

(1989) 09 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No's. 1770 and 3417 of 1987

Indian Oil Corporation Ltd.

APPELLANT

Vs

Joint Chief Labour Commissioner and Appellate Authority and
Others
 Ram Vinod Vs Joint Chief Labour
Commissioner and Others

RESPONDENT

Date of Decision : 15-09-1989

Acts Referred:

Citation : (1990) 60 FLR 754 : (1990) ILR Delhi 270 : (1990) LabIC 871 :
(1990) 1 LLJ 408

Hon'ble Judges : P.K. Bahri, J;Leila Seth, J

Bench : Division Bench

Advocate : V.N. Kalra, Sujata Gupta, K.B. Prasad, Jitendra Sharma, P. Jain,
Ashok Aggarwal, K.B. Prasad, V.N. Kaora and Sujata Gupta, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Indian Oil Corporation Limited has in this writ petition sought a writ in the nature of certiorari for quashing the order dated. October II, 1984. passed by respondent No. 2-Regional Labour Commissioner and-designated Certifying Officer u/s 5(2) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the "Standing Orders Act") and the subsequent appellate order dated May 4, 1987, passed by respondent No. 1- Joint Chief Labour Commissioner, the Appellate Authority u/s 10(2) of the Standing Orders Act.

(2) The facts of this case are not in dispute . Two important but interesting questions arise, in this writ petition, firstly, whether the Certifying Authority under the Standing Orders Act has the jurisdiction to entertain an application for amendment of a Standing Order which fixes the age of retirement of the Workmen as 58 years which is in consonance with the model standing order and enhances the age of retirement to 60 years without first giving any finding whether it is practicable to give effect to the model standing order and secondly,

whether the settlement arrived at u/s 18(3) and Section 19(2) of the Industrial Disputes Act, 1947, between the petitioner and the workmen represented by their recognised majority union and which settlement was in force when impugned orders were made. had put any bar on the rights of the workmen to approach the authorities under the said Act for seeking modification of the Standing Order with regard to the fixation of age of superannuation of the workmen.

(3) The draft Standing Orders in respect of the Barauni Refinery were submitted by the petitioner and were certified by Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others Regional Labour Commissioner u/s 4 of the Standing Orders Act and the same. came into force on December 5, 1964, pursuant to the provisions of Section 7 of the Standing Orders Act. Clause 20 of the certified Standing Orders applicable to Barauni Refinery of the petitioner provides that every employee shall retire from service on completing the age of 58 years and extension for a maximum period of 5 years, but not more than one year at a time, may be given at the discretion of the Company, provided the employee is certified to be fit by the Company's Medical Officer and provided further that the employee concerned also consents to such extension. Admittedly, the petitioner Corporation had never exercised its discretion of giving any extension to any workman at any time. The petitioner-Corporation has refineries based in Assam, Gujarat, Baroda, Mathura, West Bengal and recently acquired refinery of Assam Oil Company and in all these refineries "inc Standing Orders provide for similar type of Standing Order pertaining to the age of superannuation. In pursuance to a charter of demand dated December 23, 1981, given by Barauni Refinery Tel Shodhak Majdoor Union which is imp leaded through its General Secretary as respondent No. 5 in the writ petition which represents the majority of the workmen employed at Barauni Refinery and the similar charter of demands raised by Unions of majority workers of other refineries, the conciliation proceedings were initiated and one of the common demand^ of the workmen of all those refineries including the workmen of Barauni Refinery was that the age of superannuation should be fixed at 60 years. In the course of the conciliation proceedings held on the basis of said charter or demands, a package long term. settlement, was arrived at which was given effect to in respect, of all those workers of all the refineries. Clause 19 of the said settlement was as follows:

THE Corporation agrees that such terms and conditions of service as well as amenities and allowances as are not changed under this Settlement shall remain unchanged and operative during the period of the Settlement.

Clause 21 provided as follows:

THE Unions agree that during the period of operation of this Settlement they shall not rare any demand having financial burden on the Corporation other than bonus, provided that this Clause shall not affect the rights and obligations of

the parties in regard to matters covered u/s 9A of the Industrial Dispute. Act, 1947.

(4) Admittedly the said settlement was for a period of four years ending April 30, 1986. u/s 18(3) of the Industrial Disputes Act, the said settlement admittedly is binding on all the workmen of the petitioner and the settlement was to remain in force for the full term thereof and thereafter until terminated by a notice given by a majority of the workmen Section 29 of the said Act makes it an offence for any party to act in breach of the settlement. Admittedly, no notice had been given by the majority of workmen terminating the said settlement. So, the said settlement has been in force at all relevant times. The Central Government by a notification dated September 12, 1984, had amended. Schedule IB(3) of the Standing Orders Rules and has provided a model Standing Order in which it has been set out that the age of superannuation must be 58 years in all cases.

(5) At this stage, I may notice that the petitioner company has two separate divisions, one known as Marketing Division and the other known as Refineries and Pipeline Division. In the Standing Order pertaining to the Marketing Division the age of retirement is provided as 60 years for the workmen. It is mentioned in the writ petition that the petitioner is taking steps to seek modification of the Standing Order to reduce the age of superannuation to 58 years in the Marketing Division as well on the basis of the Model Standing Order framed by the Central Government.

(6) A faction of the workmen represented by another labour union formed as Petroleum and Chemical Mazdoor Union of which Shri Ram Vinod Singh is the General Secretary, had given a notice to the Regional Labour Commissioner u/s 10(2) of the Standing Orders Act for modification of the Standing Order for the Barauni Refinery workers for increasing the age of retirement from 58 years to 60 years. In this it was pleaded that as the age of retirement of the workmen is 60 years in respect of the workmen of the Marketing Division the same age of retirement should be fixed for the workmen of the Barauni Refinery as both the Marketing Division and the Refinery Division are owned by the petitioner-company and both have workmen of both the divisions performing similar type of duties and functions, and are having similar type of pay-scales and there are no provisions for pensions. Indian Oil Corporation Ltd. Vs. Joint Chief Labour 277 Commissioner & Appellate authority & Others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others

(7) By the impugned order dated October 11, 1984, the Regional Labour Commissioner after giving necessary hearing to the petitioner and the labour unions allowed the modification of the Standing Order for increasing the age of superannuation of the said workmen from 58 years to 60 years. The petitioner filed an appeal against the impugned order u/s 10(3) read with Section 6 of the Standing Orders Act and after giving necessary hearing the appellate authority-respondent No. 1 dismissed the appeal after making slight modification and provided that the age of superannuation would be extended to 60 years only in

respect of the workmen who are found to be medically fit after attaining the age of 58 years by the Medical Officers of the petitioner-company.

