

(2014) 01 AHC CK 0075

In the Allahabad High Court

Case No : Writ-C No. 2606 of 1989 C/W Writ-C No. 21586 of 2004

I.E.L. Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(4), 2, 25H, 33C(II), 33C(V)

Citation : (2014) 3 ADJ 657 : (2014) 3 AWC 3229 : (2014) 141 FLR 623

Hon'ble Judges : Sunita Agarwal, J

Bench : Single Bench

Advocate : S.N. Verma, Rohan Gupta in Writ-C No. 2606 of 1989 and J.N. Tiwari and S. Chatterjee, Advocate for the Appellant; S.C. Bushra Maryam, K.M. Dayal, Saurabh Adhikari, Shesh Pal and Shrish Pal in Writ-C No. 2606 of 1989 and C.S.C., Bushra Maryam and Sumati Rani Gupta in Writ-C No. 21586 of 2004, Advocate for the Respondent

Judgement

Sunita Agarwal, J.—Present writ petition is directed against the award dated 1.2.1989 passed by the Presiding Officer, Industrial Tribunal (III), Kanpur in Adjudication Case No. 83 of 1988.

Sri Navin Sinha, learned Senior Advocate assisted by Sri Rohan Gupta have put in appearance on behalf of Kanpur Fertilizer and Cement Limited, a company incorporated under the provisions of Companies Act, 1956 having its registered office at Sector 128 NOIDA, Gautambuddh Nagar. It had been impleaded by the order dated 18.2.2013 passed by this Court as it had taken over M/s. I.E.L. Limited, Fertilizer Division, Panki, Kanpur the then petitioner. Heard learned Senior Counsel assisted by Sri Rohan Gupta for the petitioner and Ms. Bushra Maryam, learned Counsel appearing on behalf of the respondent No. 3.

The respondent No. 3 raised an industrial dispute which was referred to the Tribunal for adjudication u/s 4K of the Industrial Disputes Act, 1947 on 28.8.1981. The same was registered as Adjudication Case No. 139 of 1981 and

later on transferred to Industrial Tribunal (I), Allahabad from where it was again transferred to Industrial Tribunal (III) at Kanpur and was registered afresh as Adjudication Case No. 83 of 1988. The reference for adjudication u/s 4K of the U.P. Industrial Disputes Act, 1947 Act is as under:--

2. The dispute was raised by 59 workers of M/s. Indian Explosives Ltd., Panki, Kanpur. The respondent No. 3 i.e. Fertilizers Union raised the dispute on behalf of the workers. The dispute raised was with regard to claim of the workmen for payment of Compensatory off with wages in lieu of the work done by them on the day of weekly rest. The stand taken by the workmen was that they were enjoying the concession of Compensatory off with wages upto 5.4.1976. This concession was withdrawn by the company i.e. I.E.L. Limited with effect from 6.4.1976. The said concession granted by the then employer became a condition of their service which could not have been withdrawn by the company unilaterally without following the procedure laid down u/s 4I of the Industrial Disputes Act, 1947(hereinafter referred as the "Act").

3. The case of the employer company was that they have withdrawn the concession in compliance with the statutory provision namely Rule 86 of the Rules framed by the State Government u/s 64(2)(d) of The Factories Act.

4. The Tribunal after consideration of the rival pleadings came to the conclusion that the denial of Compensatory off with wages to the concerned workmen with effect from 6.4.1976 was neither justified nor valid. The workmen were entitled to Compensatory off with wages since the time of its withdrawal and to get arrears of wages, if any, according to Compensatory off which had been earned by them subsequent to 6.4.1976. Thus, the award was drawn in favour of the workmen.

5. Challenging the said award, this petition was filed in the month of February, 1989 and an interim order dated 28.2.1989 was passed to the effect that the operation of the impugned award dated 1.2.1989 shall remain stayed provided the petitioner pays future Compensatory off with wages with effect from 1.3.1989 to the workmen named in the award. In case of default this interim order shall stand automatically vacated and it will be open to the respondents to execute the award.

