerned workmen on basic wages, and then further demand from another set, and this will trigger a cycle of demands. This is not a remote apprehension. The history of wage structure and the principle of parity which has existed in the Petitioner''s establishment for last 50 years or so had to be carefully analysed by the Tribunal.

39. The object of Industrial adjudication is to achieve industrial peace and harmony. Tribunal by conducting a comprehensive inquiry and settling all the issues can ensure that the further litigation is minimised. The Tribunal also must take care that inadvertently it does not set in motion a chain of litigation which could result in disruption of long-standing traditions in an establishment.

40. Now remains the point taken by way of amendment. The Petitioner had amended the petition to take up a contention that the notice of termination in respect of the settlement dated 15 December 1986, the Federation''s settlement dated 14 June 1990 and Y.D. Joshi award dated 14 October 1990 and the settlement dated 2 April 1997 in respect of ex-Lakme workmen were not validly

terminated as required u/s 19(2) and 19(6) of the Act. It is Petitioner''s contention that since the earlier award and settlements were not terminated, the reference itself was not maintainable and no orders could have been passed. The termination letter dated 23 February 2008 is placed on record. The amendment was allowed and the contention of the Union that this ground was not taken before the Tribunal and should not be considered in the writ petition for the first time, was kept open.

41. Mr. Naik contended that if the matter needs to be remanded to the Tribunal for de novo consideration, since the contention based on Section 19, goes to the root, should also be considered by the Tribunal. Mr. Singhvi opposed the submission submitting that no new ground should be allowed and if that it allowed it will delay the proceedings further and many of the concerned employees have only few years of service remaining.

42. Firstly, it needs to be considered whether there is any prima facie merit in this contention at all. Then the second question would be whether to permit the Petitioner to raise this question. Section 19 of the Industrial Disputes Act reads as under-

19. Period of operation of settlements and awards.-

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A]: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the

award was that of a Tribunal or of a National Tribunal] for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be] on such reference shall, be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.]] [and where there is a recognized union for any undertaking under any law for the time being in force by such recognized union].

43. Section 19 contemplates a notice of termination. The notice of termination is given on 23 February 2008. Notice of termination u/s 19(2) and 19(6) is regarding the following-"

(1) Shri Y.D. Joshi Award dated 29.9.1981

(2) Settlement dated 15.02.1985 between erstwhile Tomco Ltd. and Tata Oil Mills and Allied Companies Employees'' Union.

(3) Settlement dated 2.4.1997 between erstwhile Lakme Ltd. and All India Labour and Allied Companies Employees Union.

44. There were two Y.D. Joshi awards. One is Y.D. Joshi Part I award rendered on 5 November 1980 and second is Y.D. Joshi Part II award, rendered on 29 September 1981. It is submitted by Mr. Naik that the Part II award dealt with re-classification and Part I dealt with salary scales. According to Mr. Naik notice of termination does not terminate the award Part I in respect of salary scales and unless it was terminated the present award was not maintainable. Mr. Singhvi submitted that it was unnecessary for the Respondent Union to give notice of termination as regards Y.D. Joshi Part I award as the Part I award is deemed to have been merged with Part II award.

45. In the introduction to Y.D. Joshi Part II award, it is specifically stated that after the publication of Y.D. Joshi Part I award, the parties were directed to discuss certain matters which were not covered by Part I award and if no settlement was arrived at between them, they would refer the dispute back to the Arbitrator in respect of which were matters reserved for decision in Y.D. Joshi Part II award. This would prima facie indicate that the Y.D. Joshi Part I and Part

II awards dealt different issues and they would become final in respect of the issues contained therein. Therefore, a question would arise whether without terminating the Y.D. Joshi Part I award, the Respondent Union could proceed with the present reference.

46. Mr. Naik has placed reliance on the decision of the Apex Court in Shukla Manseta Industries Private Ltd. Vs. The Workmen Employed under it, In this decision the question regarding notice to be given u/s 19(2) and 19(6) came up for consideration. The Apex Court observed the policy behind Section 19 as follows-

10. The policy of the Act is to ban agitations over the matters covered by a settlement or by an award during the period specified u/s 19(2) and Section 19(6) respectively. To avoid uncertainty and speculation Section 19 prescribed a terminus a quo and a terminus ad quern. If in a settlement there is no time limit agreed upon between the parties the period of operation is a space of six months from the date of signing of the settlement and will also last until the expiry of two months from the date of receipt of the notice of termination of the settlement. If the period is fixed it commences from the date as specified in the settlement and will theoretically end as agreed upon but shall continue to operate under the law until the expiry of the requisite period of two months by a clear written notice.

