

(1993) 02 BOM CK 0112

In the Bombay High Court

Case No : O.S.W.P. No. S 2416 and 3532 of 1991

Ici India Ltd.

APPELLANT

Vs

Presiding Officer and others

RESPONDENT

Date of Decision : 10-02-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 9

Citation : (1993) 3 BomCR 387 : (1993) 2 LLJ 568

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : P. Chidambaram, for the Appellant; C.L. Dudhia, for the Respondent

Judgement

1. These are two writ petitions under Article 226 of the Constitution of India filed by the employer and the workmen respectively, challenging the Award of the National Industrial Tribunal dated April 8, 1991 made in reference No. NTP-2 of 1987. Since the two writ petitions are in the nature of cross-petitions, the parties shall, hereinafter, be referred to as they are arrayed in Writ Petition No. 2416 of 1991, in which the Petitioner is the employer, Respondent No. 1 is the Presiding Officer, National Industrial Tribunal, Bombay and Respondents 2 to 8 are Trade Unions/Associations representing the present and past workmen of the Petitioner Employer.

2. A Company known as ICI(India) Pvt. Ltd. was incorporated some time in 1926. Between 1939 to 1961, three Indian subsidiaries, by name (1) Alkali and Chemicals Corporation of India Ltd., (2) Indian Explosives Ltd. and (3) Chemicals and Fibers of India Ltd., of the parent U.K. Company were set up in India. In 1982, the other subsidiary companies were amalgamated with Indian Explosives Ltd. In 1989, the name of Indian Explosives Ltd, was changed to ICI India Ltd., which is the name of the Petitioner as shown in the Petition. The petitioner has several manufacturing facilities at different places in the country. The locations and details of products manufactured in such facilities are as under :-

1. Penki (UP) Fertilizers, Catalysts 2. Comic (Bihar) Explosives 3. Rishra (W. Bengal) Paints, Rubber, Chemicals 4. Hyderabad (A.P.) Paints 5. Thane (Maharashtra) Polyester Fibre Speciality Chemicals 6. Ennore (Tamil Nadu) Pharmaceuticals, Agro-Chemicals 7. Bangalore (Karnataka) Seeds

3. The petitioner employs about 8,500 employees in its establishments all over India. Out of these 8,500 employees, it has categorised about 517 as Management Staff required to perform Managerial and Administrative functions. The rest are categorised as Non-Management Staff and comprise "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act and also Supervisory Staff who are not "work men".

4. The Non-Management Staff of the Petitioner had always enjoyed the benefits of gratuity and Contributory Provident Fund which were more liberal than those provided for in the respective applicable statutes. In addition there to, the petitioner had been giving, on ex-gratia basis, a monthly pension to the retired employees and widows in a few cases of hardship. In 1962, the petitioner announced a pension scheme as a third retirement benefit which was brought into force from January 1, 1961. Since then the Scheme has been revised from time to time by the petitioner, though ad hoc. There is dispute between the parties as to whether the Scheme of Pension introduced initially was the result of a settlement in an industrial dispute, or voluntary. The Scheme was revised with effect from January 1, 1966, April 1, 1975 and October 1, 1977. These revisions were made applicable to the existing pensioners also. Though ad hoc, the revised pensioner benefits were made applicable to the existing pensioners, the erstwhile pensioners as well as to those who retired after the aforesaid dates. However the revision made with effect from July 1, 1976 was made applicable only to those workmen who retired after that date. There was a date further revision made with effect from December 1, 1979 which was made applicable only to those who retired on or after July 1, 1979. The revisions made with effect from June 1, 1980 and July 1, 1984 were made applicable only to those workmen who retired prior to December 1, 1979. A further revision was made with effect from April 1, 1985 classifying the pensioners into three classes, (a) those who retired prior to December 1, 1979 (b) those who retired between December 1, 1979 and March 31, 1985 and (c) those who retired after April 1, 1985. The different classed of pensioners were granted different benefits by way of revision of pension as the applicable pension formula to each of these categories was different.

5. The discrimination between the classes of pensioners according to their dates of retirement and the differential application of revised pension formula to different categories gave rise to heart burning. The Association of Pensioners and Union of workmen continued to agitate the issue since about the year 1973. The first Respondent Federation sought to raise an industrial dispute on the issue by its letter dated March 19, 1982. Conciliation proceedings were sought to be initiated by the Deputy Commissioner of Labour, West Bengal. The proceedings resulted in failure as the petitioner refused to participate in the proceedings. The

State Labour Authorities, West Bengal filed a failure report on September 2, 1985. The petitioner objected that, it being a company with factories situated in several States no State Government nor State Industrial Tribunal could exercise jurisdiction. The Government of West Bengal moved the Government of India for constitution of a National Industrial Tribunal and for reference of the dispute for adjudication. Consequently the Central Government made an order dated August 13, 1987, in exercise of its powers u/s 10(1)(A) of the Industrial Disputes Act, and referred the industrial dispute to the National Industrial Tribunal for adjudication. Since several contentions have been urged on the jurisdictional limits of the adjudicatory powers of the National Industrial Tribunal, based upon the language of the order of reference, it would be necessary to reproduce the material part of the dispute referred for adjudication. The material part of the reference order is in the following terms :

"Whether the pension formula governing the present pension scheme introduced by the management of Indian Explosives Ltd for its employees in all its establishments in the country needs revision in so far as it does not take into account the cost of living as a factor in its determination and whether the scheme in the way it is being implemented is discriminatory in its application to different categories of pensioners. If so, what is the relief to which the workers are entitled ?"

6. On January 11, 1988 the Association of Pensioners, Respondent No. 5 made an application to the National Industrial Tribunal for impleading it as a party. Despite objections by the petitioner-employer by an exhaustive order dated 10th June, 1988, the National Industrial Tribunal allowed the application and impleaded Respondent No. 5 as a party to the industrial dispute.

7. The petitioner challenged the order of the National Industrial Tribunal dated June 10, 1988, by its Writ Petition No. 2052 of 1988 before this Court. This Court, by its order dated July 22, 1988 summarily rejected the writ petition on the ground that it was directed against the interlocutory order passed by the National Industrial Tribunal, reserving liberty to the petitioner to agitate all questions raised in the writ petition in an appropriate proceeding, if the final award was adverse to it.

8. The petitioner thereafter raised two preliminary issues before the National Industrial Tribunal and urged upon the Tribunal acceded to this request and, after hearing the parties, made an order dated August 21, 1989, by which it overruled the preliminary objections and upheld the validity of the reference order and its own competence to adjudicate the dispute referred to it. The petitioner's SLP to the Supreme Court against the said order was rejected by the Supreme Court's order dated November 27, 1989, on the ground that it had been directed against an interlocutory order of the National Industrial Tribunal. The Supreme Court granted liberty to the petitioner to raise all points in case the award went against the petitioner and was challenged. It was not necessary at this stage to refer to the contentions urged before the National Industrial Tribunal or the

findings given thereupon since the same contentions have been urged in this Court and a detailed reference will be made to them hereinafter.

9. During the trial of the reference before the National Industrial Tribunal, the evidence consisted of affidavits filed by one G. T. Jejurikar, Chief Executive, Personnel, of the petitioner, and his cross-examination. The parties relied upon several documents which were placed on record by way of charts and statements to which the National Industrial Tribunal has made detailed reference and which will be referred to at appropriate places. It might, however, be pointed out at this stage that on behalf of the workmen an application was made to the National Industrial Tribunal to direct the petitioner to produce some information, which was exclusively in its custody, before the Tribunal in the form of statements. The Tribunal made an order thereupon directing the petitioner to produce such information as directed. There is dispute as to whether such information was made available by the petitioner or not. The Tribunal, however has taken the view that the petitioner had failed to comply with the direction and drawn an adverse inference against the petitioner.

10. After recording evidence and hearing the parties at considerable length, the National Industrial Tribunal made the impugned award dated April 8, 1991. Broadly, the Tribunal took the view that there was discrimination in the application of the various pension formulae to different categories of pensioners which was required to be eliminated, that the amounts of pension payable to the different categories of pensioners and widows had become unrealistic due to steep rise in the cost of living and erosion of the real value of money and that a suitable pension formula linking it to an appropriate Index Number had to be devised. Upon these considerations, the Tribunal has revised the pension formula applicable to the workmen. The petitioners are aggrieved by revision of the pension formula made, retrospectively, by the Tribunal and the linking of the pension amount to the Consumer Price Index Number. The workmen, on the other hand, are aggrieved by the fact that the award does not give them full relief as sought by them.

11. Before embarking upon an evaluation of the merits of the rival contentions canvassed at the Bar, it is necessary to take a quick look at the pension scheme which is the subject matter of the impugned Award so as to get the correct perspective for such evaluation.

12. As stated earlier, there was no scheme of pension applicable to any of the workmen of the Company prior to 1962. An industrial dispute, Reference (ID) No. 232 of 1961, was pending before the Industrial Tribunal, Delhi, between the Management of the Company and its workmen. Though the dispute was with regard to the raising of the age of retirement from 55 to 60 years, the parties entered into an agreement dated December 1, 1961 and sought a consent Award therein. The Tribunal made a consent Award dated December 15, 1961. The said agreement states, vide Clause (3), that the agreement shall be treated "as a settlement u/s 18 of the Industrial Disputes Act." One of the terms of the said

agreement "treated as settlement", was the the petitioner-employer undertook to implement the pension scheme a copy of which was annexed to the agreement. The pension scheme came to be implemented with effect from January 1, 1961. The petitioner company proudly announced in its in-house magazine by name, "ICI News" in its issue of April 1962,

"ICI and its two associated companies Indian Explosives Ltd. and the Alkali and Chemical Corporation of India Ltd. have introduced a non-contributory Pension Scheme as service condition for their 5,500 non-management staff including hourly rated workers. This pension which is in addition to the existing two retirement benefits of Provident Fund and Gratuity will be paid every month to the employee during his retired life."

13. Extolling the merits of the scheme, the then Chairman of the petitioner-company said :

"We are glad to be able to tell you that a monthly pension scheme has now been approved and has been introduced as a regular service benefit for all non-management staff of the Company. The scheme is on-contributory and the pension is in addition to the existing Provident Fund benefits and Gratuity.

This company is the first in the country to provide the three retirement benefits- Provident Fund, Gratuity and Pension."

This was followed by a settlement dated September 11, 1970 between the petitioner company and its workmen employed in the Chemicals and Fibre Indian Division.

14. The details of the original scheme of pension as applied to the workmen and the manager in which it was revised from time to time have been pleaded in the written statement of the fifth Respondent filed before the Tribunal (vide pages 155 to 160 of the petition). The preliminary order of the Tribunal dated August 21, 1989 brings out the details of the manner in which the originally introduced pension scheme was improved upon from time to time. The scheme of pension, which was originally introduced with effect from January 1, 1961 provided for calculation of pension on the following formula :

$1/12 * (A * B - D) / C$, where

A = Number of completed continuous months of service subject to a maximum of 420 months (in the case of those employees whose age of retirement is 53 years), 450 months (in the case of those employees whose age of retirement is 58 years), or 480 months (in the case of those employees whose age of retirement is 60 years) respectively.

B = Annual average of salary and dearness allowance for the last 84 months immediately preceding the date of retirement.

C = 840 where the age of retirement is 55; 900 where the age of retirement is 58; 960 where the age of retirement is 60;

D = Annuity value of the combined Provident Fund accumulations and Gratuity of the employee at such rates of annuity as may be declared from time to time by the Life Insurance Corporation of India. Subject to the provisions of Rule 16, the minimum pension for an employee who is a member of subordinate staff at the time of his retirement shall be Rs. 20/- per month, and the minimum pension for an employee who is not a member of subordinate staff at the time of his retirement shall be Rs. 45/- per month.

Between 1966 to 1982, marginal improvement were made in the scheme. In November, 1982 the Petitioner-company introduced two pension schemes for pensioners retiring on or after December 1, 1979. These schemes were called as Scheme "A" and Scheme "B". They were,

Scheme "A" : 1.35% of the pensionable salary for each year of completed service. Pensionable salary for this purpose would be the last drawn basic salary received by an employee provided it does not exceed Rs. 1000/- per month :-

Scheme "B" : The existing linked formula with the deduction of annuity at the rate prevailing from time to time and the resultant amount would be increased by 40%.

The Scheme "A" or "B", whichever was more beneficial, was made applicable; the minimum pension was also revised to Rs. 150/- per month for general staff and Rs. 100/- per month for labour and service staff. These revisions, however, were not made applicable to those pensioners who retired prior to December 1, 1979. The modifications made between 1980 to 1984 merely related to improvements in the quota. With effect from April 1, 1985, the petitioner-company once again revised the pension scheme as under :

(a) Pension for existing pensioners who retired prior to December 1, 1979 was increased by 25% of the pension that they were getting as on March 31, 1983.

(b) Pension for existing pensioners who retired between December 1, 1979 and March 31, 1985 was increased by 10% of the pension that they were getting as on March 31, 1985.

(c) Pension for employees retiring on or after April 1, 1985 was revised as follows :

(i) Scheme "A"; 1.5% of the pensionable salary for each year of completed service.

-Pensionable salary for this purpose would be the last drawn basic salary received by an employee provided it does not exceed Rs. 1500/- per month;

OR

(ii) Scheme "B" : The existing linked formula with the deducted of annuity at rates prevailing from time to time and the resultant amount to be increased by 40% whichever is more beneficial;

(iii) The minimum pension was increased as follows :-

Rs. 200/- for General Staff.

Rs. 100/- for Labour and Service Staff.

The minimum pension was applicable to all pensioners whether they retired on or after April 1, 1983 or earlier.

(iv) A Pension Scheme for widows/widowers of Pensioners who expired on or after June 1, 1980, at the rate of 50% of the pension payable to the Pensioners. This Pension Scheme was not made applicable in case of widows/widowers of pensioners who died before June 1, 1980.

15. The correspondence placed on record of the Tribunal shows that the second Respondent as well as the Associations of retired staff, second and sixth Respondents, had, since the year 1973, sought revision of the pension scheme. Despite continuous correspondence, nothing concrete emerged. Finally, the second Respondent by its letter dated March 19, 1982, took up the matter with the petitioners. It is this dispute which was processed and has finally resulted in the Award.