(8) It is also evident from the facts that one Vasudev Kalra, a workman employed by the Refinery Division at Gujarat had brought Writ Petition No. 632186 seeking writ of mandamus requiring the petitioner-company to fix the age of retirement of the workmen at 60 years as the age of retirement of the workmen in the Marketing Division of the petitioner-company is 60 years but the said Writ Petition came to be dismissed by a Division Bench of this Court on May 14, 1986 and a SLP (Civil) No. 7134/86 filed by Vasudev Kalra was dismissed by the Supreme Court on October 27, 1986, after issuance of a show-cause notice.

(9) The impugned orders have been also challenged by the petitioner on merits pleading that certain material facts that the age of retirement of all the workmen in all the Refineries of the petitioner is fixed at 58 years and also the age of retirement of the workmen is 58 years in all public sector industries have not been taken into consideration by respondents 1 & 2 and thus those orders are vitiated on that score. A plea also has been taken that the Marketing Division of the Petitioner-company is not comparable with the Refinery and Pipeline Division of the petitioner- company and various facts have been enumerated in the writ petition showing the differences between the service conditions of the workmen of the said two Divisions. Before proceeding to discuss the two important points raised by the learned counsel for the petitioner in respect of the writ petition, it is necessary to mention that Civil Writ Petition No. 3417187 has been issued by Shri Ram Vinod Singh, General Secretary of the Petroleum & Chemical Mazdoor Union, in which a prayer has been made that the order of the appellate Authority beset aside and the order made by the certifying Authority be restored.

(10) Before referring to the arguments advanced on the first point, it is necessary to notice the various provisions of the Industrial Employment (Standing Orders) Act, 1946. This Act has been brought into the statute book so that the conditions of employment of the workmen are defined with sufficient precision and are made known to the workmen. Section 2(g) defines Standing Orders as to mean rules relating to matters set out in the Schedule. u/s 3 the industrial establishments which are covered by the Standing Orders Act have to submit to the Certifying Officer five copies of the draft standing Orders proposed for adoption in such industrial establishment. Sub-section (2) of Section 3 clearly provides that in such a draft provision shall be made for "every matter set out in the Schedule..... and where Model Standing Orders have been prescribed, the draft has to be in conformity with such model as far as it is practicable". Section 4 lays down that a Standing Order shall be certified if (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment and, (b) the Standing Orders are otherwise in conformity with the provisions of this Act and it shall be the function of the Certifying Officer or the Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders. The interpretation of the said provision

would lead to the solution of the first point raised by the learned counsel for the petitioner in challenging the impugned orders. It may be noticed at this stage that prior to coming into force of Amendment Act No. 36 of 1956, the unamended Section 4 laid down that it shall not be the function of the Certifying Officer or the Appellate Authority to adjudicate upon the fairness and or reasonableness of the provisions of any Standing Orders. It is by virtue of the said Amendment Act that a duty has been cast on the authorities under the Standing Orders Act to dole upon the fairness or reasonableness of the provisions of any Standing Order Prior to the amendment, of the statute only one duty was cast on the authorities to see that the Standing Orders conformed with the provisions of the Standing Orders Act and they must also include every matter set out in the Schedule. The Standing Orders had to be in conformity with the Model Standing Orders so far as it was practicable to do so. So, before the amendment of the statute the authorities could only examine whether it was practicable or not practicable for the proposed draft Standing Orders to be in conformity with the Model Standing Order". Now a two fold duty is cast upon the authorities they have not only to examine whether the Standing Orders are in conformity with the Model Standing Orders but also to see whether the proposed Standing Orders are fair and reasonable. The latter duty has to be performed by the authorities ;functioning as quasi judicial authorities after giving necessary opportunities of hearing to the employer and the workmen and even in certain cases suo moto.

(11) Section 5 lays down the procedure to be followed by the Certifying Officer before, certifying the draft Standing Orders. Section 6 provides for an appeal to the Appellate Authority against the order of the certifying Officer and Section 7 provides for the date from which such certified orders come into operation. Section 8 requires maintenance of a register in which the Standing Orders so certified are to be incorporated and Section 9 provides for displaying of certified order? at prominent place in the language known to the majority of workmen and also in English language. Section 10 gives a right not only to the employer but also to any workman or trade union or other representative body of the workmen to seek modification of any certified Standing Order but it could be done only after the expiry of six months from the date on which the Standing Orders or the last modification thereof came into operation and the parties are to follow the same procedure for certifying the proposed modification as was to be followed initially for certifying the original Standing Orders.

(12) It is u/s 10 that a small faction of the workmen had sought the modification and impugned orders have been passed. The other material provision of Section 12A which was also introduced by Amendment of Act No. 39 of 1963, lays down that till the employer gets the Standing Orders certified the Model Standing

Orders shall be deemed to be adopted in that particular establishment .Section 15 gives power to make rules, to the appropriate Government not only for prescribing additional matters to be included in the Schedule but also for setting out Model Standing Orders for the purpose" of the Standing Orders Act. Section 15(3) contemplates that every such rule made by the Central Government shall be laid before each house of the Parliament and if the Parliament makes any modification, then that modification would come into effect.

(13) The Schedule as attached to the original Standing Orders Act provided the subjects on which the Standing Orders have to be made and item No. Ii contemplated any other matter which may be prescribed. This Schedule came to be amended by the Central Government by Note No. Gsr 30(E) dated January 17, 1983, and items 10-A and was incorporated. Schedule I attached to Industrial Employment (Standing Orders) Central Rules 1946, introduced vide notification dated December 18, 1946, provided for the Model Standing Orders in respect of industrial establishments not being industrial establishments in coal mines. These Model Standing Orders have been added, altered and modified at different times by Central Government. Schedule 1B was introduced vide notification No. Gsr 30(E) dated January 17, 1989 and in the Model Standing Orders the Central Government provided for the age of retirement or superannuation of a workman initially 60 years but by another notification No. Gsr 1040 dated September 12, 1984, the age of retirement was reduced to 58 years. It was mentioned that where there is no such agreed age, retirement or superannuation shall be on completion of 58 years of age by the workmen. Presumably the Central Government with the object to create more employment opportunities for the people had thought it fit to reduce the age of retirement from 60 years to 58 years. It is also to be noticed that the Model Standing Orders are not specific on many matters and have given a broad framework on certain matters which were required to be filled in by the employers by drafting the Standing Orders and getting them certified under the provisions of the Standing Orders Act. In this connection the Model Standing Older Nos. 4, 7, 9 and 14 in Schedule I, and items 4 & 5 of Schedule Ib may be noticed.