11. An award u/s 19(3) of the Act has a longer period of operation, to start with, namely, one year from the date of the commencement of the award, which is on the expiry of 30 days from the date of publication of the award by the appropriate Government. As in the case of a settlement so also u/s 19(6) the award continues to operate governing the condition''s of service until the expiry of two months from the date of receipt of notice of termination of the award. Under the two provisos to Sub-section (3) of Section 19 Government has the option to reduce or extend the period of operation of an award. This will be, however, always subject to Sub-section (5) of Section 19.

12. Notice u/s 19(2) or u/s 19(6) is only for intimation of an intention to terminate a settlement or an award respectively. There is no legal impediment to give advance intimation of the aforesaid intention provided the contractual or statutory period of settlement is not thereby affected or curtailed.

47. In case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , the question fell for consideration before the Supreme Court was regarding the existence of a settlement questioned therein. The Supreme Court analysed three stages u/s 19 with different legal effect and observed thus-

34. The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This

is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination u/s 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end-order in society-can it commit functional harakiri by leaving a conflict situation to lawless void ?

48. Mr. Singhvi relied upon the decision of the Apex Court in the case of Karnani Properties Ltd. Vs. State of West Bengal and others, to submit that the notice of termination u/s 19 can be inferred even from the correspondence. Counter submission of Mr. Naik is that in the present case there is no termination of Y.D. Joshi Part I award at all, let alone by inference.

49. The conclusion of the Apex Court in the case of M/s. Shukla Mansetta (supra) needs to be noticed, while deciding whether this issue is of importance. The Apex Court observed-

20. We do not read the above observation as supporting the submission of counsel that no advance notice can be given to terminate a settlement or an award provided the requisite period of two months required u/s 19(2) expires on the date of expiry of the settlement or award or thereafter. It is only if a notice u/s 19(2) or 19(6) expires within the period of operation of the award or settlement, such a notice will be invalid under the law. In that event the settlement or the award will continue to be in operation and any reference by Government of a dispute during the period of settlement or an award without the same being terminated under the law will be invalid.

50. The above-mentioned observations are pertinent. The Apex Court emphasized that if the requisite period is not complete, then the notice will be invalid in law and during the pendency of settlement of award, the reference will be invalid. Thus, this issue cannot be simply brushed aside. Once it is brought to

the notice that a position of law and fact may exist, which would render a reference itself invalid, then it cannot be ignored.

51. Mr. Singhvi relied upon the decision of the Apex Court in the case of Karnani Properties Ltd. Vs. State of West Bengal and others, to contend that the question as to whether there was non-compliance in the provisions of Section 19 cannot be decided for the first time in a Writ petition as it involves inquiry to questions of fact.

52. But in the present case, the award is not being set aside on the ground of Section 19. What is being done is that when the matter is being remanded back for de novo consideration, the Petitioner is permitted to urge this point before the Tribunal, which will be adjudicated on it''s own merits.

53. The objection raised by Mr. Singhvi for keeping this point open upon remand is that it would further delay the proceedings. This may be so but simply on that ground an issue which appear to go to the root of the case cannot be left out of consideration. The first of the Four Awards was given in the year 1997. Even assuming the case of the Respondent Union that the concerned workmen became employees of Petitioner in the year 1998, for 10 years the Union did not seek benefit of this award. If the Respondent Union was anxious that its members should get the benefits before their superannuation, nothing stopped the Union from raising the dispute earlier. No satisfactory explanation in this regard has been placed on record by the Respondent Union. Thus, if by few months the proceedings get extended in view of consideration of the additional ground, it cannot be said that the Union is seriously prejudiced.

54. In the circumstances, the only course left open is to set aside the award and remand the proceedings to the Industrial Tribunal for de novo consideration. The amendment carried out by the Petitioner in this petition shall constitute part of its pleading before the Industrial Tribunal. It is open to the Respondent to file counter statement to the additional ground taken in the amendment.

55. It is clarified that the above discussion is only to highlight the issues involved and to bring to the notice of the Tribunal the various aspect of the controversy. Therefore, none of the observations made in the judgment will be construed as conclusions on the merits of the issues.

56. Accordingly, the petition is allowed. The impugned award dated 30 November 2013 in Reference (IT) No. 41 of 2009 is set aside. The proceedings are remanded back to the Tribunal for de novo consideration. The Tribunal will make endeavour to dispose of the proceedings within period of six months from the date of the writ reaching the Tribunal. Both parties shall co-operate with the Tribunal.