16. The tribunal after considering the evidence on record, has taken view that since there were no concerns comparable to the company in the entire country, the question of application of the Industry-cum-Regional principle did not arise. It also held that finance was not at all a problem for the petitioner-company which could stand in the way of further revision of the pension scheme and further that the Petitioners' financial position was quite sound so as to absorb the additional burden of the revision of the pension for the non-management staff. The grievance of the workmen that the pension schemes were discriminatively applied to the retirees was also partly upheld by the Tribunal which took the view that the pension scheme was discriminatory in its application with regard to employees who retired during the period between December 1, 1979 and March 31, 1985, as they would get pension on pensionable salary of Rs. 1000/- per month, while those who retired on or after 1985 would get pension on pensionable salary of Rs. 1500/-. The Tribunal also held that there was discrimination because service staff would get minimum pension of Rs. 150/- per month while general staff got it at the rate of Rs. 200/- per month with effect from April 1, 1985. The Tribunal took the view that there was justification for removing the invidious discrimination in the application of pension formulae to different workmen based merely on the fortuitous circumstance of date of retirement. Finally, the Tribunal held that the quantum of pension, though revised ad hoc from time to time, did not keep pace with the galloping increased in inflation which had eroded the real money value thereof. Consequently, the Tribunal was of the view that there was necessity to introduce a mechanism for automatic readjustment of pension by linking it to the cost of living. The Tribunal sought to achieve this by revision of pension formula by including an element of Dearness Allowance.

17. The Award provides that pension for workmen who retired on or after January 1, 1961 or who retired hereafter shall be computed according to any of the following schemes which may be most beneficial to the pensioners/ workmen concerned. Schemes "A" and "B" are applicable for workmen who retired on or after December 1, 1979.

Scheme "A" : 1.5% of the pensionable salary for each year of completed service. Pensionable salary for this purpose is the last drawn basic salary received by an employee provided it does not exceed Rs. 1500 per month.

Scheme "D". "The existing linked formula with the deduction of annuity at rates prevailing from time to time and the resultant 5 amount to be increased by 40%.

New Scheme : $1/12 \times (A \times B - C) / 720 + (D1 - D2)$

(i) A = Number of completed continuous months of service subject to a maximum of 420 months (in the case of those employees whose age of retirement is 55 years). 450 months (in the case of those employees whose age of retirement is 58 years), or 480 months in the case of those employees whose age of retirement is 60 years) respectively.

B = Salary and dearness allowance during the last 12 months immediately preceding the date of retirement.

C = Annuity value of the combined Provident Fund accumulations and Gratuity of the employee at such rates of annuity as may be declared from time to time by the Life Insurance Corporation of India.

D1 = Dearness allowance payable on the amount of $1/12 \times (A \times B - C) / (720)$ for the month the pension is to be computed.

D2 = Dearness Allowance that would have been payable on the amount of $1/12 \times (A \times B - C) / (720)$ according to the rates prevailing on the date of retirement.

The minimum pension is increased to Rs. 300/- per month for sub-staff and Rs. 350/- per month for general staff irrespective of the scheme applicable.

Widows-widowers of the workmen who have still to retire or of the pensioners who have retired on or after June 1, 1980 shall get 50% of the pension as would have been payable to retiring workmen subject to minimum pension of Rs. 150/- for widow or widowers of sub-staff and Rs. 175/- for widow/widowers of general staff.

(iv) The other conditions for eligibility for pension such as length of service etc. have been kept intact by the Award.

(v) Lastly, the Tribunal has directed that the arrears of pension payable under the Awards shall be made payable with effect only from April 1, 1985.

18. Mr. Chidambaram, learned counsel appearing for the petitioner-company, impugned the award on the following grounds :

- (a) The reference is incompetent and the resultant award is without jurisdiction.
- (b) The Tribunal erred in impleading respondent No. 5 as a party to the industrial dispute and this error has vitiated the award.
- (c) The award is vitiated as it is contrary to the well settled principles of adjudication of industrial disputes and contains patent errors in the exercise of jurisdiction.
- (d) The award is erroneous as it yields irrational results and is rationally incapable of implementation.

(a) Competency of reference and jurisdiction of the Tribunal :

19. The learned counsel for the petitioners urges that the pension is not and cannot be the subject matter of industrial dispute. In his submission the subjects on which industrial disputes could be referred to the Labour Court or to the Industrial Tribunal have been enumerated in the Second and Third Schedule respectively of the Industrial Disputes Act. A close and correct reading of the items enumerated in the Second, Third and Fourth Schedules of the Industrial Disputes Act would show that each item specified therein has a nexus to existing contract of service between the employer and the workmen. There is no item in any of the schedules which would operate or survive the termination of contract of service and snapping of vinculum juris of the employer-employee. The right to pension springs into existence for the first time only upon the determination of master and servant relationship, and therefore, it does not find place in any of the items enumerated in the second, Third or Fourth Schedule of the Industrial Disputes Act. Counsel urged that what can be referred to the National Industrial Tribunal u/s 7-B read with Section 10(1-A) of the Act, is only any matter "specified" in the Second Schedule or the Third Schedule.

20. The learned counsel for the petitioner company urged that the reference made to the National Industrial Tribunal is incompetent in that the subject matter of the reference is a dispute with regard to "pension" which can never form the subject matter of valid "industrial dispute". It is contended that a right to pension can only be conferred as a statutory right and it cannot form the subject matter of a industrial demand or an industrial dispute. Fortifying this contention, the learned counsel drew attention to the Fourth Schedule to the Industrial Disputes Act and canvassed a some-what, if I may say so, startling proposition. The learned counsel contended that all subject matters of a valid Industrial Dispute must be found only with in the Fourth Schedule appended to the Industrial Dispute Act; that the jurisdiction of the Adjudicatory Authorities under the Act extends no further than the enumerated matters to be found in the Second and Third Schedules and finally that "pension" having not been enumerated in either Second or Third Schedule, there can neither be valid industrial dispute with regard to it, nor a valid reference of dispute with regard to it to any Adjudicatory Authority contemplated under the Act. It was finally submitted that the employer had not recognized pension as a condition of service

at all, although it had voluntarily, perhaps as a matter of grace, granted pensionary benefits way back in the year 1961 and improved the pensionary benefits from time to time till the year, 1985

21. In my view, the contention appears to be an attempt to put back the clock. It is not possible to accept the contention that pension cannot be the subject matter of an industrial dispute. Nor is it possible to accept the contention that industrial dispute can arise only with regard to specified items enumerated in the Second and Third Schedules. The expression "Industrial Dispute" has been defined in Section 2(k) as follows :

"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 employments or with conditions of labour of any person."

Mr. Chidambaram contends that notwithstanding the wide sweep of the definition of "Industrial dispute" as in Section 2(k), the concept of pension itself must amount to a whittling down of the provision. As to parties between whom an industrial dispute can arise, ignoring the first and the third category and concentrating on second category only, it is clear that the dispute must arise between "employers and workmen." The expression "workman" is also defined in Section 2(s) of the Act as meaning "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 purposes 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 retirement has led to that dispute, but does not include any such person..." According to learned counsel, it is inherent in this definition of "workman" that no person can be a workman unless there is an existing contract of employment. Thus, according to the learned counsel, any person working in an industry would be a workman only as long as the contract of employment subsists and if the contract of employment comes to an end, he would cease to be a workman, subject to the limited exception in the case of the workman who is dismissed/discharged/retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. Barring these limited exceptional cases, a person who is no longer party to the employment contract would not answer the description of "workman", according to the learned counsel. The judgment of the Supreme Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, was pressed into service as supporting this view. It is doubtless true that in Dharangadhara's case (supra) the Supreme Court pointed out that no person could be said to be a workman unless he was carrying a work for another under a contract of employment. It cannot, however, be forgotten that Dharangadhara's case of contract between a workman and an

independent contractor. In order to highlight the distinction between the two categories, both of which work for another, the Supreme Court pointed out that in the case of a "workman" he would be working for another under direct supervision and control under the contract of employment, while in the case of an independent contractor, the work would be carried out by the contractor at his discretion, though subject to the terms of the contract between the parties. The question as to whether a person could be said to continue as a "workman" after cessation of the contract of an employment, neither arose for consideration before the Supreme court in Dharangadhra, nor decided.

22.A judgment of a Division Bench of this Court in P. L. Mayekar v. Agichend Narayan 57 BLR 1000, however takes the view that a person who has ceased to be in service or employment could yet be a workman for the purposes of Section 2(s) of the Act. As a matter of fact, the learned Chief Justice (Chagla J.), who decided the case, pointed out the even without the amendment incorporated in Section 2(s), such would be the effect of the section. After setting out the relevant provision of the Section 2(s) the learned Judge observed :

"Now the definition of "workman" does not indicate that the workman must be employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward; in other words, the definition is intended to point out what the nature and characteristic of a person is who can be deemed to be a workman within the meaning of the Act. In our opinion, a workman as defined in this sub-section means any person who is employed at anytime in an industry. If he satisfies the definition of "workman" under S. 2(s), then whether he can raise an industrial dispute or not must be judged by the definition of "industrial dispute" given in S. 2(k). Therefore, an order to determine whether an industrial dispute has been properly raised or referred, one must read S. 2(k) and S. 2(s) in conjunction."

Repelling emphatically a somewhat similar contention raised therein by the Appellant's counsel, the Division Bench further pointed out :

"There is no reason whatever, looking to the definition of "workman", to restrict the expression "employed" to the point of time which Mr. Gupte suggested it should be restricted. So long as the workman was employed by the employer against whom he wishes to raise the industrial dispute and the dispute is of the nature required by the definition of "industrial dispute", he is a workman falling within the definition of S. 2(s)."

The Division Bench finally concluded that even a dismissed employee would fall within the sweep of Section 2(s) and observed :

"In our opinion, the case of a dismissed employee who wishes to raise an industrial dispute falls directly within the definition of "workman" and it is only in cases where a workman has been dismissed pending an industrial dispute that we must look to the latter part of the definition of S. 2(s)."

The Division Bench pointed out that the latter part of the definition extended the meaning of the expression "workman" and extended the ambit of the jurisdiction of the Industrial Tribunal. According to the Court, the Legislature, in the first place, had given the meaning of the expression "workman" and then, because a certain case did not fall within that definition, it proceeded to enumerate that case and provided that that case would also fall within the definition already given of the expression "workman".

23. In my view, the proposition is inarguable after the judgment of the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . In this case the workman of tea estate has raised an industrial dispute with regard to abrupt termination of service of a Medical Officer. The Supreme Court proceeded on the footing that the Medical Officer himself was not a "workman" within the meaning of the Act. The question that had to be answered was whether the dispute in relation to a person who is not a workman within the meaning of the Act could fall within the definition of Section 2(k) of the Act. After considering the preamble of the scheme of the Act. the Supreme Court observed pp. 506) :

"The Act is primarily meant for regulating the relations of employers and workmen past, present and future. It draws a distinction between "workmen" as such and the managerial or supervisory staff, and confers benefit on the former only."

24. I am, therefore, unable to accept the contention that a person in respect of whom the contract of employment has ceased to exist, cannot fall within the definition of a "workman".

25. Shifting sights, adroitly, Mr. Chidambaram then contended that in order to fall within the definition of "industrial dispute" the subject matter of dispute had to be of the nature described in Section 2(k). Every dispute or difference, whatever its subject matter, could not fall within the ambit of Section 2(k). He rightly points out that in order to qualify to be an industrial dispute, the dispute or difference must be one which is "connected with the employment or non-employment or the terms of employment or with conditions of labour of any person". Mr. Chidambaram contended rightly that the expression "any person" used in this defining clause was not of unlimited ambit as several judgments have imported as in-built restriction thereupon. Although the premise on which the contention proceeds does appear to be correct, the conclusion drawn by learned counsel is unacceptable. Counsel contends that for an industrial dispute to exist, the dispute or difference must be connected with :

- (a) employment or non-employment of any person;
- (b) terms of employment of any person; or
- (c) conditions of labour of any person.

Since pension, by definition, is a right which springs into existence only after a

person has ceased to be in service, the first and second categories above would not apply, according to learned counsel. Similarly, since pension has nothing to do with the conditions of labour of the person concerned, the third also would not apply. Thus, a dispute or difference with regard to pension would, according to the learned counsel, never amount to an industrial dispute as defined in Section 2(k) of the Act. Consequently, there could be no valid reference thereof. The arguments, though, prima facie ingenious and attractive, is seen to be fallacious upon closer examination of the reasoning, and careful reading of the binding precedents.

26. The writ petitioner relies on the judgment of A Division Bench of this court in *N. K. Sen & Ors. v. Labour Appellate Tribunal of India* and Ors. 1953 I LLJ 6, wherein the Division Bench held that it was clear that some restriction or some limitation has to be placed upon the expression "any person" occurring in the definition of the expression "industrial dispute" in Section 2(k) of the Act. This Court held that the words "any person" used in the definition can only refer to the employment or the terms of employment or the conditions of labour of only those person in the employment or non-employment or the conditions of labour of only those persons in the employment or non employment or the condition of labour of whom the workmen are themselves directly and substantially interested. The definition of industrial dispute excludes any ideological, theoretical, metaphysical, or philosophical differences, and the difference of dispute must be a controversy in which the workmen are directly and substantially interested, and, which the employer is in a position to remedy. This Court pointed out that the ambit of the expression "any person" must necessarily be whittled down by consideration of the object of the Act and the two limiting factors are :

(a) the dispute must be one in which the workmen have a substantial interest, and

(b) it must be a grievance which the employer, as the employer, is in a position to remedy or set right.

27. The judgment of the Madras High Court in *Workers of Sagar Talkies (South India Cinema Employees" Association) v. Odeon Cinema, Madras* & Ors. 1975 I LLJ 639, also follows the same line of reasoning.

28. In *Workmen of Dimakuchi*'s case cited supra, the supreme Court, examined this issue in greater depth and observed that a careful consideration would show that the expression "any person" occurring in the third part of the definition clause could not mean anybody or everybody in this wide world. It pointed out that the subject matter of dispute must relate to employment or non-employment or terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation never existed or can never possibly exist cannot be the subject matter of a dispute between employers and workmen.