(14) The learned counsel for the petitioner has strongly urged that there is no jurisdiction vested in the authorities under the Standing Orders Act to test the fairness or reasonableness of the specific Model Standing Order inasmuch as such a specific Model Standing Order has received the approval of the Parliament. He has argued that the authorities could examine the reasonableness and the fairness of only such Standing Orders if the same are not in conformity with the Model Standing Orders after determining whether it is practicable or not that particular Standing Order could conform with Model Standing Order. He has urged that the authorities could also examine the fairness and reasonableness of such Standing Orders which only apply the details left open in the Model Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others Standing Orders, or of such Standing Orders which are framed on any matter on which

there does not exist any Model Standing Order. He has further urged that as the Model Standing Orders receives the imprint by the Parliament inasmuch they are laid before each House of Parliament by virtue of Section 15(3) of the Standing Orders Act, the authorities under the Standing Orders Act should not have power to examine the fairness and reasonable of such Model Standing Orders. The learned counsel for the petitioner has placed reliance on *The Associated Cement Co. Ltd. Vs. P.D. Vyas and Others*, and *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others*,

(15) Mr. Jitender Sharma, Advocate who appeared on behalf of the respondent No. 5, countered the contention of the learned counsel for the petitioner by submitting that keeping in view the language of Section 4 of the Standing Order Act it is clear that every Standing Order is open for consideration whether the same is reasonable or fair and thus, there is no limitation placed on the power of the Certifying Officer to consider the fairness and reasonableness of any Standing order which he is to certify after following the procedure laid down in the Standing Order; Act. Hence, he argued that the question of the Model Standing Orders being immune from such scrutiny by the Certifying Officer does not arise. He has further urged that there has taken place a vital change in the legislation by Act 36 of 1956 because prior to this Amendment Act the Certifying Officer had no power to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders but by virtue of this amendment the Parliament has conferred this power on the Codifying Officer and also on the Appellate Authority. While amending the Standing Orders Act no, exception has been carved cut by virtue of which the scrutiny of the Model Standing Orders is excluded from the purview of the said power of Certifying Officer or Appellate Authority adjudicate upon the same

(16) He has vehemently argued that after Standing Orders have been certified the statute gives the right to any workman to seek modification of any of the Standing Order; which have been already certified and while adjudicating upon such proposed modification the Certifying Officer has to again comply with the provisions of Sections 4 & 5 of the Standing Orders Act and he has to see whether the said proposed modification is in conformity with the provisions of the Standing Orders Act and also to adjudicate upon the fairness or reasonableness of the said proposed modified of the Standing Order. It has been argued that what in the present case has been proposed by respondent No. 3 was the modification of the Standing Order with regard to the condition pertaining to the fixation of age of retirement or superannuation and the Certifying Officer and the Appellate Authority has the jurisdiction to adjudicate whether the proposed modification is fair or reasonable. He has argued that at that point of time the Certifying Officer is not considering the fairness or reasonableness of the Model Standing Order. He has argued that what the statute required is that the standing Orders should be, so far as practicable, in conformity with the Model Standing Order but it is not mandatory provision that the Standing Order to be certified must be identical with the Model Standing Order. He has argued that

even if the Certifying Officer comes to the conclusion that there is nothing impracticable in conforming the Standing Order with the Model Standing Order even then the Certifying Officer has the jurisdiction to adjudicate whether the proposed Standing Order is fair or reasonable. He has argued that if the Parliament had the intention not to confer any jurisdiction on the Certifying Officer or Appellate Authority to adjudicate upon the fairness or reasonableness of the Model Standing Orders the Parliament would have provided so in Section 4 itself. He has also argued that the Model Standing Order are the minimum service conditions which have to be certified and there is no bar imposed in the statute that the Standing Orders could not provide for something more beneficial than the Model Standing Order in the service conditions of the workmen,

(17) Hence, he has argued that it must be laid down that the Certifying Officer and the Appellate Authority under the Standing Orders Act had the jurisdiction to examine the fairness and reasonableness of the proposed" modification in the Standing Order regarding the change in the age of retirement or superannuation. He has placed reliance on Bagalkot Cement Co Ltd.. and Pathan (R.K.) and others, 1962(1) Lu 203(3). Engineering Workers" Union and other and Appellate Authority and others, 1965(11) Lu 350(4). Akhil Ranjan Das Gupta and Assam Tribune, Gauhati and others, 1965(11) I.L.T 614(5), Women of Bhupendra Cement Works and Industrial Tribunal, Punjab and others. 1966(1) Lj 851(6), Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers" Union, . The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen, , and The U.P. State Electricity Board and Another v. Hari Shankar Jain and others Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others

(18) Mr. K. B. Prasad, Advocate, appeared) for respondent No. 3 and also for the petitioner in the second writ petition and Shri Ashok Aggarwal for respondent No. 7 adopted the arguments advanced by Mr. Jitender Sharma on this point.

(19) Before dealing with the contentions raised" by the learned counsel for the parties it would be useful to refer to the case law cited at the Bar. In the cae of the Associated Cement Co. Ltd. (supra), the facts, in brief, were that the employer had submitted draft Standing Orders for certification u/s 3(1) but the Certifying Officer made two important alterations, item No. 8 of the draft Standing Order provided service of notice of 14 days in the event of discontinuation of a shift. The Certifying Officer modified it by increasing the period of notice from 14 days to one month which was in accord with the Model Standing Order. In item. No. 16, it was provided that striking work either singly or with other workers without giving 14 days previous notice would be. treated as misconduct and if the workers incite any other worker to strike work while on the premises of the employer, the same will be also treated a misconduct. The Certifying Officer, however, modified these provisions and provided that striking work illegally either singly or with other workers or abetting, inciting,

investigating or acting in furtherance of an illegal strike would be treated as misconduct. This modification was also in consonance with the provisions in the Model Standing Order. The Management had come to the Supreme Court after having failed to get those modifications set aside in appeal as, well as by taking resort to writ jurisdiction of the High Court. The Supreme Court analysed the provisions of the Standing Orders Act as it existed prior to its amendment in 1956 and laid down that it is incumbent upon the employer to submit, draft Standing Orders which should conform with the Model Standing Orders and it is the duty of the Certifying Officer to see u/s 4- that the said draft Standing Orders cover all the matters set out in the Schedule and also are otherwise in conformity with the provisions of the Standing Orders Act. It was held that unless it is shown to the satisfaction of the certifying Officer that it would be impracticable, to conform to the Model Standing Order. the draft Standing Order must be in conformity with the Model Standing Order.