6. Heard Sri Navin Sinha learned Senior Counsel assisted by Sri Rohan Gupta for the petitioner. Learned Counsel invited attention of the Court to the sections 51, 52, 54, 55 and 56 of the Factories Act, 1942. Section 51 provides for approval of weekly rest for an adult worker. Section 52 provides for weekly holidays. Section 54 provides for daily rest for an adult worker in the factory subject to provisions of section 51. Section 55 provides for interval for rest to an adult worker in a factory each day and section 56 provides that period of work of an adult worker in a factory shall be so arranged that inclusive of intervals for rest u/s 55, they shall not work more than ten and half hours in any day. He further invited attention to section 64(2)(d) of the Factories Act which reads as under:--

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed--

(d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55 and 56.

7. Learned Senior Counsel for the petitioner submits that the petitioner factory is a Continuous Process factory. The Rules are framed by the State Government in exercise of power u/s 64(2)(d) of the Factories Act. Rule 86 is relevant for Continuous Process Factories. Under Rule 86, class of factory has been mentioned and the petitioner factory falls under Clause (viii) namely "Chemical Works." Class of work relating to petitioner factory, covered by Rule 86 has been mentioned in column 2 of the Table appended to the rule.

8. He further submits that in the amendment made in Rule 86 in the year 1976, condition No. (iii) appended to Rule 86 was amended. The amended condition relevant for the purpose of deciding the controversy is as follows:--

Rule 86(iii) The total daily hours of work shall not exceed 10 with a spread over of 12 hours except in an emergency when it is necessary to employ a shift worker for more than 8 hours in any day to enable him to work whole or part of the subsequent shift. In no case shall the worker be employed for more than 16 hours in a period of 24 hours from the commencement of work, and total number of hours of overtime shall also not exceed 50 in any quarter.

Provided that where subsequent shift or any part thereof during which a shift worker is employed as aforesaid falls on a weekly holiday, compensatory period of rest shall also be given on a day which is neither a festival nor a weekly holiday.

Also, when a worker is so employed the Manager shall within seven days inform the Inspector in Form No. 10 and shall intimate the date of compensatory period of rest to be given.

The Manager shall also enter the period of extra time worked and the extent of compensatory period of rest in the respective registers and shall note therein the time of commencement of such extra time work before its commencement.

9. Learned Senior Counsel for the petitioner while assailing the award submits that the Labour Court travelled beyond the reference. A perusal of the reference made to the Labour Court for adjudication was that as to whether the workmen were entitled to Compensatory off i.e. period of rest in lieu of working on the day of their weekly rest. No dispute was raised with regard to wages and as such the Tribunal could not have gone into the controversy as to whether the workers are entitled to Compensatory off with wages. The "wages" was not subject-matter of reference before the Tribunal. In support of his submission, learned Senior Counsel relied upon the judgment of the Apex Court in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, , *State Bank of Bikaner and Jaipur*

Vs. Om Prakash Sharma, , Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, , Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees' Union, .

10. It is settled position of law that the jurisdiction of the Tribunal emanates from the order of reference and does not extend; beyond the terms thereof. An award passed by the Labour Court in excess of its jurisdiction suffers from illegality and could not be passed. In case, the Labour Court exceeds its jurisdiction, the award must be held to be suffering from jurisdictional error.

11. Dealing, with the judgments relied upon by the learned Counsel for the petitioner on the question of jurisdiction of the Labour Court, it may be relevant to go through the facts of those cases. In Delhi Cloth Mills (supra) the question Nos. 3 and 4 which were referred, are as follows:--

3. Whether the strike at the Delhi Cloth Mills and the lockout declared by the management on the 24.2.1966 are justified and legal and whether the workmen are entitled to wages for the period of the lockout?

4. Whether the sit-down strike at the Swatantra Bharat Mills from 23.2.1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike?

12. The Apex Court held that the Tribunal had to examine issue Nos. 3 and 4 on the basis that there was a strike at the DCM unit and a sit-down strike at Swtantra Bharat Mills and that there was a lockout declared with regard to the former as stated in the third term of reference. It was for the Tribunal to examine the evidence only on the question as to whether the strikes were justified and legal. It then had to come to its decision as to whether the workmen were entitled to the Wages for the period of the lockout in the Delhi Cloth Mills and for the period of the sit-down strike at the Swtantra Bharat Mills.