Secondly, the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act. After analysing the objects and the scheme of the Act and approvingly referring to the judgment in the case of N. K. Sen (supra) the Supreme Court summarised the legal provision as under Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, :

"Having regard to the scheme and objects of the Act, and its other provisions, the expression " any person" in S. 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context, the two crucial limitations are :

(1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause), so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and

(2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct substantial interest.

In the absence of such interest, the dispute cannot be said to be a real dispute between the parties. Where the workman raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking, a "workman" within the meaning of the Act, but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest."

In order to test whether an industrial dispute has been validly raised, it would be necessary to consider the definition of the expression "industrial dispute" in Section 2(k), by imparting the two limitations the Supreme Court suggested in Dimakuchi's case (supra) and also by conjunctively reading it with the definition of "workman" contained in Section 2(s) of the Act.

29. Taking an holistic view of the legal position, I am unable to subscribe to the contention of the petitioner that the dispute as to pension cannot be the subject matter of a valid industrial dispute. It is also not possible to accept the argument that the Second and Third Schedules to the Industrial Disputes Act exhaust all categories of industrial disputes. In fact, one can think of several industrial matters with regard to which there could be a valid industrial dispute, which do not find mention either in the Second Schedule or Third Schedule to the said Act. Issues such as age of retirement, lay-off, transfer, working hours, etc., and several others do not find specific enumeration in the Second Schedule. In fact, a careful reading of the Second and Third Schedules suggests that the lists therein are neither exhaustive, nor close ended. The enumeration in the two schedules appears to have been made for convenience in making of a reference, and not intended to be an exhaustive list of all possible subjects with regard to which an

industrial dispute can conceivably be validly raised. That the lists are illustrative and open-ended is obvious from perusal of item 6 of the Second Schedule and item 11 of the Third Schedule. I am, therefore, of the view that anything that logically fits into the definition of the expression "industrial dispute" in Section 2(k) of the Act would be an industrial dispute, irrespective of whether the subject matter thereof finds enumeration in any of the schedules appended to the Act.

30. I am also not impressed by the submission that pension is not a condition of service. The nature of pension has been the subject matter of much debts and has also received the attention of the Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, . The Supreme court in its exhaustive survey on the subject referred copiously to the recommendations of the Fourth Central Pay Commission and observed (p.10) :

"The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court, has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad Vs. The State of Bihar and Others*, "

After setting out a survey of the pensionary benefits of public servants in this country, and the philosophy behind granting of such rights, the Supreme Court observed : *D.S. Nakara and Others Vs. Union of India (UOI)*, .

"Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payment usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are : (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude."

With regard to the reason why pension is granted, the Supreme Court had this to say (p. 112.)

"Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of

life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be deferred portion of the compensation for service rendered. In one sentence one can say that the most practical sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment, but not senility and penury, if there is nothing to fall back upon."

In Nakara's case (*supra*) the Supreme Court focused its attention on the preamble of the Constitution which declares our country to be a "Sovereign, Socialist, Secular, Democratic Republic."

31. Though Mr. Chidambaram attempted to distinguish the observation on the concept of pension in Nakara's case (*supra*) as only made in the context of Government service and applicable only to public service, I am of the view that there is not much difference on the basic concept of pension, whether in respect of public concept of pension, whether in respect of public service or private service. Perhaps, in the halcyon days of *laissez-faire* economy. the employer could have taken the stand that, apart from paying for work done, he was not responsible for the social welfare of his employees. But, in a Sovereign, Socialist, Secular, Democratic Republic, it is not possible to set the clock back by wishing away what is inconvenient. in the light of policy declaration as to liberalization of economy made by the Government in power at a given time. In a fully Socialist State, the welfare of every citizen is the responsibility of the State and this would include the provision as to old age benefits by way of pension, health care and otherwise. In a mixed economy, like ours, every industry is obliged to share part of the State's burden on these. This is the least price that every employer has to pay for the freedom to set up and run an industry and make profits. It is for this reason that industrial adjudication has consistently taken the view that the employer is responsible, partly atleast, to implement welfare measures vis-a-vis workmen. It is true that with lapse of time, none of these welfare measures, perhaps because they are not being implemented satisfactorily, have become the subject matters of Acts of legislature. Till rendered the subject matters of statute, the responsibility for them partly rests on the shoulders of the employer. He cannot shrug them off by saying that there is not Act of Parliament which requires him to shoulder welfare measures.

32. Mr. Chidambaram was at pains to impress upon me that a third retirement benefit was a novelty, unheard of in industrial adjudication was Drawing attention to Item 2 of the Fourth Schedule to the Industrial Disputes Act, he sought to draw support therefor. He emphasized that in public service, there were only two retirement benefits, gratuity and pension or contributory provident fund; in private service, there were two retirement benefits, namely gratuity and

provident fund. Two retirement benefits are more than sufficient to take care of the post-retirement problems confronting workmen after retirement and there is neither justification, nor warrant, for introducing a compulsory third retirement benefit by way of industrial adjudication, in the submission of the learned counsel. There is a basic underlying fallacy in the argument. In the first place, the reference to Item 2 of the Fourth Schedule of the Act is somewhat misconceived. Fourth Schedule of the Industrial Dispute Act has to be read with Section 9A of the Act. The purpose of Section 9A is to put an embargo upon the employer's right to effect any change in the conditions of service applicable to workman in respect of matters specified in the Fourth Schedule, without following certain procedure. It is, therefore, fallacious to argue that because Item 2 of Fourth Schedule of the Act refers to

"Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force."

Pension was not contemplated as a potential subject matter of settlement or Award. As already pointed out, pension is a matter with regard to which there can be a valid industrial dispute and, therefore, a fortiori, it can validly be subject matter of an enforceable settlement or Award.

33. The argument of novelty in industrial adjudication, is the least impressive. History of mankind would stagnate if this argument were to prevail; status quo and strait-jacket would rule the roost. At any rate, it is not possible to accept the argument coming from the petitioners that pension is not a condition of service. As pointed out earlier, pension was introduced in the employment of the petitioner-company some time in the year 1961 by virtue of a consent award dated December 15, 1961 made in Reference (ID) No. 232 of 1961 pending before the Industrial Tribunal, Delhi. Though the reference therein was one pertaining to the age of retirement, the parties nevertheless entered into a settlement of the subject matter of pension and agreed that the agreement "shall be treated as a settlement u/s 18 of the Industrial Disputes Act." That is how pension came into existence in the petitioner-company. I have already extracted the proud announcement made by the company in its "ICI News in House Magazine " in which it declared, in unambiguous terms, that a non-contributory pension scheme terms, has been brought into existence as a condition of service, as the third retirement benefit. It is also not possible to accept this contention, as in its pleadings before the National Industrial Tribunal, the petitioner categorically admitted that pension was a condition of service. Says the petitioner-company in its written statement at paragraphs 3 and 4 :

"The long term settlements having been concluded in full and final settlement of all the demands, no dispute can be raised in respect of pension where such settlements are in force. Besides, pension is a term and condition of service like all other terms and conditions of service. The settlements are arrived at as package deals locally on industry-cum-region principle which is the basis laid down by the Supreme Court. The company would rely upon the said settlements

as and when produced. The company submits that it is not open to the claimants to pick up one such condition of service viz. pension and raise an all India dispute in regard to it."

Again in paragraph 4, the petitioner says :

"As regards the retirement benefits, the company provides three retirement benefits, viz. Provident Fund, Gratuity and Pension."

In these circumstances, I am unable to accept either the contention that pension is a matter of voluntary payment or grace on the part of the employer or that it is particularly so in the case of the present employer. The Tribunal has found, and in my view rightly, that pension is a condition of service of the employees of the petitioner-company. It would, therefore, be futile to attempt to set the clock back by arguing that he pension cannot become subject matter of service conditions of the workmen.

34. It was next contended by the learned counsel for the writ petitioner that a careful reading of the order of reference dated August 13, 1987, would show that the dispute was purely one between the "company" and its "employees", that the Tribunal was required to merely consider the discrimination, if any, in application of the pension scheme to different categories of "pensioners". However, the relief, if any found due, ought to be made available only to the "workers".

35. With respect to learned counsel, it is not possible to read the reference order with such cuteness or astuteness. That the order of reference ought not to be construed liberally and that the Court must lean in favour of a construction which resolves the industrial dispute, is a trite proposition of law. Apart from putting liberal construction on a reference order, in case of doubt with regard to construction of an order of reference, the Courts are required to construe it by reference to pleadings of parties. (See in this connection the judgments of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, , *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, and *State of Madras Vs. C.P. Sarathy and Another*, . Applying the principles laid down in these cases to the order of reference, I am of the view that the Tribunal has rightly held that, despite the marginal variation in the phraseology used in the schedule to the reference, what had to be considered was the impact of the pension scheme on pensioners in general and the relief, if any due, had to be granted not only to the workmen in service, but also to the pensioners who had already retired. I have no hesitation in upholding the correctness of approach of the Tribunal. It is not possible to interfere with the Award on this count as the contention deserves to be rejected.

36. The petitioners then contend that the order of reference made by the Central Government referring the industrial dispute for adjudication of the National Industrial Tribunal is incompetent, illegal and, therefore, all further proceedings and the resultant Award deserve to be quashed. The argument runs thus-what

can be referred to a National Industrial Tribunal u/s 7B read with Section 10(1A) is only any matter specified in the Second Schedule or the Third Schedule, conversely, as matter which is not specified in the Second and Third Schedules of the Act cannot be validly referred for adjudication by a National Industrial Tribunal. In the instant case, pension not having been specified in the Second and Third Schedules of the Act, on valid reference could have been made of any industrial dispute with regard to pension; the reference is, therefore, illegal and deserves to be quashed.

37. The scheme of the Industrial Disputes Act, pertaining to the setting up of different adjudicatory authorities, needs to be analysed, in depth, to assess the import and worth of the contention.

38. Section 7 empowers the appropriate Government to constitute one or more Labour Courts for the adjudication of industrial disputes relating to "any matter specified in the Second Schedule" and for performing such other functions as may be assigned to them under this Act. The Section also prescribes qualifications and the eligibility criteria of the person to be appointed as a Labour Court. Section 7-A empowers the appropriate Government to set up another adjudicatory authority "Industrial Tribunal", for the adjudication of Industrial disputes relating to any matter, "whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act." Section 78 empowers the Central Government to constitute one or more National industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of a national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

39. Even a cursory look at Section 7B would show that the constitution of a National Industrial Tribunal is not for carrying out adjudication of industrial disputes relating to matter specified in any particular Schedule to the Act. The power of constitution of a National Industrial Tribunal is somewhat over-riding, and advisedly so, since the basic requirement is that the Central Government be satisfied that the industrial dispute to be referred to the National Industrial Tribunal involves questions of national importance or is of such nature that industrial establishments all over the country are likely to be interested in, or affected by, such dispute. That the constitution of National Industrial Tribunal has an over-riding effect, is also indicated by the provision of this section precluding reference to other adjudicatory authorities when an industrial dispute has been referred to the National Industrial Tribunal.

40. The provisions of section 10 of the Industrial Disputes Act which vests power of reference of an industrial dispute to adjudication, also need notice. Power of the appropriate Government to refer a matter for industrial adjudications is to be found in Section 10 of the Act. Section 10(1)(c) enables the appropriate Government to refer the dispute or any matter appearing to be connected with,

or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. Similarly, Clause (d) of sub-section (1) of Section 10 empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to the dispute, "Whether it relates to any matter specified in the Second or Third Schedule", to a Tribunal for adjudication. There is of course a proviso at the end of Clause (d) which provides that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks, make the reference to a Labour Court under clause (c). Then comes sub-section (1A) of S. 10 which provides that where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Industrial Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute, or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Industrial Tribunal for adjudication.

41. Learned counsel for the petitioner contends that whatever be the width or amplitude of the industrial dispute, even if the dispute or difference with regard to pension fell within the purview of Section 2(k) of the Act, the Central Government has no power under sub-section (1A) of Section 10 of the Act to refer such a dispute to a National Industrial Tribunal for adjudication. In his submission, the qualifying clause "whether it relates to any matter specified in the Second or the Third Schedule" qualifies the enabling power of the Central Government. Conversely, he argued that if the matter does not pertain to those enumerated in the Second Schedule or the Third Schedule, there is total lack of power to make a reference.

42. In my view, the scheme of Second and Third Schedules negatives the contention put forward by the learned counsel for the petitioners. After enumeration of five specific items, the Second Schedule contains Item No. 6, which can legitimately be described as a residuary item. Item No. 6 reads :

"All matters other than those specified in the Third Schedule."

Similarly, in the Third Schedule which prescribes matters within the jurisdiction of Industrial Tribunals after enumeration of ten specific items comes the 11th one which reads :

"Any other matter that may be prescribed."

It is common ground that no other matter has been prescribed under Item 11 of the Third Schedule. At any rate, it is common ground that "pension" is not an Item prescribed under Item 11 of the Third Schedule. We may, therefore, for the

present, conveniently omit Item No. 11 of Third Schedule from consideration. Looking at the wide and general formulation of Item 6 of Second Schedule, one would have thought that it was an open category leaving the list of industrial matters open-ended. Mr. Chidambaram, however, contends that it would be in correct to construe Item 6 of Second Schedule as a residuary time and that it would not be correct to subsume into this item disputes of all kinds. In his submission, only disputes with regard to industrial matters which are cognate or associated with the once enumerated in Items 1 to 5 of the Second Schedule could fall within the contemplation of Item 6; the principle of *Noscitur A Sociis* must govern while interpreting the language used in Item 6 of the Second Schedule. Alternatively it is contended that under the scheme of the Industrial Disputes Act, there is a hierarchy of the adjudicating authorities, the Labour Court being the lower and the Industrial Tribunal being the higher. Matters which affect individual or limited number of workmen are intended to be adjudicated by the Adjudicator of limited jurisdiction, namely, the Labour Court, while industrial disputes with wider ramification are to be adjudicated by the forum with wider jurisdiction, namely, the Industrial Tribunal. This being so, Item 6 would necessarily have to be read down, as otherwise all matters having wider repercussions would come in through the residuary category to the forum of limited jurisdiction. Analysing the scheme of the matter arranged in the Second Schedule and the Third Schedule, counsel contended that the only mode in which pension could become subject matter of an industrial dispute capable of being referred to an Industrial Tribunal would be by being prescribed under Item 11 of the Third Schedule. So long as this has not been done, there is no power in the Central Government to refer the industrial dispute with regard to the pension to adjudication of a National Industrial Tribunal, goes the submission of the learned counsel.