(20) There is no dispute about the proposition of law based on the unamended provisions of the Standing Orders Act that before the amendment was introduced in 1956 in Section 4 of the Standing Orders Act, the only duty cast on the Certifying Officer was to see whether the draft standing Orders are on matters indicated in the Schedule and also are in conformity with the Model Standing Order. In case the draft Standing Orders were not in conformity with the Model Standing Orders the duty was cast on the employer to show to the satisfaction of the Certifying Officer that it was not practicable to make the draft Standing Order in conformity with particular Model Standing Orders on a particular matter. However, in 1956 the Legislature had amended Section 4 of the Standing Orders Act in order to give more power to the Certifying Officer to adjudicate upon the reasonableness or fairness of the Standing Orders before they are certified". So, nothing said in this judgment helps the petitioner in showing that the certifying officer cannot allow modification of any Standing Order solely on the ground that such modification is in somewhat conflict with the Model Standing Order. After amendment of Section 4. a duty is cast on the Certifying Officer to see that the draft Standing Order or the modification thereof not only should conform with the Model Standing Order but he has to also adjudicate whether the same are reasonable or fair

(21) In the case of Rohtak and Hissar Districts Electric Supply Co. Ltd. (supra), the facts, in brief, were that the employer had prepared draft standing Orders in consultation with its employees at the time when the workmen had not as yet formed any union. The Certifying Officer on his own made certain changes in the said draft. The Management filed an appeal which was dismissed and the matter came to the Supreme Court by Special Leave. The Supreme Court had mentioned that while enacting the present Act the Legislature had intended to see that conditions of employment of the workmen in the industrial establishments are clear and are made known to the workmen and originally the jurisdiction of the Certifying Officer and the Appellate Authority was very much limited as they were called upon to consider whether the Standing Orders submitted for

certification commend to the Model Standing Orders or not. But in 1956, a radical change was made in the provisions of the Standing Orders Act and the Certifying Officer and the Appellate Authority were given the jurisdiction to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders. The Supreme Court observed that:

In other words, after the amendment was made in 1956, the jurisdiction of the certifying authorities has become very much wider and the -cope of the enquiry also has become correspondingly wider. When draft Indian Oil Corporation Ltd. Vs. Join chief Labour Commissioner & Appellate authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others Standing Orders are submitted for certification, the enquiry now has to be two-fold; are the said Standing Orders in conformity with Model Standing Orders; and are they reasonable or fair?

(22) One of the contentions raised in the said case was that the Model Standing Orders permissible under the Standing Orders Act should be confined to matters which do not fall within the purview of the provisions of the Industrial Disputes Act, 1947. This contention was repelled by the Supreme Court and it was held that the two Acts do not conflict with each other. One Act purports to secure to industrial employees clear and unambiguous conditions of their employment while the object of the other Act is to deal with the problems posed by the industrial disputes which have actually arisen or are apprehended, and naturally the nature of the industrial disputes which may arise or which may be apprehended, relates to items larger in number than the items covered by the first Act and it may be also true that some of the items are common to both the Acts but the scope of the provisions of the two respective Acts and the fields covered by them from that point of view are not the same. Then referring to the amended provisions of the Standing Orders Act the Supreme Court opined that it is true that the original scope of the Act was "narrow and limited but even after the scope of the Act has been made wider even then it: cannot be said that the said Act conflicts with the provisions of the other Act. Then a contention was raised before the Supreme Court that the appropriate authorities under the Standing Orders Act were in error in insisting upon conformity with the Model Standing Orders u/s 3(4). A further contention was raised that the draft Standing Orders framed by the employer may include matters which may not be strictly covered by the items in the Schedule, particularly when the workmen have given their consent to the same. The Supreme Court noticed that when the draft Standing Orders were prepared and consent of three representatives of the workmen was obtained, the workmen had not as yet been organized into any union and were not strong enough to put their point of view vigorously, so it was held that the appropriate authority was not precluded from discharging its obligation by considering the fairness or reasonableness of the draft. The contention was negated that the draft Standing Order can relate to matters outside the Schedule. It was held that the two Standing Orders included in the draft of the Management did not fall under any of the items in the Schedule, so

the Certifying Officers were quite justified in not including them in the certified Standing Orders.

(23) The Supreme Court then held that the true portion appears to be that u/s 3(2) of the Standing Orders Act, the employers have to frame draft Standing Orders and they must normally cover the items in the Schedule and if, however, it appears to the appropriate authorities that having regard to the relevant facts and circumstances it would be unfair and unreasonable to make a provision for a particular item it would be competent for them to do so, but the employer cannot insist upon adding a condition to the Standing Order which relates to a matter which is not included in the Schedule. The Supreme Court further held that Section 3(2) of the Standing Orders Act especially requires that the Standing Order shall be, as far as practicable, in conformity with the model and these words indicate that the appropriate authority may permit departure from the Model Standing Orders if it is satisfied that insistence upon such conformity may be impracticable and this fact also shows that in a given case, the appropriate authority may permit departure from the Model Standing Orders and may come to the conclusion that one or the other of the conditions included in the Model Standing Orders may not, for the time being, be included in the Standing Orders of any particular establishment. Then, the Supreme Court referred to other questions arising in the case which have no relevance with the point to be decided in this case.

(24) This judgment also does not support the contention of the learned counsel for the petitioner that the authorities under the Standing Orders Act have no jurisdiction to examine the fairness or the reasonableness of the proposed modification to the Standing Order if such modification is more beneficial to the workmen than the Model Standing Order. As a matter of fact, while examining the suggested modification the authorities are not adjudicating upon the fairness or the reasonableness of the Model Standing Order but are examining the fairness or reasonableness of the modification so proposed. The contention that unless and until the modification so proposed is in conformity with the Model Standing Order the appropriate authorities have no jurisdiction to certify the same does not appear to be correct because the Standing Orders already certified can lie modified after following the procedure given in the Standing Orders Act. It is clear that before certifying any modification the competent authority has to examine as to whether the said Indian oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate authority & others and Sil Ram Vinod Vs. Jt. Chief Labour Commissioner and others modification is in conformity with the Model Standing Order and also whether such modification is reasonable or fair. There is nothing to indicate in the statute that if proposed modification is in conflict with Model Standing Order the same cannot be certified if it is found that the same is reasonable or fair. It is not incumbent for the appropriate authority at first to give any finding that the conformity of the proposed modification with the Model Standing Order is not practicable. Section 3 only puts an obligation on the employer to see that the draft Standing Orders are in

conformity with the Model Standing Orders unless It is not practicable to conform with any particular Model Standing Order. No such duty has been cast on the workmen to see that the proposed modification should also conform with the Model Standing Order and if the same does not conform with I he Model Standing Order then it should be shown that it was not practicable to conform with the same. u/s 4 the authorities have to examine only whether the proposed modification is in accordance with the provisions of the Standing Orders Act and secondly, whether the same is fair or reasonable.