13. In Pottery Mazdoor Panchayat (supra) the reference was whether the employers in relation to the Poly Pather Clay Mines of Perfect Pottery Co. Ltd., Jabalpur were justified in closing down the said mine and retrenching the 81 workers with effect from July 1, 1967. If not, to what relief are the workmen entitled?. It was held that the very terms of the reference show that the point of dispute between the parties were not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by

the management.

14. In *Firststone Tyre* (supra) reliance has been placed on section 10(4) of the Industrial Disputes Act and it was held that the reference to the Tribunal was with regard to the demand of reinstatement in respect to workmen on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on the permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen alongwith others; it is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, we think the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination.

15. In the *State of Bikaner & Jaipur* (supra) the reference was as to whether the management is justified in terminating the services of workmen and employing another junior workman in his place is violation of section 25H of the ID Act. The award was made in favour of the workmen that he was entitled to be reinstated in service with 50% of back wages as employment of junior after termination of service of workmen was found in violation of section 25H of the Act or otherwise. Aggrieved by the award the writ petition was filed and the High Court in dismissing the writ petition opined that if reference in question refers only to section 25H of the Act, the same would not mean that the Tribunal was barred from going into other illegality under the Act or the amended Rules. The Intra Court Appeal preferred by the appellant was allowed. The Apex Court while dealing with the jurisdiction of the Labour Court has held in paragraph 12 and 13 which are quoted as under:--

12. The specific issue which was, therefore, referred for determination by the Labour Court, related to the dispute as regards violation of section 25H of the Act. If the said provisions had not been found to be violated, the question of setting aside the order of termination by the Labour Court did not and could not arise. The learned Single Judge proceeded on the premise that the High Court, in exercise of its writ jurisdiction, cannot sit in appeal over the Award of the Labour Court. The learned Single Judge was right, but then, only because the jurisdiction of the High Court, while exercising of its power of judicial review was limited, it would not mean that even a jurisdictional error could not have been corrected. The provisions of Articles 226 and 227 of the Constitution of India would be attracted if the inferior Tribunal has, inter alia, committed a jurisdictional error. What would be the ground for judicial review, in regard to the orders passed by an inferior Tribunal is no longer a *res integra*.

13. In *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, the

issue which came for consideration before this Court was as to whether in the face of the provision for an appeal, the High Court could exercise its power of judicial review. It was held that when an appeal power is vested in the High Court, ordinarily the writ jurisdiction could not be taken recourse to. Even in such a case, the Court was held to have limited jurisdiction.

16. Learned Counsel for the respondent No. 3 Ms. Bushra Maryam submits that present is not a case where the Tribunal had gone beyond the jurisdiction in deciding the dispute between the parties. In order to substantiate her arguments she placed reliance upon paragraph 30 of the judgment in Delhi Cloth & General Mills (supra) wherein the Apex Court had observed as follows:--

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

17. She further submits that in the present case, the dispute as referred to the Tribunal was with regard to payment of Compensatory off or rest in lieu of the work done by them on weekly holidays. The petitioner employer while contesting before the Labour Court did not take any plea with regard to the jurisdiction of the Tribunal. In the written statement filed by them, a preliminary objection was taken that the order of reference was vague and the matter of dispute is not an industrial dispute as the same has not been sponsored by the Union of the company who was competent to do so. The order on reference taken on the face of it cannot be deemed to be considered as an industrial dispute as defined in Clause 1 of section 2 of the U.P. Industrial Disputes Act.

18. In the written statement filed by the company the main objection taken was that the petitioner factory is a Continuous factory and the Government of India realizing the difficulties of Continuous Chemical factories has framed rules in exercise of powers contained in section 64(2) (d) of the Factories Act. It was stated that the compensatory off with wages was being paid to them under the rules upto 5.4.1976. Thus, it is apparent that no contest was made with regard to the jurisdiction of the Labour Court to decide.

19. In reply to the same, learned Counsel for the petitioner submits that though

the said plea was not taken in the written statement filed by the employer, however, in the rejoinder affidavit filed by the employer, a specific plea was taken in paragraph 1 that in the present reference order the matter of dispute regarding Compensatory off with wages has not been referred. The question of granting Compensatory off with wages in lieu of working on weekly holidays was outside purview of the present reference order. He further submits that despite the said plea taken in the rejoinder affidavit, the Tribunal did not deal with the same.