43. This argument, though *prima facie* attractive, is without substance. In the first place, it is not possible to accept the contention that only matter affecting individual workmen or few workmen can be referred to a Labour Court. While this may be true with regard to matters enumerated at Item 1 of the Second Schedule viz. "the propriety or legality of an order passed by the employer under the Standing orders" or Item No. 3 viz. "the discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongly dismissed", it would not be true in respect of matters enumerated at Items 2,4 and 5 which respectively read as under :

"2. The application and interpretation of standing orders.

4. Withdrawal of any customary concession or privileges.

5. Illegality or otherwise of a strike or lockout."

It does not require much imagination or argument to see that a dispute pertaining to application and interpretation of Standing Orders could conceivably cover all workmen in an industrial establishment, however large their number.

Similarly, a dispute with regard to withdrawal of customary concession or privilege could affect the entire body of the work force. Finally, a strike or lock-out could also affect all workmen in an industrial establishment and a dispute as to the illegality or otherwise of a strike or lock-out would have a fall out affecting all workmen in an establishment. In my view, therefore, the contention of the learned counsel is based on an erroneous premise, namely, that all matters enumerated in Items 1 to 5 of Second Schedules have limited application or affect individual workmen. I see no difference between a disputes arising out of Items 2,4 and 5 of the Second Schedule or one arising under Items 1 to 10 of the Third Schedule, as far as its fall out is concerned. Hence, it is not possible to accept the contention that the jurisdiction of the Labour Court is necessarily narrow or limited. Once the air is cleared of this misconception, there is no difficulty in construction of Item 6 of the Second Schedule as a residuary item capable of comprehending within its sweep all industrial matters not specified in the Third Schedule.

44. I am also unable to accept the contention of the petitioner that the construction to be put on the words contained in Item 6 of Second Schedule of the Act is determined by the principles of *noscitur a sociis*.. The rule of construction *noscitur a sociis* was explained by Lord Nao Nillen as " the meaning of a word is to be judged by the company it keeps". The Privy Council pointed out in *M/s. Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise* AIR 1991 S.C. 734 :

"It is a legitimate rule of construction to construe words in an Act or Parliament with reference to words founding immediate connection with them."

The rule was explained by the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . "This rule, according to Maxwell means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general" (p. 256). In *Bank of India Vs. Vijay Transport and Others*, , the Supreme Court pointed out that the rule has no application when the meaning is not in doubt. Finally, a note of caution sounded by the Supreme Court in *State of Bombay v. Hospital Mazdoor Sabha* (supra) is worth repeating (p. 256) :

"It must be borne in mind that *noscitur a sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear, that the present rule of construction can be usefully applied."

This exposition as to application of the rule of *noscitur a sociis* leaves no room for doubt that the rule is incapable of application in the instant case. Firstly, it is

difficult to say that the matters enumerated in Items 1 to 5 of Second Schedule are analogous, cognate, thought they may be. Secondly, I am unwilling to accept that the meaning to be ascribed to the words used in Item 6 of Second Schedule is doubtful. On the contrary, I am of the view that the Legislature has deliberately used generic words in the said Item, so that the list of matters, which could legitimately form the subject matter of an industrial dispute might not be closed. Vicissitudes of life, experiences gained and improved perceptions give rise to myriad situations which, in the pragmatic field of industrial relations, would be incapable of a priori definition. It is for this reason that the Legislature, after indicating the various heads in Items 1 to 5 of Second Schedule and Items 1 to 10 of Third Schedule, designedly kept the categories open-ended. What may not be conceived of as a legitimate industrial dispute to-day, might be seen as one with tomorrow's experience. It would, therefore, be neither practical, nor prudent, to exhaust the list of matters with reference to which an industrial dispute can arise. The policy of the Act, as embodied in its preamble and its scheme, make it amply clear that the over-riding and predominant object of the Act is to satisfactorily resolve industrial disputes for the good of the society at large. This objective could hardly be achieved if the list of matters on which industrial disputes could arise is treated as exhaustive or close-ended. Looking at the problem from several perspectives, I am of the view that the construction of item 6 of Second Schedule suggested by the learned counsel for the petitioners cannot be accepted. In my view, Item 6 of the Second Schedule would include within its ambit any matter which is not specified either in Second Schedule or Third Schedule. Reading the provisions of Section 10(1)(A) with this aperçu and reading the enabling power of the Central Government contained therein in the light thrown by the provision of Section 7B of the Act, it is clear that the Central Government is not hamstrung by the restrictions and limitations canvassed at the Bar. It would be unimaginable that an industrial dispute, in the considered opinion of the Central Government, has nation wide importance or is likely to affect industrial establishment throughout the length and breadth of the country, and, yet the Central Government would be powerless to refer such an industrial dispute to the National Industrial Tribunal. The better way of looking at Section 10(1)(A) would be that the Central Government is empowered to refer for adjudication of a National Industrial Tribunal any industrial dispute, whether prescribed in Second Schedule or Third Schedule, as long as the other qualifying factors are present. I am also not impressed by the argument of the Petitioner that giving a broad interpretation to Item 6 of the Second Schedule would mean that what could not gain entry through the main entrance would come in through the side entrance. If that is the result intended, so shall it be, for good reason, namely, anxiety to resolve industrial disputes at all costs.

45. Another argument canvassed in this connection was that the items enumerated under Second, Third and Fourth Schedules were of such nature that they had nexus to the contract of service between the employer and the workman and that there is no item in any of the Schedules which could operate

after, or survive the termination of, the contract of service. Since, pension, by definition, is a right which comes into existence only after the master-servant relationship has come to an end, it has not been included in any of the Schedules and could not, therefore, be brought in, by a side wind, into Item 6 of Second Schedule. Even this argument leaves me unimpressed. Item 3 of the Second Schedule would obviously come into play only after the service of the workmen has come to an end. Similar is the case with Item 10 of the Third Schedule. 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's case (supra) and by the Supreme Court in Dimakuchi's case (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 such be a 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 demoting office the pensionary rights 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's case (supra) and the Supreme Court in Dimakuchi's case (supra), the expression "workmen" 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.

(B) Error in impleading Respondent No. 5 as party to dispute :

46. The Next contention of Mr. Chidambaram that the Tribunal erred in making the Association of Pensioners (Respondent No. 5) as party to the industrial dispute, in exercise of its implied powers u/s 18 of the Act, also leaves me cold. When the Association of Pensioners applied before the Tribunal for being impleaded as party, it was objected to by the employer on the ground that the pensioners were not workmen and, therefore, the question arose whether a person other than a "workman" could be impleaded as party to an industrial dispute on the assumption that a "Workman" must be one who is employed presently. Doubtless, the Tribunal took the view that the Association of Pensioners, by itself, could not have raised the dispute under the Industrial Disputes Act, but it solved the difficulty by holding that the Federation of ICI and Associated Companies "Employees" Union (Respondent No. 2) had raised the dispute under the Industrial Disputes Act both in respect of the existing employees as well as the retired employees, with regard to the revision of pensionary benefits. In my view, there was no need for the Tribunal to be apologetic or make this detour. It could as well have held that the industrial dispute could have been validly raised by retired employees with regard to their subsisting pensionary rights under the pension scheme. In any even, I am not

prepared to hold that the Tribunal erred in taking the view that Respondent No. 5 was a necessary party to the industrial dispute or that its addition as party had vitiated the adjudication before the Industrial Tribunal. Assuming for a moment that the contention is correct, it has not been shown to me how and why the Award has become vitiated merely because the Association of Pensioners, Respondent No. 5 was impleaded as party to the dispute.

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's* case (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 regard to 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 instance 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's* case (supra) and *Dimakuchi's* case (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 workman, therefore, has sufficient community of interest, in ensuring that the pensionary benefits available to past employees, present employees, as well as future employees, are suitably revised from time to time. I, therefore, reject the contention based on the non-existence of community of interest between the workmen represented by Respondents 2, 3 and 4 and the pensioners represented by Respondents 5, 6, 7 and 8.

48. As pointed out earlier in the judgment, two attempts made by the petitioner to stall the reference by arguing preliminary objection were aborted—one by this Court, other by the Supreme Court. Since both this Court and the Supreme Court granted liberty to the petitioner to raise the same questions after the award was made, they were canvassed before me with full force. I have been taken through the two preliminary orders dated August 21, 1989 and June 10, 1988 disposing of the preliminary objections raised on behalf of the employer. I find it difficult to fault the findings made by the Tribunal. In any event, the questions were vigorously canvassed in this Court also, I have dealt with them exhaustively and

I am unable to come to any different conclusions than what those reached by the two preliminary orders of the Tribunal.

49. The next objection raised by the petitioner was that the Tribunal had travelled beyond the terms of reference and, therefore, the Award was liable to be quashed on that ground. The argument was that the reference order had deliberately used three distinct terms "employees", "pensioners" and "workers", and it required the Tribunal to examine the need for revision of pension formula introduced by the petitioner-company, but the Tribunal could have granted relief only to "workers" and to none else. Secondly, the reference order required the Tribunal to examine whether the implementation of the pension formula was discriminatory in its application of different categories of "pensioners"; the Tribunal could have answered it either in the affirmative or in the negative and, depending on its determination, could have granted relief only to the "workers". By directing relief to persons who were not workmen, either on the date of the Award or on the date of reference, the Tribunal has travelled beyond the terms of the reference. It is not possible to accept the contention that "pensioners" are not "workmen" within the meaning of Section 2(s) of the Act. For reasons sufficiently elaborated earlier in the judgment, the contention must fail. Notwithstanding the fortuitous use of three different expressions, "workers", "pensioners" and "employees", the Tribunal was fully justified in examining the need for revision of the pension formula, the discrimination, if any, in its implementation and the need for relief both to pensioners and workmen. I see no substance in the contention which must fail.

50. My attention was drawn to the following observations of the Tribunal in paragraph 20 of the impugned Award :

"To put tersely, my job in the present adjudication is to see whether (i) any revision of the Non-management Staff Pension Scheme is necessary, in so far as it does not take into the cost of living as a relevant factor; (ii) whether the implementation of this Scheme as amended from time to time results in any invidious discrimination amongst the different categories of pensioners under this very Scheme, and (iii) the reliefs which ought to be granted to the workmen, depending on the findings on points (i) and (ii)."

It is contended that in framing of point (iii), *supra*, the Tribunal has implicitly accepted the contention that relief was due only to workmen and having started with this premise in paragraph 20, the Tribunal erred in directing relief to pensioners who had ceased to be workmen. I am not impressed by the contention. In the light of *Narendra (supra)* and *Dimakuchi (supra)*, I find it difficult to accept that there was any justification for denying relief to pensioners who had ceased to be workmen. In formulating point (iii) in paragraph 20 of the impugned Award, the Tribunal appears to have slipped up. In any event, it is difficult to hold that the Tribunal erred in granting relief to the pensioners in the teeth of law as expounded by *Narendra (supra)* and *Dimakuchi (supra)*.

(C) Non-application of Industry-cum-Region principle and errors of jurisdiction :

51. The next contention is that the Tribunal erred in not applying the cardinal principle of industry-cum-region in adjudicating of the industrial dispute. It is contended that evidence placed before the Tribunal showed that, apart from the petitioner-Company, there were only four companies in the private sector, namely I.T.C., Hindustan Lever, Brooke Bond and Dunlop, which had pension schemes applicable to their workmen. Out of these companies, the pension scheme of the petitioner-company was the best and most advantageous. The Office Memorandum dated April 12, 1991, issued by the Government of India expressly discountenanced the demand for pension of public sector. In the manufacture of products like fertilizers, explosives, paints, polyester fibre, pharmaceuticals and agro-chemicals, the petitioner-company had to compete with different companies in the region in which the different units of the petitioner-company were located. In none of these regions did such competing companies have pension scheme. The Tribunal, therefore, erred in brushing aside the evidence on record and concluding that since there were no concerns comparable to the Company in the entire country, the question of industry-cum-region principle did not arise at all in the petitioner's case.

52. That industry-cum-region principle is a cardinal principle of industrial adjudication is indisputable. The principle has been evolved upon practical considerations. It is intended to ensure that the cutting edge of competition is not blunted due to disparate wage burden and to avoid migration of labour due to varying conditions of service, in competing industries, in the same region. However salutary, this principle is not without exception. A principle in law is not a principle of mathematics so as to admit of no exception; particularly so in the field of industrial relations, where pragmatism and prudence rule and the dominant object is satisfactory resolution of industrial disputes.

53. The dynamics of the principle are illustrated by the judgment of the Supreme Court in *Greaves Cotton and Co. and Others Vs. Their Workmen*, . The Supreme Court pointed therein that the basis of fixation of wages and dearness allowance is, normally, industry-cum-region. Where there are a large number of the industrial concerns of the same kind in the same region, it would be proper to put greater emphasis on the industry part of the industry-cum-region principle, as that would put all concerns on a more or less equal footing in the matter of competition production costs and, therefore, in the matter of competition in the market, and this will equally apply to clerical and subordinate staff whose wages and dearness allowance also go into calculation of production costs. But, where the number of comparable concerns is small in a particular region and, therefore, the competition aspect is not of the same importance, the region part of the industry-cum-region formula assumes greater importance, particularly with reference to clerical and subordinate staff. As was emphasised in the earlier two judgments of the Supreme Court in *Workmen of Hindustan Motors v. Hindustan Motors* 1962 II LLJ 352 and *French Motor Car Co., Limited Vs. Workmen*, , where

the Company was paying the highest wages in the particular line of business and, therefore, comparison had to be made with as similar concerns as possible in different lines of business for the purpose of fixing wage-scales and dearness allowance, the Supreme Court observed *Greaves Cotton and Co. and Others Vs. Their Workmen*, :

"The principles therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage-scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry, in such a case, in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small, it is the region part of the industry-cum-region formula which assumes importance, particularly in the case of clerical and subordinate staff."