(25) In the case of Bagalkot Cement Co. Ltd. (supra) the Management had submitted the draft. Standing Orders and paragraph 11(1) provided that holidays with pay will be allowed as provided for in the Factories Act, 1948, and other holidays in accordance with law and contract. The Certifying Officer made a change in the said provision and provided that the holidays with pay will be allowed as provided for in the Mines Act and then Clause (7) was added which provided different types of holidays and the quantum thereof. A plea was taken by the Management that it was beyond the power of the Certifying Officer to provide such holidays and leave but the plea has negatived and the matter was taken in appeal. The appeal was dismissed with slight modification by mentioning that instead of 10 there will be only 7 festival holidays and there will be ten days" casual leave instead of 15 days and with other slight modifications which are not very material. The matter was brought to the Supreme Court and a plea was taken that the appropriate authority had no jurisdiction to make such additions as Clause 5 in the Schedule did not cover the said subject. It was asserted. that Clause 5 of the Schedule only required the Standing Orders to provide for conditions subject to which leave and holidays could be granted and the procedure in respect thereof and the authority which may grant such leave and holidays. The quantum of leave and holidays which should be grazed to the workmen was outside the purview of the Schedule and as such the same could not be included in the Standing Orders. The Supreme Court noticed that Clause 10 of the Model Standing Orders provided that a workman may be granted casual leave of absence with or without pay not exceeding ten days in the aggregate in a calendar year. The Supreme Court gave wider interpretation to Clause 5 and held that the quantum of leave is also covered by clause 5. The Supreme Court observed that it is not disputed that the claim for leave and holidays can become the subject-matter of an industrial dispute and if such a dispute is referred to for adjudication to an Industrial Tribunal, the Tribunal can fix the quantum of holidays and leave and what the Tribunal can do on such reference is indeed intended to be achieved by the Standing Orders themselves in respect of industrial establishments to which the Standing Orders Act applies.

(26) The learned counsel for the respondent has pointed out that it cannot be, in the present case also, disputed that a reference could be made under the Industrial Disputes Act with regard to the demand of the workmen with regard to the fixation of age of superannuation or retirement and the Tribunal under the Industrial Disputes Act would have power to fix the age of superannuation of

retirement and if that is so, there is no reason to exclude the same dispute from the jurisdiction of the appropriate authorities under the Standing Orders Act. There appears to be a lot of force in this contention.

(27) In the case of Engineering Workers' Union and others (*supra*), the facts, in brief, were that the draft Standing Order proposed by the Management provided annual leave with wages to be regulated in accordance with the provisions of the Factories Act for the time being in force. The workmen filed objections and proposed a different Standing Order in respect of annual leave which was in line with the Model Standing Order. The Certifying Officer accepted the proposal of the workmen and provided that the service for a total period of 12 months in the industrial establishment shall qualify a workman for a total period of one month's leave with pay. The Management filed an appeal. The Appellate Authority made the modifications by providing that leave and wages and other kinds of the leave to the workmen would be admissible and regulated in accordance with the provisions of the Factories Act. The workmen filed the writ petition in the High Court of Allahabad. The contention raised before the High Court was that Sections 3 & 4 should be harmoniously construed in a manner so as not to bring about any conflict between them. It was argued that in view of *Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority & others* and *Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others* Section 3(2) the draft will have to be in conformity with the Model Standing Order unless it is shown that such conformity was not practicable and in respect of matters for which there was no model the authorities will be entitled to adjudicate upon the fairness or reasonableness of the draft Standing Orders and in respect of matters of which Model Standing Orders are in existence the authority shall have no power to adjudicate upon the fairness or reasonableness. A Single Bench of the said High Court observed as follows:

IF the legislative intent was to confer power of adjudicating upon the fairness or reasonableness only in cases where there was Model Standing Order on the particular topic, the provisions of Section 4 would have been more clear. The authorities have to adjudicate upon the provisions of "any Standing Orders." The use of word "any" indicates that there was no intention to confine the jurisdiction of the authorities to any particular category of Standing Orders. No class of Standing Orders appears to have been excluded from the purview of this power.

(28) In the said case, the proposed draft was in conformity with the Model Standing Orders but the Appellate Authority on consideration of various aspects of the matter came to the conclusion that it will not be feasible to accept the modification suggested by the workmen and the finding given was that the draft was fair and reasonable and it would not be reasonable to add to the burden of this new company. The Court observed that this will tantamount to a finding that it is not practicable to make the draft conform to the Model Standing Order in respect of the question of leave. Then, the Court held that it cannot be said that the Appellate Authority acted in excess of its jurisdiction.

(29) So, this judgment clearly shows that the authorities have jurisdiction to go into the question of impracticability of the Standing Order to be in conformity with the Model Standing Order as well as the question of fairness or reasonableness of the same and the inquiry has to be an integrated one. The reasoning given in this judgment appears to be quite sound and there is no reason to differ with the same. After all the Legislature had not put any restriction on the power of the Authority under the Standing Orders Act for examining the fairness or reasonableness of any Standing Order. There is no exception carved out in favor of Model Standing Orders that they would be immune from the jurisdiction of the appropriate authorities to adjudicate upon their fairness or reasonableness. The language of Section 4 leaves no room for doubt that besides seeing whether the Standing Orders are in conformity with the Model Standing Orders the authorities have to see whether they are fair or reasonable. A broad language has been used by the Legislature by mentioning that it shall be the duty of the authorities to adjudicate upon the fairness or reasonableness of any Standing Order. The words "any Standing Order" would include "Model Standing Orders", "proposed Standing Orders" and the "proposed modification to the already certified Standing Orders".