20. A perusal of the award passed by the Tribunal shows that the representatives of the employer and employees have put in appearance. It seems from the judgment of the Tribunal that though the issue was raised in the rejoinder affidavit, however the same was not pressed during the course of hearing and as such the same was not dealt with. For the first time the plea was taken and arguments are made before this Court.

21. This apart, both the parties were aware of the controversy and the issue was for payment of Compensatory off with wages. The employer in the written statement themselves admitted that the workmen were entitled to Compensatory off but not entitled to wages. Thus, it cannot be said that the only controversy between the parties was with regard to payment of Compensatory off and not for payment of wages.

22. The Apex Court in Delhi Cloth (supra) while examining the reference made by the Tribunal has observed as follows:--

28. In the last mentioned case, the question whether C rank officers were workmen had to be examined by the Tribunal, for, if they were not, there could be no reference under the Industrial Disputes Act. In the case before us, there is no such difficulty. The third and the fourth terms of reference in the instant case are founded on the basis that there was a strike at the Delhi Cloth Mills and a sit down strike at the Swatantra Bharat Mills and that there was a lock-out declared by the management of the Delhi Cloth Mills on 24.2.1966. On the order of reference, it was not competent to the workmen to contend before the Tribunal that there was no strike at all; equally, it was not open to the management to argue that there was no lock-out declared by it. The parties would be allowed by their respective statement of cases to place before the Tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the Tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.

29. On behalf of the respondents, Mr. Chari put before us four propositions which according to him the Tribunal had to consider before coming to a decision on

these two issues. They were: (i) The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute; (ii) The order of reference only limited the Tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute; (iii) Not every recital of fact mentioned in the order of Government was irrebuttable; and (iv) In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first two points. The correctness of the third proposition would depend on the language of the recital.

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

23. In view of the observations made by the Apex Court in aforementioned judgment and looking to the pleadings of the parties to find out the exact nature of the dispute, it is found that the real issue before the Tribunal was as to whether the workmen were entitled to Compensatory off with wages or not. The reference appears to have been loosely worded and no benefit can be derived from the same. In view of the facts discussed above and the proposition of law discussed in the judgment of the Apex Court in Delhi Cloth & General Mills (supra), this Court is of the opinion that the argument of learned Counsel for the petitioner that the Tribunal had exceeded in its jurisdiction while deciding the reference is not worthy of acceptance. The same is rejected as such.

24. The next argument of the learned Counsel for the petitioner is that the benefit was given to the workmen pursuant to the unamended Rules and after the amendment in the year 1976 the same was withdrawn. As the benefit was withdrawn in view of the statutory rules, the same would not fall within the meaning of Industrial Disputes Act.

25. He further submits that once the Tribunal has recorded a finding that the petitioner industry is a continuous process industry, then it could not have categorized different classes of workmen. He further pointed out that the finding of the Tribunal that the workmen were not covered by Rule 86 of the Factories Rules as they are loaders, working in the packing plant and they were not engaged in the work on Boilers, Pumps and Compressors, therefore, the work

done by them is not relating to manufacture of any kind of chemicals is incorrect. The conclusion by the Tribunal that they were not covered in the class of work mentioned in the Second Column of Table appended to Rule 86 is clearly illegal. In view of the admitted fact that the petitioner industry is a Continuous Process Industry and is covered under clause (viii) in the Class of factory as given in the Table appended to Rule 86 of the factories Rules the workers cannot be said to be covered by the conditions laid down by the rules. The class of work as specified in the table "Chemical Works" relates to Continuous Process Factory. In relation to Continuous Process Factories, Rule 86 framed u/s 64(2) (d) of the Factories Act is as follows:--

Rule 86. The following classes of work in the undermentioned classes of factories shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act and shall be exempt from the provisions of sections 51, 52, 53, 54, 55 and 56 of the Act subject to the conditions stated below.