It this is the dynamics of application of industry-cum-region principle, the Tribunal has hardly erred in applying the principle in the present case. Despite the persuasive arguments of Mr. Chidambaram, I am not satisfied that there is any error in application of the principle. The Tribunal had ample material before it to justify non-application of the industry-cum-region principle.

54. The witness for the Company, Ganesh Trimbakrao Jejurikar, filed in affidavit dated January 11, 1990, which was in lieu of examination-in-chief. In paragraph 6 of the affidavit he asserted that there were very few companies amongst the private sector industries where the workmen had the retirement benefit of pension and, that, even in the few such companies it had been introduced recently. He asserted that the petitioner-company, since 1962, had been voluntarily improving upon the pension schemes from time to time. He maintained that the pension scheme introduced by the petitioner-company was the best in India, taking into consideration the pension schemes in force in all the industries in the private sector, barring Banking industries. He claimed that the petitioner-company had lost its competitive strength in the field of fertilizer and polyester staple fibre, which accounted for the major portion of the Company's income, and in other fields, also, due to increased competition, profits had declined considerably. Under cross-examination he admitted that he was unable to explain how the industry-cum-region principle had been applied while arriving at the settlements. Though he asserted that a comparison was made with the companies in Calcutta, such as I.T.C., Dunlop, Shaw Wallace, Floride India, etc., he admitted that the said companies manufactured different products and not the same as those of the petitioner-company. With reference to the nine revisions carried out in the pension scheme from 1962 to 1985. Jejurikar admitted that the said revisions had not been based on industry-cum-region principle. He also admitted that all revisions were made on All India basis and the principle of industry-cum-region was not followed in these revisions. (vide

paragraphs 9 and 10 of his evidence) He also admitted (vide paragraph 10) that by a letter dated July 22, 1982 the Management of the Petitioner-Company had objected to the State of West Bengal processing the industrial dispute under the State Conciliation machinery, on the ground that the dispute was of an All India nature and therefor, the Labour Commissioner of the Government of West Bengal had no jurisdiction to entertain the dispute. It would thus appear that the industry-cum-region principle was considered inconvenient and not adhered to by the petitioner-company, when it entered into settlements from time to time or carried out revisions of the pension scheme over the period ranging from 1962 to 1985. Taking the principle at its highest, reliance was placed on the pension scheme of I.T. C. Dunlop, Hindustan Lever Limited and Brooke Bond, copies of which are placed on the Tribunal's record. It is significant that these pension schemes are also ad-hoc and brought into existence by settlements between the parties, neither results of adjudication, nor products of any principle. As against these schemes, the workmen had relied on the pension schemes applicable in Grindlays Bank and State Bank of India which admittedly give better benefits than benefits available under the pension schemes which were cited as comparative schemes by the petitioner-company. In the light of the principle enunciated by the Supreme Court in Greaves Cotton and Co. and Others Vs. Their Workmen, , it was, therefore, clear that the petitioner-company was an All India concern carrying on activities in different industries located in different regions and that there was not a large number of concerns in any particular region carrying on business in the same industry as the petitioner-Company. Since the number of comparable concerns in the particular region carrying on business of the same kind was small, as pointed out by the Supreme Court, the region part of the formula became accentuated and assumed importance for the purpose of adjudication. The Award of the Tribunal cannot be faulted. The Tribunal had before it atleast two pension schemes, Grindlays Bank and State Bank of India, indicative of the inadequacy of the petitioner's pension scheme. In the circumstances, if the Tribunal emphasised the region part of the formula, as against the industry part it is difficult to find fault with its reasoning. It is more difficult to characterise the award as being vitiated for not following the industry-cum-region principle of the industrial adjudication.

55. The next ground of attack is that the Tribunal erred in not properly assessing the additional burden which was likely to result from its award and also in not making a true assessment of the financial capacity of the petitioner-company to bear such burden.

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56. As to assessment of the financial capacity of the Petitioner-Company to bear the burden consequent upon revision of the pension scheme, a perusal of the impugned award shows that the Tribunal has record a finding that the financial capacity of the petitioner-company is not in doubt and that the petitioner is in a "very good financial condition." Apart from the balance-sheets and financial

statistics extracted therefrom, the only other evidence on this issue was the affidavit of petitioner's witness Jejurikar. The Tribunal has referred to and extracted relevant portions from Jekurikar's evidence (vide paragraph 23 of the Award). Published balance sheets from the years 1982 and 1989 were filed on record of the Tribunal. Financial statistical data of the Petitioner-Company for the years 1978 to 1989 was also available from the published balance-sheets which are on record. Upon an analysis of this material the Tribunal has arrived at the finding that the Petitioner's financial position has been pretty sound all along. The Tribunal found that the petitioner is one of the most diversified companies and deals in Chemicals, Fertilisers, Paints, Pharmaceuticals, Polyester Fibres, etc. The written statement of the company itself gives (vide paragraph 8) the assets of the 20 largest companies in this country. Though the petitioner claimed that in this list it ranked last in terms of assets, during 1986-87, the Tribunal has observed that, in terms of fixed assets, the petitioner is the largest multi-national company in India. The learned counsel for the petitioner drew attention to the 20 companies listed in paragraph 8 of the written statement (vide page 166 of the writ petition) and argued that the only multi-nationals in this list were Hindustan Lever, I.T.C. and the Petitioner itself. He contended that in the year 1966-67 the assets of Hindustan Lever were Rs. 631.89 crores, the assets of I.T.C. were Rs. 552.93 crores whereas the petitioner company's assets were Rs. 653-52 crores. In the face of these facts, the Tribunal's finding that the petitioner-company is, in terms of assets, the largest multi-national company in India, is perverse, in his submission. If the written statement was the only material on record, the contention, perhaps, was arguable. Apart from written statement, if there is other material on record, and upon assessment of all material on record, the Tribunal has drawn its conclusion, it would not be permissible to interfere with it in writ jurisdiction. Jejurikar, who, in his affidavit attempted to paint a gloomy picture of the financial capacity of the petitioner, was subjected to searching cross-examination. His attention was pointedly invited to Exh. W-57. Exh. W-58, Exh. W-59, Exh. W-60, Exh. W-61 Exh. W-62 and Exh. W-63, Exh. W-57 is the ICI Reporter while Exh. W-58 is the notice issued to the shareholder members. The contents of these documents were admitted by Jejurikar and they do not, by any means, support the gloomy financial picture projected by the petitioner. Jejurikar admitted in cross-examination that the facts stated in Exhs. W-57 to W-63 were true, though he was quick to point out that the petitioner-company had incurred unprecedented loss to the extent of Rs. 16 crores from April to September 1989, and, therefore, the company was not in a position to further revise the pension. When his attention was drawn to the extreme optimism expressed by the Directors in their report, that it was reasonable to expect, barring unforeseen circumstances, that the year will end with a modest profit, Jejurikar stated that he was not in a position to say whether the said assessment made by the Directors would actually come true or not. Jejurikar also admitted that Rs. 60 crores had been spent for modernisation of the Thane Fibre Plant which had gone into production in the last week of January 1990. Though some of the Units were running in heavy losses, he admitted that in 1988-89 the

petitioner had sold off some Units running at loss, including the Polythene Plant at Rishra in West Bengal for Rs. 14 crores. The said plant had not been running for two years. He also admitted that the immovable property of the company known as "Crescent House" situated in Bombay was agreed to be sold for a sum of Rs. 27 crores. Another factor which he admitted was that, under the voluntary retirement scheme the company had reduced about 2000 workmen during the 2 to 3 years prior to 1990. The ostensible reason for such large scale reduction of man-power was high wage cost. His attention was drawn to large amount of "Discount on Fertilisers" which had not been reimbursed by the Government. He admitted that he was not aware whether the subsidy amount had been received by the end of 31st March, 1990 and also that the petitioner-company was bound to receive this subsidy from the Government and claimed inability to give particulars of the receivable subsidy amounts on the ground that he was not dealing with that Division. When confronted with the fact that, despite its claim of financial inability, the petitioner had substantially improved the pension benefits applicable to management Staff, he admitted the fact. When asked the reason why the Petitioner-Company went in for such substantial improvements of the pension benefits applicable to Management Staff, the witness admitted :

"All these hikes are given taking into consideration the financial condition of the Company."

The cross-examination of this witness indicates that as far as the Management Staff was concerned, the petitioner was granting quite liberal increased pensionary benefit. Although the pension payable to retired Management Staff came out of the fund created by the Company and there was more than sufficient money therein to take care of the pensionary payments, on the ground of contractual obligation to deposit certain percentage of the remuneration into the fund, the petitioner had continued to do so. Consequently there were large accumulations in the fund as a result of which there was more than enough money in the fund for revising pensionary benefits of the Managements Staff from time to time.

57. Since Jejuriakar had to admit that the contents of Exhs, W-58 to W-63 were correct, it would be necessary to consider their impact on the assessment of the financial capacity of the petitioner. These documents contain extracts from the Economic Times, Bombay, dated March 23, 1989, Business Standard dated March 12, 1989, Business Standard dated January 23, 1989, Business Telegraph, Calcutta dated February 17, 1989, and the Economic Times dated February 16, 1989. These were the articles written by Financial Journalists making an assessment of the working and future prospects of the petitioner an forecasting its product profitability. One assumes, when an article of this nature is given in a leading Financial Weekly or newspaper, that the writer has access to relevant information or has had discussion with the top Executives of the company who have access to relevant date. Each of these articles paints a very rosy picture of the future prospects of the petitioner company and foretells long term financial

stability. Though a Court of law would, normally, be reluctant to accept such material as evidence, there is no allergy to such material before an Industrial Tribunal. In any event, when given opportunity, the Company's witness Jejurikar categorically admitted the correctness of the contents of the said articles. There was, thus, no difficulty for the Tribunal to accept them as material showing good financial capacity of the Company. It would, therefore, appear that the evidence on record was partly documentary and partly oral, being admissions made by the witness of the petitioner. It is upon appreciation and assessment of such evidence on record that her Tribunal has recorded its finding that the financial capacity of the company is extremely sound. It is not possible to fault the finding or interfere with it in exercise of writ jurisdiction. It is true that the Tribunal has not indicated in quantitative terms its assessment of the financial capacity. But that, per se, is not an infirmity necessarily calling for interference with the award in writ jurisdiction.

58. Since the contention as to financial capacity was argued with some persistence in this Court also, and the Court had the benefit of the balance-sheet of earlier years. I had directed the petitioner to make available the balance-sheets of the profit and loss account of the subsequent years, the benefit of which was not available to the Tribunal at the time of hearing the reference. It is worthwhile considering this aspect of the matter in some details as it was one of the main planks of attack on the award.

59. The case made out by the petitioner before the Tribunal was that it had suffered unprecedented losses during 1990 to the extent of Rs. 121.9 million. A plea was made that the company's finances were in jeopardy and that the company had tried to stave off utter disaster by selling its Rishra Unit in West Bengal and raising money by sale of Crescent House in Bombay. A look at the figures is revealing. Over the period 1982 to 1992, the fixed assets of the petitioner-company rose from 1780.3 million rupees to 4988.0 million rupees. Its investment increased from 2.4 to 33.9 million rupees. The share capital base extended from 289.9 to 408.7 million rupees. The capital increased from 2.0 to 577.7 million rupees. The Revenue Reserves increased from 287.6 to 748.2 million rupees. True that correspondingly the loans also have increased from 966.2 to 1961.5 million rupees over the same period. The sale turn over of the petitioner increased from 1759.0 to 7076.8 million rupees over the same period, while profit before depreciation ranged from 243.6 to 545.1 million rupees Profits before Taxation ranged from 120.5 to 266.1 million rupees over the same period except during the year 1990 when it made a loss of 121.9 million rupees. There was a loss of 121.9 million rupees in 1990 and in the next two years the profit before Taxation was Rs. 206.7 and 266.1 million, respectively. The number of Equity Shareholders increased from 26000 in 1982 to 61189 in 1992 showing increasing public confidence due to good performance and profitability of the Company.

60. The Directors' Report for the year 1991-1992 gives under the caption

"Performance of Business Sectors", the performance by the various Units Fertilizers showed "strong performance", Volume of sale of explosives increased by 8 per cent over the previous year, Polyester Staple Fibre Capacity was successfully implemented and the commercial production commenced effectively. Paints showed a slow down in the industrial production which was sought to be off-set by product differentiation, Rubber Chemicals sales were maintained despite increase in in-put costs, Agrochemicals had firm demand and higher off-take, Pharmaceuticals showed higher scales by 12 percent than in the previous year. Speciality Chemicals had "encouraging performance" with higher product-mix, while catalysts recorded "high sales with continued strong market demand and high plant output." The exports were 34% higher than previous year at Rs. 163 million. Under the caption "future outlook" the Directors had to say :

"Whilst the Company's financial performance shows encouraging sings of improvement, performance is still well below the capability of the company. The business environment presents many challenges as well as opportunities. The radical change in the government's economic policy emphasising a more market-friendly and open system, better integrated with the global economy, implies greater competition for India industry. In this perspective, the company will step up its pursuit of increased operational excellence and resource productivity so that its competitive edge can be sharpened."

61. I am aware that the statements made in the Directors' Report is subject to certain amount of puffing, but it is not possible to ignore the figures of performance over the last 10 years. The Tribunal had all this material before it. It had the admissions made by the company's witness. Putting them together, the Tribunal, in my view, has correctly recorded the conclusion that the petitioner's financial position has been pretty sound all along. The fact that the petitioner's management cut losses by disposing of the non-productive plant at Rishra in West Bengal or that it shrewdly made large profits by disposing of prime property in Bombay, is neither indicative of distress, nor despondency. A large number of workmen, numbering about 2000, were removed from service by implementing a voluntary retirement scheme. Obviously, a large chunk of money had to be paid over as increased compensation to these workmen under the Voluntary Retirement Scheme. These payments would necessarily be reflected in the concerned years. Although Mr. Chidambaram attempted to draw a bleak picture of the company's prospects by placing reliance on several statistical tables, I am unwilling to be side tracked into them. As the Supreme Court pointed out in Ahmedabad Mill Owner's Association & Ors. v. Textile Labour Association, Ahmedabad (State of Gujarat & Ors. - Intervenor) 1966 I LLJ 1 such statistical tables are single-purpose tables and usually give a distorted picture. Considering the matter carefully, I am unable to accept the contention of the Petitioner's learned counsel that the Tribunal's finding on the financial capacity of the petitioner is perverse or needs interference.