(30) In the case of Akhil Ranjan Das Gupta (*supra*), in the draft Standing Order, Clause 16(3)(a) provided for suspension of the workman pending the inquiry and the draft by sub-clause (3) had raised the period of suspension by way of punishment from four days to seven days. The Model Standing Orders provided for four days suspension as punishment. A contention was raised that Model Standing Order provided for four days suspension pending the inquiry. The contention was negatived. The contention of the petitioner was that the provision of suspension of the workman during the course of inquiry for a period of more than four days being in conflict with the Model Standing Order should be held to be illegal. This contention was negatived and it was held that the Model Standing Order did not provide for any period for suspension during the course of inquiry. However, it was noticed that four days suspension has been provided as a matter of punishment which has been Increased to seven days and it was found that the reasonableness of the said change has been considered by the Labour Court and the Certifying Officer and thus, it cannot be said that on the face of it this is so unreasonable that the court will interfere with the exercise of power by the Certifying Officer or the labour Court on appeal. So, this judgment also shows that although the Model Standing Order provided for four days period of suspension as a matter of punishment the Certified Standing Order, *inter alia*, provided for seven days period of suspension as a punishment and the same was upheld. So, this judgment also supports the view that if the draft Standing Order provides for something more than given in the particular Model Standing Order, the same could be allowed if it is reasonable or fair.

(31) In the case of workmen of Bhupendra Cement Works (*Supra*), it has been laid down that it is open to a Certifying Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority & others and Sri Ram Vinod Vs. Jt.

Chief Labour Commissioner and others Officer or an Appellate Authority under the Standing Orders Act to allow a departure from the Model Standing Orders on the ground of fairness and reasonableness of the proposed provisions and the authorities under the Standing Orders Act can certify the Standing Orders providing for matters covered by the relevant items of the Schedule to the Standing Orders Act even if there is no provision in the Model Standing Order provided that the departure does not go contrary to the Model Standing Order concerned.

(32) Could it be said that providing a better service condition to the workmen is in contradiction with the Model Standing Order if the condition so provided is fair and reasonable? Answer must be in the negative.

(33) In the case of Management Shahdara (Delhi) Sharanpur Light Railway Co. Ltd. (supra), the Supreme Court has laid down that it is well settled that the meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation and the primary duty of a Court is to find the natural meaning of the words used in the context in which they occur, that context including any other phrase in the Standing Orders Act which may throw light on the sense in which the makers of this Act used the words in dispute. The Court ought, Therefore, to give a literal meaning to the language used by Parliament unless the language is ambiguous or its literal sense gives rise to an anomaly or results in something which would defeat the purpose of this Act.

(34) Keeping in view the said principle of law laid down by the Supreme Court the words used in Section 4 leave no room for any two interpretations when the words "any standing orders" literally would include all Standing Orders. even those conforming to the Model-Standing Orders, with a view to examine their fairness and reasonableness.

(35) In this judgment, certain modifications to the already certified Standing Orders were allowed. The first suggested modification was that the Railways under the terms of employment had to terminate the services of a permanent workman on giving him one month's notice in writing or one month's pay in lieu of the notice. The Union of the workmen claimed that the Management should give reasons even when they terminate the services of an employee by a discharge simpliciter. The modification which was allowed by the Certified Officer directed that the reasons be recorded in writing and communicated to the workman if he so desires at the time of the discharge but not if the Management considers it inadvisable. The proposed second modification was that when any of the penalties specified in order 9 is imposed upon the workman, an appeal shall lie to the authority next above and an appeal shall lie to the managing agents on the original orders passed by the General Manager..... The Union's plea was that some time limit was necessary for the disposal of the appeals. The modification allowed was that every such appeal shall be disposed of within sixty days. The third proposal was that a workman shall be liable to be removed from service in the following circumstances:

(A)Inefficiency.....". title modification allowed was that in case of inefficiency due to physical unfitness the workman whom the management considers suitable for some alternative employment shall be offered the same on reasonable emoluments having regard to his former emoluments. Another modification allowed was that in case the management proposed to remove the workman from service they shall serve on the workman separate show cause notice to that effect.

(36) The Management before the Supreme Court had challenged the said modification on two aspects, firstly, the scope of the power of modification u/s 1(2) of the Standing Orders Act and secondly on merits. The plea taken was that jurisdictional powers of the authorities under the Standing Orders Act to certify modifications of the existing Standing Orders are limited to cases where a change of circumstance is established. In the alternative it was argued that if at the time of the last certification certain circumstances were, for one reason or the other, omitted from consideration they would constitute a valid reason for modification and the modification would be granted even though in such a case a change of circumstances has not occurred. A plea was taken that principles analogous to *res judicata* would apply to an application for modification. The Supreme Court after noticing the provisions of the Act and also the amendment introduced in 1956, negated the said contentions and noticing the provisions of Section 10, it held that Section 10 does not state that once a Standing Order is modified and modification is certified, no further modification is permissible except upon proof that new circumstances have arisen since the last modification. It was held that as a matter of *Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority & others* and *Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others* fact the Legislature has not incorporated any words in the subsection restricting the right to apply for modification except, of course, the time limit of six months. It was held that in an application for modification the issue before the authority would be not as to the reasonableness or fairness of the Standing Orders or their last modification but whether the modification now applied for is fair and reasonable, and, Therefore, the contention that a change of circumstances is a condition precedent to the maintainability of an application u/s 10(2) or that an application for modification without proof of such a change amounts to review by the same authority of its previous order is not correct. In this judgment it was also held that the Industrial Tribunal should be slow and circumspect in applying technical principles such as acquiescence and estoppel.

(37) Similarly, as in Section 10, so in Section 4, there is no provision made that the Certifying Officer would not have jurisdiction to examine the fairness or reasonableness of any particular Standing Order if it is in conformity with the Model Standing Order.

(38) In the case of *United Provinces Electric Supply Co. Ltd. (supra)*, the point arising for decision in the present case did not arise for consideration in the said

case. In the said case, at the time the draft Standing Order was submitted providing for age of superannuation there did not exist any item in the Schedule pertaining to condition of service regarding superannuation or retirement and the question which arose for decision was whether such a condition of service could be prescribed? So, this judgment is of no help in deciding the point in issue in this case.

(39) In the case of U.P. State Electricity Board (supra), the Supreme Court had only analysed the provisions of the Standing Orders Act and had observed that now under the present Act the Certified Officer has the jurisdiction to adjudicate upon the fairness and reasonableness of the draft Standing Orders. The question whether any modification which has the effect of making some deviation or departure from the Model Standing Order could be certified or not on the ground that the same is fair and reasonable did not arise for consideration in the said case.