He further submits that the workmen were employed in the packing plant which is part of the manufacturing process in the unit in the factory. The petitioner industry is engaged in manufacturing and selling of chemical fertilizers "Urea" manufactured in their factory at Panki, Kanpur. He invited attention of the Court to section 2(k)(i) of the Factories Act which defines manufacturing process in order to submit that the manufacturing process includes packing. Relevant section 2(k)(i) is quoted as under:--

Manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

26. Learned Counsel for the petitioner further relied upon the judgment of this Court in Shree Gopal Paper Mills Ltd. Vs. Inspector of Factories, U.P., to submit that the packing that is aimed at in section 2(k)(i) is the packing of the finished manufactured article, which is done to facilitate or make possible its sale or transport for sale to customers. This form of packing is in effect the last operation in the series of operations that taken together constitute the manufacture of the article for sale.

27. He further placed reliance on judgment of the Apex Court in V. P. Gopala Rao Vs. Public Prosecutor, Andhra Pradesh, to submit that the manufacture process as defined u/s 2(k)(i) of the Factories Act includes the "packing" also. Thus the workmen being engaged in the packing plant of the factory cannot be said to be the workmen not engaged in the manufacture of chemical fertilizers namely "Urea" which is finished manufactured product in the factory. The classification given by the Tribunal is wholly illusory.

The last submission of learned Counsel for the petitioner is that the finding of the Tribunal that before withdrawing the benefit of Compensatory off with wages with effect from 6.4.1976, the company did not give any notice to the workmen u/s

4(I) of the U.P. Industrial Disputes Act is incorrect as the said section is not applicable in the instant case. Section 4I of the U.P. Industrial Disputes Act is as follows:--

4-I. Notice of change.--No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule, shall effect such change,--

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change,--

(i) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate) Tribunal Act, 1950; or

(ii) where the change is likely to affect workmen who are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Civil Service Regulations or any other rules or regulations that may be noticed in this behalf by the State Government in the Official Gazette apply.)

28. He submits that the benefit which was being awarded to the workmen under the Rules and not by way of concession as suggested by the Tribunal. The Tribunal had erred in concluding that the withdrawal was not justified in view of non-compliance of section 4(I) of the U.P. Industrial Disputes Act as it was not a condition of service in respect of any matter specified in the Third Schedule of the Industrial Disputes Act.

29. Learned Counsel for the petitioner further placed reliance upon judgment of this Court in the case of I.E.L. Employees Union Vs. Indian Explosives Limited, . All in support of his argument. In the said case it was concluded that the employers have been following statutory rule which once ordained them to provide Compensatory off day to the workmen but does not do so now. The action of the employers in extending the facility of Compensatory off day was not volitional nor in its withdrawal. The grant by the employers of that off day has not been proved to be in the nature of a customary concession or privilege or by way of usage in these proceedings.

30. Ms. Bushra Maryam, learned Counsel for the respondent No. 3 relied upon judgment of the Apex Court in Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others, . The Management of Indian Oil Corporation Ltd. Vs. Its Workmen, , M/s. Kanpur Sahkari Milk Board v. Industrial Tribunal (III) U.P. at Kanpur and others 1982 (44) FLR 36 in support of her submission that the Compensatory off with wages were given to workmen for a long number of years. That may not have been according to any Standing Orders but that had certainly become a condition

of service and no change could be effected without complying with the provisions of section 4-I of the Act. The workmen were never given Compensatory off with wages pursuant to Rule 86 of the Factories Rules as contended by the petitioner employer. They are not covered under Rule 86 Clause (viii) relating to class of work as specified in relation to class of the factory as they were loaders engaged in the "packing plant". No dispute was raised by the employer that the workmen were doing any other work than that of the "Loaders" in the "packing plant" of the factory. Rather it was stated on their behalf that the main work of the workmen was lifting of Urea bags for loading from the conveyor machine.

31. In view of the same, before withdrawing the concession of "Compensatory off with wages", the workmen were required to put to notice as prescribed u/s 4-I (a) of the U.P. Industrial Disputes Act. The withdrawal of said concession was in fact the change in the Condition of the services applicable to the workmen in respect of the manner specified in Third schedule of the Industrial Disputes Act. In view of section 4-I of the Act no employer can change any condition of service applicable to any workman in respect of any manner specified in the Third schedule. The Tribunal had rightly recorded a finding that proviso to section 4-I had not been complied with.