62. That takes us to the next aspect argued by the petitioner, namely,

assessment of consequential burden of the award. It is true that the Tribunal has given no quantitative estimate of the burden which was likely to be imposed upon the employer as a result of its award. It would have been better if the Tribunal had done, for it would have considerably reduced the work of this Court. However, the absence of a clear-cut finding on the financial burden, under the peculiar circumstances of this case, is not a fatal flaw in the award requiring interference with it. I am also satisfied that the employers contributed to it. A reading of the award would show that, apart from raising innumerable technical legal objections, there was no attempt made by the petitioner which had all material available with it, to place proper material on this aspect of the matter before the Tribunal to enable a fair adjudication of the dispute. The response of the petitioner was purely negative, intended to create as many hurdles in the way of adjudication as possible. That is why the Tribunal was forced to observe :

"I had suggested to the company to present their proposals, but there was no response from them. I am satisfied that finance is not at all a problem for the company for further revision of the Scheme."

The Tribunal has also adversely commented on the refusal of the petitioner, to file certain documents showing the details of disbursement of pension to the Management Staff, on the ground that it was confidential information. Despite the suggestion that the information would be kept confidential u/s 21 of the Act, the petitioner declined to make available the relevant, called for information. The workmen called upon the Tribunal to draw an adverse inference and the Tribunal found the request quite legitimate and has drawn an adverse inference that the petitioner company was paying attractive sums of pensions to the Management Staff and had adequate finances at their disposal to absorb the increase in pension expenditure for Non-Management Staff also. Since the Company has given a further increase in the pensionary benefits of the Management Staff with effect from April 1, 1990 the Tribunal concluded :

Without labouring further, I hold that the Company's financial position is pretty sound to absorb the additional burden of the revision of pension for the Non-Management Staff."

63. Mr. Chidambaram strenuously urged that the adverse inference drawn by the Tribunal against the petitioner was neither legitimate, nor justified. The Respondents had moved an application before the Tribunal seeking a direction to the petitioner for production of certain documents and information. As expected, the application was vehemently opposed. The Tribunal made an order dated October, 21, 1988 and directed the petitioner to produce : (i) documents showing the details of the pension schemes formulated for the non-management staff from 1961 onwards. (ii) the details of the pension scheme or schemes for the management staff with effect from April 1, 1985. showing all pensionary benefits given to the management staff and (iii) the details of the pension funds. The response of the petitioner was truncated and half-hearted. It produced some, but did not produce other material, as according to it the material was irrelevant for

adjudication. In the face of the failure to comply with its direction, the Tribunal was fully justified in drawing an adverse inference. The benefits made available to the management category of staff is certainly a relevant criterion to be considered whenever the question of revision of conditions of service of workmen arises for adjudication. Whether there is good justification for making, available better benefits for Management Staff or not, it is the duty of the employer to place on record all material without hiding any and thereafter raise his contentions as to how, despite such material, the revision of conditions of service sought by the workmen is unwarranted or unjustified. If the employer resorts to hide and seek, he runs the risk of an adverse inference. I am by no means satisfied that the Tribunal has acted without jurisdiction or justification, in drawing the adverse inference against the employer in the instant case. The adverse inference virtually negatives the arguments of failure to record a quantitative finding of the burden of the award. The absence of a quantitative estimate of the burden, under the peculiar circumstances of the instant case is, therefore, not a vitiating factor, in my judgment. The argument must therefore, fail.

64. Mr. Chidambaram then urged that the Tribunal has erred in recording its finding on a number of other minor issues. I am unwilling to be drawn into the examination of such issues. I am unwilling to be drawn into the examination of such issues. I am not sitting in appeal over the award of the Tribunal; what is being exercised is the Constitutional writ jurisdiction whose limits are well settled by a catena of judgments. That this Court is loath to interfere with findings of fact while exercising its writ jurisdiction is too well settled a proposition of law, to need any further expatiation. The view taken by the Tribunal was possible, and I see no reason to interfere with the findings recorded by the Tribunal on several issues to which my attention was drawn.

(D) Irrationality of Award :

65. The next ground of attack on the Award is that it is irrational and produces startlingly absurd results. In order to drive home the point, several statistical statements have been produced showing that the quantum of pension under the impugned Award would become, in some cases, ten times what it was earlier. In order to appreciate the contention, some detailed examination of the award is necessary.

66. The order of reference required the Tribunal to do the following :

- (1) To examine whether the pension formula governing the pension scheme introduced by the Company for its employees needed revision so far as it did not take into account the cost of living as a factor in its determination.
- (2) To examine whether the pension scheme in its implementation was discriminatory as against different categories of pension.
- (3) To grant relief, after having made its findings on the aforesaid issues.

The workmen contended that the pension formula, despite its ad-hoc revision from time to time, not being linked to the rise in cost of living, did not adequately provide against the erosion of real value of the pension. They contended that the pension amount, in absolute terms, was meagre to start with became further eroded, in term of real money value, due to steep rise in the cost of living over the years. They made a grievance that the pension scheme suffered from invidious discrimination against Non-Management Staff in as much as the management staff got several unjustified and unnecessary revisions in the pensionary benefits, there was hardly any revision worth the name for Non-Management Staff. Even regarding the category of "workmen", they contended that there was arbitrary discrimination in pension entitlement depending on the date of retirement. Those who retired prior to 1961 got no pension. With regard to post-1961 retirees, it was contended that the revisions made were not uniformly applicable and resulted in arbitrary discrimination depending on the fortuitous circumstances of the date of retirement.

67. On the first issue of there being no link between the cost of living and the pension amount, the Tribunal found no difficulty in accepting it. Prior to 1961, there was no pension payable. the pension scheme was devised in the year 1961 and, whatever its real worth in the year 1961, taking into account the considerable increase in the cost of living over the number of years, the Tribunal found no difficulty in accepting the first contention. Even a cursory look at the All India Consumer Price Index Numbers for the industrial workers (1960 : 100) would show that the figure has arisen from the base of 100 in 1960 to 981 in December 1990 representing a rise of 981%. The existing pension formulate did not provide against inflationary pressure and consequent erosion of real value of the pension payable thereunder. The only determinative factors which went into the then existing pension formula were the length of service, annual average of salary and Dearness Allowance over the last seven years, age or retirement and the annuity available by investment of the provident fund and gratuity. It was sought to be argued here, as it was urged before the Tribunal, that factor "B", the annual average of salary and dearness allowance, would take care of the dearness element and, therefore, the pension formula needed no revision at all. It is not possible to accept this contention. In the first place, the formula provided for monthly pension in which the annual average factor "B" is the annual average of salary and Dearness Allowance over the 84 months immediately preceding the date of retirement. Thus, it hardly represents the Dearness Allowance as on the date of retirement. Secondly, having determined the quantum of monthly pension at any given point of time, the pension formula contained no mechanism by which there would be automatic rise therein in the event of future rise in the cost of living. Even if it is accepted for a moment that the quantum of monthly pension determined under the formula, on the date of retirement, is an adequate amount, there is no gain-saying that with lapse of time even the said amount loses its real money value due to increase in the cost of living.

68. The Fourth Central Pay Commission specifically considered the effect of inflation on the quantum of pension. Chapter 2 of the Report is devoted to a discussion on this subject. The Commission pointed out that a regular scheme of providing dearness relief to pensioners based on increase in the 12 monthly average of All India Working Class Consumer Price Index (1960 = 100), was for the first time recommended by the Third Pay Commission. The Commission also took note that under the provisions of U. K. Pensions (Increase) Act, 1971, the British Government has abandoned the concept of relief of hardship and had accepted an unqualified obligation to maintain the purchasing power of public service pensions. Though noticing the difference in conditions of service in the two countries, the Commission yet felt that there was enough justification for granting relief on a regular basis to future pensioners. The Commission observes in paragraph 11.6 :

"The long term aim of pension policy should be to provide a reasonable standard of living which could be deemed to be satisfactory to retired government employees ... The erosion in the value of pension has been a matter of concern and rightly a large number of pensioners have urged for protecting the purchasing power of pension through a proper scheme of compensation against price rise. The matter has also assumed importance due to the increase in the number of pensioners, longer life span and impact of inflation on pension."

The Commission recommends in paragraph 11.7 :

"We are of the view that the pensioners also need to be given relief against price rise as a regular arrangement. We accordingly recommend that the dearness relief in future should provide full neutralisation of price rise to pensioners drawing pension upto Rs. 1750 per mensem, 75 percent. to those getting pension between Rs. 1751 and Rs. 3000 and 65 per cent to those getting pension above Rs. 3000 subject to marginal adjustment. We also recommend that the price rise for purposes of grant of relief to pensioners in future should be worked out in the same manner as recommended for serving employees in Part 1 of our report. The relief at the rates recommended above may be given twice a year."

69. In *Nakara's case* (supra) the Supreme Court pointed out that the purpose of pension was that in the fall of life the citizens are assured a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and enjoyable leisure, relieving of the boredom and the humility of dependence in old age. Subject to financial constraint, a reasonable scheme of pension should enable the employee to maintain a decent standard life, even after retirement, if not the same standard of living to which he was accustomed while in service. While expatiating on the fundamental concept of pension, the Supreme Court pointedly drew attention to several Articles in Part IV of the Constitution, the Director Principles of the State Policy which must be fundamental in governance of the country. Particularly referred were Articles 39 and 43 of the Constitution.

70. The judgment of the Supreme Court in *Bharat Petroleum (Erstwhile Burmah Shell) Management Staff Pensioners Vs. Bharat Petroleum Corporation Ltd. and Others*, also supports the contention of the Respondents on this fact which has found favour with the Tribunal. The Supreme Court was called upon in this case, inter alia, to consider whether there should be adequate escalation in the pension keeping in view the loss of purchasing power of the rupee and the general rise in the cost of living. A contention was raised that the pension fund which has already been established was insufficient to meet the cost of any escalation in the pension linked to the Index Numbers. The Supreme Court categorically rejected the argument and held that the Respondent-Company had an obligation to pay from its earnings into the fund and that merely because the existing fund was not adequate to bear the additional liability, the claim which was otherwise justified could not be rejected. The Supreme Court observed (vide paragraph 5) :

"Judicial notice can be taken of the fact that the rupee has lost its value to a considerable extent. Pension is no longer considered as a bounty and it has been held to be property. In a welfare State as ours, rise in the pension of the retired personnel who are otherwise entitled to it is accepted by the State and the State has taken the liability. If the similarly situated sister concern like Hindustan Petroleum Corporation can admit appropriate rise in the pension, we see no justification as to why the Respondent Company should not do so."

Considering all aspect, I am of the view that the finding of the Tribunal that the petitioner's pension scheme was wholly inadequate to the realities of life and needed revision by suitable linkage to the Consumer Price Index Number, is wholly unexceptional. The Tribunal was fully justified in its attempt to link the pension amount to a suitable Consumer Price Index Number and to devise a mechanism to ensure that the real money value of the quantum of pension was preserved despite rise in the cost of living due to inflation.

71. On the aspect of discrimination, the workmen contended before the Tribunal that the existing pension scheme was discriminatory on the following seven grounds vide paragraph 28 of the Award) :

1. Employees who retired prior to January 1, 1961 and who had completed 20 years" service are not given the benefit of pension scheme introduced with effect from January 1, 1961.
2. Employees who retired between January 1, 1961 and December 1, 1979 are not given the option of Scheme "A" or Scheme "B" whichever is more beneficial. The option is given to those who retired on after December, 1, 1979.
3. Those employees who retired during the period between December 1, 1979 and March 31, 1985 get pension on pensionable basic salary of Rs. 1,000/- p.m. Those who retired on or after April 1, 1985, get pension on pensionable basic salary of Rs. 1,500/- p.m.
4. The Management staff get pensions at 1.75% of the last drawn salary (they

are not paid separate basic and D.A.) and they are also given pension even if they have not completed 20 years" service. They also get family medical benefits upto Rs. 5,000/- per year. This is not extended to Non-Management Staff Pensioners.

5. Non-Management Staff who have completed 15 years" service but could not complete 20 years" service at the time of retirement or on account of death, they or their widows are not eligible for pension. However, under the Voluntary Retirement Scheme, employees who have completed 15 years" service are eligible for pension.

6. Discrimination regarding minimum pension is existing. Service Staff get minimum pension of Rs. 150/- p.m. and General staff of Rs. 200/- p.m. with effect from April 1, 1985.

7. In addition to the removal of discrimination, the Federation has demanded pension to be linked with the rise in the Working Class Consumers" Price Index. It is also demanded that pension to be calculated on the total salary, basic and D.A."

Out of the above grounds, the Tribunal rejected grounds 1,2,4 and 5 and found that the pension scheme was discriminatory for reasons on grounds 3, 6 and 7. It was also of the view that this discrimination needed to be abolished by revising the pension scheme and minimum pension needed to be suitably revised, both in the case of the pensioners and their widows/widowers. The realities of the case are succinctly brought out in the frequency distribution of the pensioners given by the Tribunal in paragraph 43 of the Award. Out of the 2497 pensioners then existing, the Tribunal found that the persons getting pension upto Rs. 150 p.m. formed a sizeable chunk of more than 22 per cent. Those getting pension between Rs. 150/- to Rs. 200 formed another sizeable chunk of 25 per cent. 17 per cent. and 16 per cent of the pensioners were in the ranges of Rs. 201-300 and Rs. 301-400 respectively. There was only one person drawing pension more than Rs. 900/-. Taking into consideration these factors, the Tribunal was persuaded to hold that the minimum of Rs. 150/- and Rs. 200/-, provided in the 1982 dispensation, deserved to be raised to Rs. 300/- and Rs. 350/- respectively. In the case of widows/widowers the minimum were revised to Rs. 150/- and Rs. 175/-, respectively on similar considerations. I do not think, there could be any valid objection for revision of the minimum of pension payable to the pensioners or their widows/widowers. Though Mr. Chidambaram did not in terms concede this, there was noticeable lack of the vim and vigour with which he advanced his other contentions. Be as it may, I am of the view that there is no justification whatsoever for interfering with the award on the ground that the minimum of pension payable to different categories have been revised by the Tribunal, nor am I satisfied that the attempt made by the Tribunal to eradicate discrimination would produce such cataclysmal results as contended.