(40) The Parliament while making amendment in Section 4 of the Standing Orders Act did not provide for any exception to make the Model Standing Orders immune from adjudication by the Certifying Officer or the Appellate Authority. The Legislature could have spoken its mind by providing a provision in Section 4 indicating that no deviation or departure from Model Standing Order would be permissible in the Standing Orders. It is also to be emphasized that Section 3 only imposes an obligation on the employer to see that the draft Standing Orders conform with the Model Standing Orders and if a particular draft Standing Order does not conform to Model Standing Order then the employer has to show that it was not practicable to do so. No such obligation has been imposed on the workman seeking any modification in the draft Standing Order. A duty has been imposed on the Certifying Officer to see that the draft Standing Orders are in accordance with the Standing Orders Act meaning thereby that they cover every matter mentioned in the Schedule and also otherwise conform with the provisions of the said Act and thereafter the Certifying Officer has to adjudicate whether the draft Standing Orders are reasonable or fair. If the Parliament intended that Model Standing Orders are not to be deviated at all, the Parliament could have made it clear in Section 4 itself.

(41) Even before Section 4 was amended the Mysore High Court in Mysore Kirlosker Employees" Association v. Industrial Tribunal, Bangalore Air 1959 Mys 235(10), had expressed the view categorically that it was not absolutely necessary that the Standing Orders should conform with the Model Standing Orders so that both are identical. It is useful to quote the observations of the Mysore High Court in this connection:

"WE find no difficulty whatever in answering the first question in the negative. The compulsion of the statute is that the standing orders shall make provision for such of the matters set out in the schedule with the additional matters prescribed by the Government as are applicable to the industrial establishment in question. If any of the matters so set out in the schedule are applicable to the industrial

establishment in question, the employer is bound to make provision for them. It does not, in our opinion, mean that provision cannot be made for any additional matters at all.

THE Act is not intended to cover or provide for all contingencies and all matters which may be applicable Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others to each and every industrial establishment in the country. Certain important matters which are more or less Of general application to all industries are set out in the schedule. The appropriate Government is also given the discretion having regard to the special conditions of the industries within its jurisdiction to add further matters to the list contained in the schedule. All such matters may be shortly described as compulsory matters. A direction or mandate to do certain things cannot in our opinion, be read as a direction or mandate not to do any other things, ".....In answering the second question, the statute itself furnishes two important clues. They are the use of the words "conformity" and "model". Conformity, in our opinion, cannot by any stretch of imagination be equated to identity. When one thing is required to conform to another, it simply means that the former should be formed according to the pattern furnished by the latter or that the former should be similar to the latter or that the former should adapt itself to the latter. A model means a shape, a figure, or a pattern proposed for limitation.

When, sub-section (2) of Section 3 of the Act states that the draft standing orders shall be, so far as practicable, in conformity with the model standing orders, it simply means that the model standing orders furnish the pattern which the draft should try to resemble or imitate, It cannot, in our opinion, mean that the draft should copy the model verbatim. Absolute identity being rule,d out by the very use of the words found in the section, it is impossible to accept the construction that the draft should copy the model and should not depart from its wording.

THE use of the words "so far as is practicable" also points to the same result. The learned counsel on behalf of the petitioner has contended that the draft should be identical with the model unless the employer can show that it is not practicable to copy it. In our opinion this is reading too much into the statute. The mandate of the statute is not that the model shall invariably be copied, but that the draft shall conform to the model as far as is practicable. The very content of the mandate is limited to the practicability of achieving conformity. The mandate is not stated in absolute terms to be cut down in stated circumstances, but is itself limited in its terms on considerations of practicability.

IF the object of the statute was to prescribe an absolute standard or to finally standardise standing orders in certain matters, the provisions would have been worded quite differently. It could well have prescribed those Rules and set them out in; the schedule to the Act and provided that those Rules shall govern all industries. But the Legislature has not done so. It has only made provision; for a

model being prescribed. The model standing orders are no more than a model. They do not have the force of a statutory rule which has to be obeyed without in any manner altering its content."

(42) In view of the above discussion, we hold that the authorities have not exceeded their jurisdiction in allowing; the modification in the Standing Order, so as to raise the age of superannuating or retirement from 58 years to 60 years even though the Model Standing Order had provided for age of retirement as 58 years.

(43) Now, we come to the second question arising in this case. It is an admitted fact that a legal, valid and binding settlement had been arrived at between the employer and the workmen and the same was to remain in force for a period of four years ending April 30, 1986 and it has not been terminated even thereafter as in law the Union representing the majority of workmen has to give a notice of two months for terminating the settlement which notice has not been given. At any rate, at the time the petition for modification was made the four years' period for which the settlement was to remain in force was still in operation. So, the question which arises for consideration is whether the settlement places a bar on the right of the workmen to seek modification in the Standing Orders. *Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority & others* and *Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others*

(44) Counsel for the petitioner has contended that Clauses 19 & 21 of the settlement read together clearly show that the workmen had agreed not to raise any demand which was to have financial burden on the company. He has pointed out that by extending the age of superannuation the financial burden on the company stands increased inasmuch as the employees who are to serve longer period have to be paid higher salaries, higher bonus amount, higher gratuity, while if the workmen are retired at the age of 58 years, the new entrants who would take their places would be paid much less amount and thus the demand of the workmen that the age of retirement should be increased has the impact of putting financial burden on the company and Clause 21 of the settlement clearly provided that no such demand would be raised by the workmen till the settlement remained in operation. Counsel for the petitioner has placed reliance on *Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, and *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, in support of his contentions.

(45) On the other hand, the learned counsel for the respondents have contended that at no point of time the workmen had given up their demand for getting the age of retirement enhanced and the terms of the settlement do not place any bar on the rights of the workmen to invoke the provisions of the Standing Orders Act for getting the Standing Order modified. It has been also argued that the mere fact that the age of retirement of the Workmen is increased does not mean that any extra financial burden is being imposed on the employer. Counsel for the

respondents have relied upon Technological Institute of Textiles and Its workmen and others, 1965 (2) Lj 149(13), in support of their contention.

(46) The legal position is, indeed, not in dispute that as long as the settlement remains in force, the same is binding on the workmen. The two important Clauses of the settlement have been already reproduced earlier in the judgment and particularly Clause 21 of the settlement clearly bars the workmen from raising any demand which would have financial burden on the company. It is not possible to accept the argument that by raising the age of superannuation of the workmen the financial burden on the company is not increased. Obviously workmen who remain in service for a longer period have to be paid a larger amount by way of salary bonus and gratuity than workmen who may newly join in place of the retiring men. So, the demand raised by the workmen seeking modification in the Standing Order for having the age of superannuation increased obviously has the effect of putting financial burden on the company and thus, such a demand could not have been raised by the workmen till the settlement was in force.