32. Learned Counsel for the respondent No. 3 placed reliance upon judgment in Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, to submit that meaning of word "Manufacture" is a transformation of an article, which is commercially different from the one which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable.

33. Lastly, she submits that the Labour Court considered the entire evidence and recorded a positive finding of fact that the workmen were "Loaders" employed in the packing plant and, therefore, they are not covered by Rule 86(viii) of The Factories Rules, this Court in exercise of its supervisory power under Article 226 of the Constitution of India may refrain from interfering in the finding of fact recorded by the Labour Court. The: nature of jurisdiction under Article 226 of the Constitution of India is supervisory and not appellate.

34. Thus, in view of the contention of Counsel for both the parties, the next question which now remains to be decided in this case is as to whether the workmen are covered by Rule 86(viii) of the Factories Rules or payment of Compensatory off with wages was part of condition of their services by way of concession given by the petitioner factory. Class of factory and class of workmen specified in clause (viii) of the Table appended to Rule 86 shows that the exemption under Rule 86 is subject to conditions stated therein, applicable to the "Class of work" mentioned in the second column of the Table. The Class of work as indicated in the Table is described as work of male adult workers attending to (a) Boilers, Pumps and Compressors; and (b) the manufacture of sulphuric, nitric and hydrochloric acids, ammonia, magnesium sulphate, alum, hyposulphite and sulphite of soda, sodium sulphate, sodium sulphide, nitrate of potash, alumina

and bichromate of potash.

35. In the present case, the specific stand of the employer was that the workmen concerned were "Loaders" of "Urea bags". In the packing plant, there was only one conveyor machine from where they used to lift the bags for loading. There is nothing on record to indicate that the Workmen were attending to boilers or compressors or they were doing some other work in the "packing plant".

36. Learned Counsel for the respondent No. 3 tried to suggest that the work of loading and unloading is part and parcel of the packing process. The said contention of learned Counsel for the respondent No. 3 does not stand to reason in view of the meaning of the "words" namely "packing", "loaders" and "conveyor". As per "Webster's New Twentieth Century Dictionary" "unabridged Second Edition; The word "packing" means "the act or process of a person or thing that packs; whereas the meaning of "Loader" is "one who or that which loads; specifically, (a) a loading device for a shell or cartridge; (b) a hay Loader."

"Conveyer" also spelled as "Conveyor" in the "Webster's New Twentieth Century Dictionary unabridged Second Edition" which means "one who or that which conveys; especially a mechanical contrivance, as the continuous chain or belt, used to move something from one place to another."

37. Thus, in view of meaning of "packing" and "loader" it cannot be said that loading is part and parcel of "packing". Even otherwise, this was not the case of the employer that the workmen were attending to any other work than that of lifting of Urea bags from "conveyor machine" for loading. They cannot be said to be involved in packing of the finished manufactured product "Urea" in the factory. The "Conveyor" machine from which the workmen used to lift "Urea bags" is only a device or belt which is used to move the packed Urea bags from one place to another. So far as "packing process" is concerned, the same is completed with the packing of the Urea bags and as soon as "Urea bags" are put to the "conveyor machine", the packing process is complete. Thus, the lifting of Urea bags from the conveyor machine for loading to the carriage to the destination cannot be said to be part and parcel of the "packing process".

38. Reference may be taken to paragraph 7 of the judgment of this Court in Shree Gopal Mills Limited (supra) relied upon by the learned Senior Counsel which itself says that the packing that is aimed at in section 2(k)(i) is the packing of the finished manufactured article, which is done to facilitate or make possible its sale or transport for sale to customers. This form of packing is in effect the last operation in the series of operations that taken together constitute the manufacture of the article for sale. Thus, considering this aspect of the matter also, this Court finds that once the Urea bags are packed and are put to "conveyor machine" i.e. belt to move from one place to another, the last operation i.e. "packing" in the series of operations taken together in the manufacture of Urea for sale is complete. Thus, from the own contention of learned Counsel for the petitioner, the workmen who were engaged as "Loaders"

in the factory cannot be said to be engaged in the process of "packing" or "manufacturing of Urea" and therefore, were not covered under the definition of "manufacturing process" u/s 2(k)(i) of the Factories Act.