72. Mr. Chidambaram voiced a grievance that, while order of reference enabled

the Tribunal to revise suitably the existing scheme of pension, a wholesale change in the pension formula was not warranted. Taking into consideration the demand and its formulation as contained in the order of reference, I am inclined to agree with the thinking of the Tribunal on this aspect of the matter. The Tribunal has endeavoured to improve upon the formula, subject to several constraints, in its attempted eradication of discrimination. I am not at all satisfied that there is any cause for complaint or reason for interference with the award in this behalf.

73. Despite rejecting the Petitioner's contention I am of the view that the result of the Tribunal's attempt to provide an in-built escalation factor - the resultant pension formula - is unsatisfactory, for reasons which I shall presently elaborate.

74. According to the Pension Scheme first introduced with effect from January 1, 1961, the monthly pension was calculated on the basis of the following formula :-

$1 (A \times B - D) \div 12 (C)$

A = Number of completed continuous months of service subject to a maximum of 420 months (in the case of those employees whose age of retirement is 55 years), 450 months (in the case of those employees whose age of retirement is 58 years), or 480 months (in the case of those employees whose age of retirement is 60 years) respectively.

B = Annual average of salary and dearness allowances for the last 84 months immediately preceding the date of retirement.

C = 840 where the age of retirement is 55;

900 where the age of retirement is 58;

960 where the age of retirement is 60;

D = Annuity value of the combined Provident Fund accumulations and Gratuity of the employee at such rates of annuity as may be declared from time to time by the Life Insurance Corporation of India. subject to the provisions of Rule 16, the minimum pension for an employee who is a member of subordinate staff at the time of his retirement shall be Rs. 20/- per month, and the minimum pension for an employee who is not a member of subordinate staff at the time of his retirement shall be Rs. 45/- per month.

The pension for employees retiring on or after April 1, 1985 was revised as follows :-

"(i) Scheme "A" : 1.5% of the pensionable salary for each year of completed service Pensionable salary for this purpose is the last drawn basic salary received by an employee provided it does not exceed Rs. 1,500/- per month.

OR

(ii) Scheme "B" : The existing linked formula with the deduction of annuity ar

rates prevailing from time to time and the resultant amount will be increased by 40%, whichever is nor beneficial.

(iii) The minimum pension was increased as follows :-

Rs. 200/- for General Staff.

Rs. 150/- for Labour and Service Staff.

The minimum pension was applicable to all pensioners whether they retired on or after April 1, 1985 or earlier.

(iv) The pension scheme applicable to widows/widowers of pensioners who retired on or after June 1, 1980 provided for pension at the rate of 50% of the pension payable to the pensioners.

75. The operation of scheme "B" produced anomalous results whenever

(AxB) ----- C

was less than or equivalent to " B". The formula would then yield a figure of pension which would be negative or zero. Hence the two schemes "A" and "B" were made alternatively applicable and workmen entitled to the better of the two.

76. Starting with the two schemes which were in operation as on April 1, 1985, the Tribunal attempted to revise them. I left intact Scheme "A"; It modified Scheme "B" marginally by substituting the divisor "C" by a uniform figure of 720. It also added an additional dearness factor (D1-D2) which represented the difference in the dearness Allowance payable on the quantum of pension, between the date of payment and the date of retirement, the Dearness Allowance being calculated at the applicable rates. In other words, the Tribunal treated the quantum of pension yielded by the formula under Scheme "B" as a static amount and, to compensate for rise in the cost of living the Tribunal directed payment of the difference between the Dearness Allowances payable on this static amount as on the date of disbursement and as on the date of retirement.

The Tribunal made it clear that the employees were entitled to the better of the benefits, either Scheme "A" or Scheme "B" or the scheme devised by it styled as Scheme "C". There were of course some revisions of minimal of pension which need not detain us at this stage.

77. A number of statistical statements were produced by the petitioner to highlight the irrational results obtained by implementation of the award and the pension formula which the Tribunal has called Scheme "C". These are the results of the inherent lacuna in the existing formula compounded and accentuated by the Dearness Allowance factor (D1-D2). The Tribunal has held that the terms of reference did not permit it to make a whole-sale substitution of the formula and I am inclined to agree with it. Whatever its in-built deficiency, there was a formula already in operation and, to the extent it could be improved upon by removing

discrimination and linking it to the escalating factor, the Tribunal could have modified the formula. the static part of the formula, devised by the Tribunal, namely,

1 (AxB-C) -- ----- 12 (720)

is a perfectly legitimate exercise of its jurisdiction and there is no justification for interference with it, atleast at the instance of the employer. The dynamic factor (D1-D2) is open to objection. The Tribunal seems to have proceeded on the assumption that the difference between D-1 and D-2 represents the neutralisation of the rise in the cost of living from the CPI Number at which D-2 was payable to the C.P.I. Number at which D-1 was payable. I see one fallacy in this assumption. The fallacy is that, even at the index number at which D-2 was payable as Dearness Allowance, the Dearness Allowance was itself the consequence of the rise in the index price number from the base figure upto the index number which stood on the date when D-2 became payable. In other words, the Dearness Allowance paid on the date of retirement would be a neutralisation of the basic wage for the rise in the index number from the base index to the index number on the date of retirement. However, the static component did not become payable from the year of the base index. As a matter of fact, there was no pension paid or payable prior to the year 1961. Pension was introduced for the first time with effect from January 1, 1961. The amount of the static component of the pension became available for the first time on January 1, 1961. Thus, neutralisation of the static component on January 1, 1961 should be zero as on that date. However, on the Tribunal's assumption, the neutralisation factor would be D-2, which is a large figure of Dearness Allowance. Similarly, in order to maintain the real value of the static component, from rise of C.P.I. Number from January 1, 1961, it was necessary only to increase the quantum in the same ratio in which the index number increased over that on January 1, 1961. In practice, however, it is usual to compute from this ratio, the amount payable per point rise, or rise for a stipulated number of points, per month. That, however, is a matter of convenience not detracting from the basic principle. Under the scheme of neutralisation provided for by the Tribunal, the Dynamic Component of pension would be the difference between the Dearness Allowance on the date of payment and the Dearness Allowance payable on the date of retirement. Another infirmity in the mechanism devised by the Tribunal under the impugned award is that the workman retiring from different locations would receive Dearness Allowance in each location linked to a local Consumer Price Index Number. the factors D-1 and D-2 would, therefore, have an in-built bias depending upon the region from which the workman retires. Consequently, even if the static component of pension is a constant figure depending upon the region from where the workman retires, the figure of (D1-D2) would vary from case to case. This is another factor which causes a distortion in the scheme formulated by the Tribunal. These distortions could have been avoided if the Tribunal had linked the static component to a suitable Consumer Price Index Number and thereafter extracted a per point neutralisation amount to be paid at convenient

intervals. I find that the pension formula devised by the Tribunal is defective, atleast on two counts, and these defects also are partially responsible for the distorted results highlighted by the Petitioner-Company. I am, of course, cognizant that the petitioners have also exaggerated the distortion by making several erroneous assumptions in the statements filed in this Court to highlight the irrational operative effect of the awarded pension scheme. Even discounting all of them in my judgment, some amount of scaling or toning down of the pension formula is necessary to theoretically rectify it. That shall be done later.

78. Turning to Writ Petition No. 3532 of 1991 filed by the workmen, I find that the basic grievances are as follows :

(a) There is no provision made in the pension scheme for persons who had retired prior to January 1, 1961.

The Tribunal has rightly rejected this contention and I see no substance in it because prior to that date pension was not even thought of as a condition of service applicable to the workmen.

(b) The second grievance is that the formula devised under the award does not give relief to the workmen who had retired prior to April 1, 1979. The pension formula gives no relief to any person who had retired prior to December 1, 1979, since all earlier revisions made on November 1, 1966, June 1, 1976 and October 1, 1977 were made prospectively applicable, leaving distinct classes of pensioners, in between who did not get the benefit of each successive revision of the pension scheme. It was only the revision of December 1, 1979 that was made uniformly applicable to all retirees, though no retrospective effect was given to it. As a consequence, whatever discrimination there was upto December 1, 1979 and the consequential deprivation, has not been rectified even under the award of the Tribunal.

This contention also has been rightly repelled by the Tribunal for reason adumbrated in paragraphs 28 and 30 of the award with which I am in agreement. Another grievance made by Mr. Dudhia, learned counsel for the workmen, is that the Tribunal failed to remove the discrimination which operated in favour of the workmen who had retired under a voluntary retirement scheme. It is pointed out that, normally, 20 years was the qualifying period of service for pension, for all workmen. In case of Non-Management Staff, who had completed 15 years service, but could not complete 20 years service at the time of retirement on account of death, they or their widows/widowers were held not eligible for pension. However, such of the workmen who opted for voluntary retirement scheme were given benefits of pension even if they had completed only 15 years service. The Tribunal has rejected this ground of discrimination for reasons given by it in paragraph 32 by saying that "B" Pension scheme under reference and the voluntary retirement scheme were two entirely different systems of which there could be no legitimate comparison as to invidious discrimination. The Tribunal has held that, even otherwise, 20 years" minimum

service for being eligible for ordinary pension could not be dubbed as unjust and unfair.

79. I am not inclined to accept the contention of the workmen that because in the case of workmen that because in the case of workmen who retired under the voluntary retirement scheme, the eligibility for pension was reduced to minimum service of 15 years, there should be a similar reduction in the case of all other workmen also. Voluntary retirement is an extra-ordinary contingency under which the workmen are retired prematurely because of certain incentives granted by the employer. Conceivably, the attraction of becoming eligible for pension, even after a service of 15 years, could be one of the factors which acts as an incentive for large number of workmen to retire from service. For that reason also, I am unable to accept the contention that the Tribunal should have reduced the minimum qualifying period for pension to 15 years. The only conceivable exception is the case of a workman who is unable to complete 20 years qualifying service on account of death. In such a case, I think human consideration requires that the widow/widower should be eligible for pension, even if the workman had completed only 15 years service. Barring to this limited extent, the contention does not appeal to me.

80. The next grievance made by the workmen is that the workmen, who retired from December 1, 1979 to March 31, 1985, were ineligible for the pensionary benefits under the revision made effective from April 1, 1985 but this discrimination the Tribunal has not cured. Further, a large number of workmen who retired after December 1, 1979 would get no benefits under Scheme "B" at all and, as such, be covered only by Scheme "A" which provides 1.5 per cent of the pensionable salary of each completed year of service. "Pensionable salary" means the last drawn basic salary of the workman concerned subject to a maximum of Rs. 1500/- per month. With respect to a large class of pensioners, covered by Scheme "A", the grievance made is that there would be no escalation factor for them even after the award. They would, therefore, get a static pension irrespective of rise in the cost of living. The next grievance is that there was no justification, in respect of such category, to maintain the ceiling of Rs. 1500/- (basic salary) as pensionable salary, taking into consideration that total wages have risen considerably beyond Rs. 1500/- in the last 15 years. In the alternative, it is contended that if at all a ceiling is to be maintained on the pensionable salary, then it should be last drawn consolidated salary and not merely basic salary. In my view, both grievances are justified. As far as the first grievance is concerned, though the Tribunal attempted to cure the grievance, it seems to have lost sight of workman getting pension only under Scheme "A". The operative part of the award would suggest that if a workman is not eligible to any benefit under Scheme "B", then he would be entitled to get benefit under Scheme "A". Scheme "A" is a static scheme which produces pension at the rate of 1.5 per cent. of the pensionable salary for each year of completed service and has no linkage to the cost of living. In respect of the category of workmen covered by Scheme "A", therefore, the grievance continues and, to that extent,

the award is defective.

81. As a corollary, it is pointed out that the case of workmen who are eligible only to minimum pension, there is no mechanism of escalation linked to the cost of living and they would perpetually remain at minimum level irrespective of the increase in the cost of living. Considering the premise, on which the Tribunal has proceeded, this grievance is also legitimate and requires to be cured.

82. Since the formula under Scheme "B" devised by the employer, and improved upon by the Tribunal, is in terms of total salary (Basic + Dearness Allowances), I see no justification for excluding the Dearness Allowance from consideration when it comes to operation of Scheme "A". I am, however not willing to accede to the contention that there should be no ceiling at all on the pensionable salary. The ceiling already operating at Rs. 1500/- appears to be reasonable, but, in my judgment, the ceiling should be at the level of Rs. 1500/- consolidated salary (Basic + Dearness Allowance).

83. The next grievance made by the workmen is that the Tribunal has erred in not making applicable the pension scheme to the Supervisory Staff who drew monthly emoluments in excess of Rs. 500/- per mensem now Rs. 1600/- per mensem) as being outside the purview of the expression " Workman" as defined in section 2(s) of the Act. Mr. Habbu, on behalf of the employers, fairly conceded that if the contentions raised by the petitioner with regard to the validity of the reference and the merits of the award did not find favour with this Court, then the employers would make whatever scheme was approved by the Court applicable to all supervisors irrespective of their monthly emoluments. Of course, in the case of Supervisory Staff, who fall within the Management category, there is no question of application of the Non-Management Staff pension scheme to them.

84. Last grievance of Mr. Dudhia is that while the award grants pensionary benefits to the widows/widowers who died prior to June 1, 1980, there is no benefit granted thereunder to widows/widowers of pensioners who died prior to June 1, 1980. I am unable to accept this contention. The Tribunal has, after careful application of mind, indicated certain cut-off dates from which the benefits awarded by it would be available and restricted monetary relief flowing from the award only to the period commencing from April 1, 1983. I am not inclined to interfere with the award merely on the last ground urged.

85. Thus, the award, like the proverbial curate's egg, is partly good and partly bad. There are some grievances made by the employers which are legitimate and some criticisms of the award by the workmen are also equally legitimate. The debatable question, therefore, is, after having indicated in sufficient details its thinking, should this Court necessarily remand the matter to the Tribunal for reconsideration and making a fresh award, or should this Court, in the exercise of its constitutional jurisdiction, interfere and modify such portions of the award as need to be modified.