(47) In the case of Management of the Bangalore Woollen. Cotton and Silk Mills Company Ltd. (supra), the Supreme Court has clearly laid down that there is no warrant, in their opinion, for holding that merely because the Standing Orders Act is a self-contained statute, with regard to the matters mentioned therein, the jurisdiction of the Industrial Tribunal, under the Act, to adjudicate upon the matters, covered by the standing orders, has been in any manner, abridged or taken away. The facts, in brief, in the said case were that the Standing Orders of the company were duly drawn up and certified by the authorities and they, inter alia, related to the question of leave to be granted to the workmen. A dispute was raised in respect of the amount of leave to be granted and the matter was referred by the Government of Mysore to the Industrial Tribunal for adjudication. The Industrial Tribunal vide its award directed the addition of certain clauses in the certified Standing Orders of the company. The award came into operation. The workmen thereafter raised a demand for change in the provision regarding leave. The State Government declined to make any other reference, but later on the State Government made a reference for adjudication. The question, which was referred, almost exclusively related to the question of privilege leave, casual leave and sick leave which already stood provided in the Standing Orders. The Management raised two preliminary objections to the jurisdiction of the Industrial Tribunal to entertain and adjudicate upon the questions, firstly, that the award dealing with leave and other facilities, not having been terminated by the first respondent by issue of a notice, as contemplated u/s 19(6) of the Act, continues to be in force and, Therefore, the question of leave cannot form the subject matter of adjudication and secondly, the question regarding leave facilities, having been provided for in the certified Standing Orders, framed by the company under the Standing Orders Act, any modifications to those provisions, as is now sought to be done, can only be in the manner provided for. Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate

Authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others in the Standing Orders Act, and cannot form the subject of adjudication, by the Industrial Tribunal, under the Act.

(48) On the first point the workmen raised a contention that in fact, the correspondence exchanged would indicate that notice of termination of award stood given. The Supreme Court on merits gave a finding that the award was still in force and had not been terminated by giving any notice and it clearly held that as long as an award or the settlement remained in force the workmen had no right to make any demand regarding the matter already adjudicated upon and on the second point, the Supreme Court held that even on the matters, which are covered by the Standing Orders Act, an industrial dispute could be raised.

(49) Similarly, in the present case, when the settlement had been arrived at between the workmen and the company and which is still in force, the parties are to remain bound by the terms of the said settlement. It is only after the settlement is terminated that the parties can raise any disputes for fresh adjudication. It cannot be argued that although the workmen are bound by the terms of the settlement, still they have a right to raise any demand, by invoking the jurisdiction of the Certifying Officer under the Standing Orders Act, which may be in conflict with the terms of the settlement.

(50) In the case of Technological Institute of Textiles (supra), the workmen had sought reference on four points and had voluntarily withdrawn two points and thereafter the matter was adjudicated and the award was given. It is evident that in such a situation the workmen are not debarred from reagitating the said two points but where the settlement has been arrived at, the terms of the settlement obviously would remain in force till the settlement is terminated. In the said case, the said two items were not withdrawn on account of any settlement. So, it was held that the existence of the settlement or the award, in the circumstances, was not a bar to the workmen raising such demands for adjudication u/s 10 of the Industrial Disputes Act. So, this judgment relied upon by the learned counsel for the respondents is distinguishable on facts.

(51) Counsel for the respondent has also made reference to Pallavan Transport Corporation Ltd. and Appellate Authority under the Industrial Employment (Standing Orders) Act, Madras and others, 1979(11) LJ 262(14). Two questions, inter alia, arose for decision in this case which have lot of bearing on "the question now being considered by us. The Management in the said case had submitted draft Standing Orders in which it was proposed to, fix the age of retirement at 55 years for all the employees whereas the Certifying Officers fixed the age at 58 years for workmen and 55 years for clerical and administrative staff provided the Management at its discretion may extend the period of service in the case of workmen or re-employ them in specific cases. The Certifying Officer had fixed the age at 55 years for clerical and administrative staff taking into account the settlement arrived at u/s 12(3) of the Industrial Disputes Act which was exhibited as M2. The said settlement in its clause 10 provided that the

age of retirement of the said staff would be 55 years. The said settlement was still in force when the draft Standing Order was submitted for certification. The settlement itself was challenged on some ground which has no relevance to the point in issue. It was held by the Division Bench of the Madras High Court in this case that as long as settlement Ex. M2 remained in force the age of superannuation in respect of the clerical and administrative staff has to be 55 years only. This part of the judgment rather supports the view which we have expressed above on this question and goes against the case of the respondents.

(52) The other question" which arose for decision in this case was with regard to the order of the Certifying Officer fixing the age of superannuation at 58 years for workmen. A contention was raised before the court that a settlement had been" arrived at with the workmen which was exhibited as M1 and the workmen had withdrawn their demand with regard to increase in the age of superannuation at the time the settlement Ex. Mi was made. Clause 15 of the settlement clearly provided that in consideration of the settlement reached, the unions agreed to withdraw all other demands listed in annexure I and clause 11 of annexure I pertained to the demand for raising the age of retirement from 55 years to 58 years. A contention was raised before the Madras High Court that as the workmen had withdrawn the said demand at the time the settlement was made in respect of various other demands. So the workmen were estopped from raising the said demand again. The contention was however, negatived by the High Court as on facts it Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority & others and Sri Ram Vinod Vs. Jt. Chief Labour Commissioner and others was found that the said particular demand of the workmen was already subject-matter of proceedings pending before the Certifying Officer under the provisions of Standing Orders Act and no settlement had been made between the Management and the workmen in regard to the said demand. In the said case, there was no term in the settlement that the workmen would not raise the said demand during the period the settlement was to remain in force. On facts, this part of the judgment is distinguishable. In the present case, at the time the settlement was made, no proceedings with regard to this particular demand of the workmen were pending before the Certifying Officer under the Standard Orders Act and rather it is one of the agreed terms of the settlement that the workmen shall not raise any demand which may have financial burden on the company during the period the settlement was to remain in force. So, any demand being raised by the workmen" in conflict with the terms of the settlement could not be entertained by the Certifying Officer as long as the settlement remains in force.

(53) In the case of M/s. Tata Engineering and Locomotive Co. Ltd. (supra), the Supreme Court has clearly laid down that if the settlement had been arrived at between the company and the Union of the worker's by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored merely because a small number of workers were not parties to it or refused to

accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emolument than" they themselves thought they did.

(54) So, in view of the above discussion, we conclude that as Ions as the said settlement remains in force the workmen are debarred from raising any demand seeking increase in the age of superannuation or retirement under the Standing Orders Act. Hence, the impugned orders are liable to be quashed.

(55) We allow Writ Petition No. 1770187 and make the rule , absolute and quash the impugned orders while we dismiss Writ Petition No. 3417187 but we make no order as to costs.