39. Mere fact that the "Conveyor machine" was in the "packing plant" does not mean that the loading was part and parcel of the "packing process". In view thereof, the work of loaders cannot be said to be included in the "manufacturing process" as suggested by the learned Counsel for the petitioner. Thus, the workmen would not fall in the class of work as provided in column 2 of Clause (viii) of the Table appended to Rule 86 which relates to "chemical factories".

40. As this Court has come to the conclusion that Rule 86 of the Factories Rules is not applicable to the petitioner, therefore, the only conclusion which can be drawn is that the benefit being given by the employer in extending the facility of Compensatory off with wages was in the nature of customary or privilege by way of usage in the factory. In view thereof, section 4-I of the Act would be attracted and, therefore, the employer could not have changed the condition of services of the workman usually granted to them without prior notice. The proviso (ii) to section 4-I as contended upon by the learned Counsel for the petitioner is not attracted in the instant case.

41. In view of above discussion, the conclusion drawn by the Labour Court that the workmen were entitled to Compensatory off with wages and to get arrears of wages, if any, according to Compensatory off which has been earned by them subsequent to 6.4.1976 is hereby upheld. The award passed by the Labour Court dated 1.2.1989 is affirmed.

42. It is further directed that the petitioner employer shall calculate arrears of the amount of Compensatory off with wages which is payable to the workmen under the award and shall pay the same within a period of six months from the date a certified copy of the order is produced before it.

The writ petition No. 2606 of 1989 is accordingly dismissed.

43. The writ petition No. 21586 of 2004 was filed by the then petitioner namely Duncans Industries Limited with the prayer for quashing of the orders dated 23.5.2003 and 27.4.2004 passed by the Labour Court (I), U.P., Kanpur in Misc. Case No. 84 of 1999. In the said writ petition also an impleadment application was filed by the petitioner Kanpur Fertilizer and Cement Limited, a company incorporated under provisions of Companies Act, 1959 having its registered office at Sector 128, NOIDA, Gautam Buddh Nagar. The impleadment application was allowed by the order dated 24.4.2003. The case of the petitioner in the writ petition No. 21586 of 2004 is that the award dated 1.2.1989 passed by the Industrial Tribunal (III), U.P., Kanpur was challenged in the connected writ petition No. 2606 of 1989 and pursuant to the conditional interim order dated 28.2.1989 passed by this Court, the proceedings u/s 33C(II) read with section 33C(V) of the Industrial Disputes Act, 1947 was initiated for payment of the amount of Compensatory off with wages. The Presiding Officer held that as the

petitioner employer had failed to comply with the interim order dated 28.2.1989 passed by this Court, therefore, the workmen were entitled to get the amount calculated by them for Compensatory off with wages under the award dated 1.2.1989. The Presiding Officer passed the order dated 23.5.2003 directing for recovery of the amount of Rs. 1,13,82,576.81. Against the order passed by the Presiding Officer, Labour Court dated 23.5.2003, a review application was filed by the petitioner. The same was dismissed by the Labour Court vide order dated 27.4.2004. Thus, the order passed for execution of the award u/s 33C(II) of the Industrial Disputes Act and the order rejecting the review application filed by the employer are under challenge in the writ petition No. 21586 of 2004. It may be noted that when the writ petition was filed, on 28.5.2004, an interim order was passed staying further proceedings for recovery of the amount till the next date of listing. The order sheet further indicates that the interim order was extended from time to time and lastly on 18.8.2004 an order was passed that interim order already granted shall continue. Be that as it may, as the award passed by the Labour Court has been upheld by this Court, the petitioner employer is under obligation to pay the amount of Compensatory off with wages alongwith arrears which has been earned by them subsequent to 6.4.1976. In view thereof, order dated 23.5.2003 passed by the Labour Court u/s 33C(II) in Misc. case No. 84 of 1999 for execution of the award during pendency of the writ petition No. 2606 of 1989 cannot be sustained and is hereby set aside. In so far as the order dated 27.4.2004 is concerned, the said order requires no interference by this Court.

For the reasons and discussions made above, the writ petition No. 21586 of 2004 is hereby decided in terms of the directions given in writ petition No. 2606 of 1989.