86. For the employer, both Mr. Chidambaram and Mr. Habbu vehemently urged that, if this Court comes to the conclusion that there is need to interfere with the award, then the only course to be followed by this Court is to quash the award and remand the matter to the Tribunal for reconsideration, fresh adjudication and award. On the authority of the judgments of the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , it was vehemently canvassed that the petitioner in Writ Petition No. 2416 of 1991 having asked for a writ of certiorari, if this Court comes to the conclusion that there is need to interfere with the Award, then the only course left open to this Court is to quash the award and remand the reference to the Tribunal for fresh award. It was contended that the two authorities of the Supreme Court in Hari Vishnu (supra) and Satyanarayan (supra) lay down the limits of exercise of jurisdiction to issue a writ of certiorari.

87. Mr. Dudhia, learned counsel for the workmen, on the other hand, contends that the genesis of the dispute goes all the way back to the year 1973, that from 1973 the Petitioners have been waging an incessant struggle to have the pensionary benefits improved. On account of the legal objections raised by the employer, the reference was made only in the year 1987, which has resulted in the award in the year 1991. The conduct of the petitioner, prior to the making of the reference, after the reference was made and during the trial of the reference, indicates, in no uncertain terms, that at whatever cost the petitioner is determined to delay the results. Mr. Dudhia submits that the power of this Court under Article 226 of the constitution of India is not confined to merely issuing writs rooted in antiquity. The language of Article 226 of the Constitution enables this Court to issue to any person or authority directions, orders or writs of other nature. The reference to the five specified types of writ occurs only in the inclusive clauses of Article 226 and indicates the paramount anxiety on the part of the framers of the constitution to ensure that the extra-ordinary Constitutional power granted to the High Court is not constrained to the strait-jacket of the five writs such as habeas corpus, mandamus, prohibition, qua warrant and certiorari. If occasion arises, the High Court can and ought to act even beyond the limits of the five enumerated writs, in the submission of the learned counsel.

88. The extra-ordinary Constitutional power vested in the High Court is intended to seek and interdict injustice, wherever and whatever. I am not impressed by the submission of the petitioner that it having sought a writ of certiorari in its writ petition, the hands of this Court are tied so that this Court can either issue a writ of certiorari or none at all. Whatever the prayer made by the petitioner before the Court, the exercise of power, its mode and manner, is the prerogative of the Court. It is to be suitably moulded to remedy injustice. This perception and ethos permeates my approach to the problem.

89. Despite workmen knocking of its doors from 1973, the employer turned a deaf ear to their plea for revision of pension. When a dispute was sought to be

raised in West Bengal and the Commissioner initiated conciliation proceeding, the petitioner promptly raised the objection that the dispute would affect their industrial establishments all over the country and, therefore, not State Industrial Tribunal, but only a National Industrial Tribunal could adjudicate the industrial dispute. The Central Government was moved in the matter and a National Industrial Tribunal was constituted. Before the National Industrial Tribunal, an attempt was made by the petitioner to resist the reference by raising a number of legal objections as to the tenability of the references. The interlocutory order of the Tribunal dated June 10, 1988 allowed impleadment of Respondent No. 5. The employer rushed to this Court by Writ Petition No. 2052 of 1988, challenged the reference, sought interim stay of further proceedings. This Court, by its order dated July 27, 1988, summarily rejected the writ petition and left open the contentions to be urged in appropriate proceedings after the award was made. The employer raised several preliminary objections as to tenability of the reference. The Tribunal overruled them by its order dated November 26, 1989. This time, the employer directly filed SLP No. 1960 of 1989 before the Supreme court, sought quashing of the proceedings and stay thereof. This attempt was foiled by reason of the order of the Supreme Court dated November 27, 1989, summarily rejecting the Special Leave Petition. It was only after these attempts that the petitioner was willing to proceed for adjudication of the dispute on merits. The conduct of the employers, at each stage of the trial, of not co-operating and not making available relevant data and the information, has been sufficiently highlighted by the Tribunal and needs no repetition. In these circumstances, when the award has been made in the year 1991, with regard to the dispute which initially arose in the year 1973, I see no justification whatsoever for pushing the workmen one rung down the ladder of litigation. The workmen have to cross two hurdles—an appeal to the Division Bench of this Court and an appeal to the Supreme Court - before they can get some relief. I see no reason to increase their number to three. Apart from factual considerations of this case, I am also supported by precedents on this aspect of the matter. as a rule, the superior Courts (the High Court and the Supreme Court) do not substitute their findings in the place of an order which is within the discretion of a lower authority, but where circumstances warrant it on account of gross delay, bias or the like, both this Court and the Supreme Court have not hesitated to substitute their findings for the ones quashed. (See in this connection with the judgments of the Supreme Court in *Nirmal Singh Vs. State of Punjab and Others*, *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, and a decision of a Division Bench of this Court in *Lalbavta Hotel & Bakery Mazdoor Union & Anr. v. Bharat Petroleum Corpn. Ltd. & Ors.* (Writ Petition No. 891 of 1992) dated December 11, 1992, per P. D. Desai C.J. and Srikrishna J.) I am, therefore, of the view that, in the exercise of writ jurisdiction, this Court ought to carry out whatever modifications are necessary for rectifying the defects in the award, instead of driving parties for another round of litigation starting from the bottom.

Reliefs :

90. Since I have held that basic features of the pension formula need to be retained intact, I shall attempt to modify the pension formula so that it will be less onerous to the employer at the same time eliminating a number of grievances voiced by the workmen. Since the pension formula needed reconstruction and the implications of the modifications and consequential benefit had to be studied, I had requested the learned counsel for the employer to work out the burden on the basis of tentative suggestions. Here again, I was told that working out the burden would be a stupendous task and would require very long time. Though I had refused long adjournment, even till to-day, no calculations of the burden, on the basis of the tentative suggestions made, have been made available by the petitioner. I am, therefore, left to the calculation made by the workmen and my own resources. As I shall presently show, such burden cannot be beyond the financial capacity of the employer.

91. In my view, the first modification required would be to eliminate (D1-D2) and replace it with a suitable neutralising factor. I consider the static part of the pension formula devised by the Tribunal as capable of working satisfactorily. The static component should be retained as

$(1 \times B - C) \times (12720)$ where the factors A, B, C have the respective meanings ascribed to them under the Award of the Tribunal. This static component needs to be linked to an appropriate index number with provision of escalation with rise in Index, on a sliding scale.

February 10, 1993

92. It would be convenient to make the compensatory payment, the Dynamic Component, available once in six months by taking six monthly average of the Consumer Price Index Numbers and computing the rise over the index number to which the pension formula is linked.

Since the petitioner is an All India concern, the All India Consumer Price Index (Simla Series) is the obvious logical choice of the index.

93. I am of the view that the person receiving the lowest level of the static component of pension needs to get cent per cent. neutralisation. This means that the persons who get minimum pension of Rs. 300/- have to be protected fully against the inflationary pressures. Once cent per cent neutralisation is calculated in respect of such pensioners, applying the same rate of the pensioners who draw higher static pensions, would result in the rate of neutralisation tapering down progressively. This approach is consistent with the theory of neutralisation as applicable even in the case of adjudication of Dearness Allowance.

94. The Tribunal has made its award operative from April 1, 1985 and granted benefits retrospectively from April 1, 1985. Although the dispute has been lingering for nearly 20 years, considering the lapse of time and the sudden impact of the large burden on the petitioner, it would not, in my view, be just or

fair to make the revision in the pension scheme operative from an earlier date as canvassed by the learned counsel for the workmen. I would, therefore, accept April 1, 1985 as the date on which the revised pension formula should be linked to an appropriate index number. The All India Consumer Price Index Number for Industrial Workers (General) (1960 = 100) stood at 594 in the month of April 1985. For the purpose of easy calculation, it would be better to link the pension to the Consumer Price Index Number 600 which was the figure of consumer Price Index Number in May, 1985. Since the minimum pension of Rs. 300/- is to be neutralised at cent per cent., the per point neutralised would work out to 50 paise. Thus for every 10 point rise the neutralisation or Dynamic Component of pension works out to Rs. 5/- per month. In my judgment, although this may not be the full relief that the workmen have been clamouring from 1973, yet, it would be a modest step in the right direction. although the Tribunal has made the revision applicable from April 1, 1985, for practical consideration, since the Consumer Price Index Number conveniently was 600 in May 1985, I am of the view that the linkage should begin from May 1, 1985.

95. As on April 1, 1985 the pension scheme stood as under :

Scheme "A" : 1.5 per cent. of the pensionable salary for each completed year of service.

Pensionable salary is the last drawn basic salary received by the employee, but did not exceed Rs. 1500/- per month. Since this scheme was not beneficial to employees who had retired prior to December 1, 1979, the earlier scheme was also kept alive subject to the modification that a gross addition of 40 percent. was made in the quantum of pension under the earlier scheme. The workman had the choice of receiving monthly pension under the first scheme styled as Scheme "A" or under the second scheme which was styled as Scheme "B" whichever was better. Since neither scheme was linked to the index number, there was persistent clamour by the workman that the monthly pension amount receivable under either scheme had become totally unrealistic on account of continual erosion of its real money value, which became all the more acute in the case of persons who received only the minimum pension amount.

96. At the time of the hearing, I had indicated my thinking tentatively and I have called upon the parties to calculate the burden likely to be imposed on the employers as a consequence of modifying the pension scheme in accordance with my tentative suggestions. On behalf of the workmen Mr. Dudhia made available calculations.

97. The average of the all India Consumer Price Index Numbers during January to June 1992, comes to 1139. This is a rise of 539 points over the base number of 600. The additional payment of would be Rs. 265.00 per pensioner ($53 \times 5 = 265$). The number of pensioners, other than widows/widowers, during this period was 3162. Consequently the burden would be Rs. 50,27,580.00 ($53 \times 5 \times 3162 \times 6$) on account of the pensioner other than widows/widowers for the six months

period January to June 1992, Similarly, for widows/widowers numbering 552, the additional pension amount per month would be Rs.

(53 x 5 x 5 x 552), 73,140.00 ----- yielding a burden of Rs. 4,38,840.00 for January to June 1992. The six monthly burden January to June 1992 for all eligible persons would be Rs. 54, 66, 420.00 (50,27,580 + 4,38,840). The annual burden taking the latest available figures, would be in the region of Rupees 1.09 crores. The burden would obviously be less as we go backwards. The calculation of the burden over the period January 1985 to June 1992 has been made available to me by Mr. Dudhia and it shows that the total burden consequent to modification in the pension scheme by linking it to the index number, as directed, would come to Rs. 3.03 crores. This, in my view, represents a fairly approximate burden consequent upon the modifications which I propose. There are two factors which need further detailed calculations. The first is the modifications made with regard to the ceiling on the pensionable salary being applied to the total salary (Basic plus Dearness Allowance). This would make eligible for pension some more pensioners. Unless the details are worked out, it is not possible to project the burden on this account. The second modification is that every year there may be new pensions added or some old pensioners, their widows/widowers dying. Thus there would be continuous addition to the liability and subtraction therefrom. Notwithstanding all these marginal variable factors, I am of the view that the burden projected by the workmen would fairly approximate to the real burden. In my judgment, this is a burden which can be conveniently borne by the employer without difficulty. The real burden would be reduced if one takes into consideration the savings made on account of the Income Tax, at the rate at which it is payable by the petitioner.

98. In the result, both the petitions are required to be made partly absolute to modify the pension scheme operative under the impugned award.

99. Both the writ petitions are hereby made partly absolute. The pension scheme awarded under the impugned award shall stand modified as under :

1. The pension for workmen who retired on or after January 1, 1961 or who retired after May 1, 1985 or retire hereafter, shall be computed according to any one of the following two schemes, whichever is more beneficial to the pensioners/workmen concerned :

(c) Scheme "A" : For workmen who retired on or after December 1, 1979, 1.4 per cent. of the pensionable salary for each year on completed service. Pensionable salary shall mean the last drawn basic salary plus dearness allowance of the concerned workmen subject to the maximum of Rs. 1500/- per month.

OR

(b) Scheme "B" : Monthly Pension

1 (AxB) -- x ----- - C 12 (720) Monthly Pension plus an additional 40% of the

gross amount, where,

A = Number of completed continuous months of service subject to a maximum of 420 months (in the case of those employees whose age of retirement is 55 years), 450 months (in the case of those employee whose age of retirement is 58 years), or 480 months (in the case of those employees whose age of retirement is 60 years) respectively.

B = Salary and dearness allowance during the last 12 months immediately preceding the date of retirement.

C = Annuity value of the combined Provident Fund accumulations and Gratuity of the employees at such rates of annuity as may be declared from time to time by the Life Insurance Corporation of India.

2. The minimum pension shall be Rs. 300/- per month for sub-staff and Rs. 550/- per month for the General Staff, irrespective of the scheme applicable "IN = 3. The pension receivable by the workmen either under Scheme "A" or Scheme "B" or the minimum pension shall be in linked to all India Consumer Price Index Number for Industrial Workmen (1961 = 100) 600. For every 10 points rise in the six month average of the said Consumer Price Index Number over 600, the workmen/pensioners shall be entitled to an additional amount of pension at the rate of Rs. 5/- per month. The six monthly averages shall be computed for the period January-June and July-December every year and the additional payments shall be accordingly made in the months of July and January every year.

4. The widows/widowers of workmen would be entitled to an amount of pension calculated at the rate of 50 per cent. of the pension (including the Dearness component) computed in the foregoing manner. The minimum pension payable to the widows/widowers shall be Rs. 150/- for Sub-staff and Rs. 175/- for General Staff.

5. All other conditions with regard to eligibility of pension such as length of service shall remain unaffected.

6. The arrears of pension payable in accordance with the above formula shall be paid with effect from May 31, 1985. The arrears to be computed and paid within four months from to-day.

100. Before parting with the judgment I must place on record my appreciation of the efforts put in by counsel on both sides to help me to reach what I consider to be a fair and just resolution of the long drawn industrial dispute.

101. Both the writ petitions are disposed of accordingly, with no order as to costs.