
(1979) 07 MAD CK 0049
In the Madras High Court

Management of Pudukottah Textile Limited APPELLANT
Vs
A. Ganapathi, Etc., Etc. RESPONDENT

Date of Decision : 09-07-1979

Acts Referred:

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 — Section 40
Factories Act, 1948 — Section 79
Industrial Disputes Act, 1947 — Section 10, 18, 19, 2, 22
Maternity Benefits Act, 1961 — Section 27
Minimum Wages Act, 1948 — Section 25
MOTOR TRANSPORT WORKERS ACT, 1961 — Section 27
Payment of Gratuity Act, 1972 — Section 14

Citation : (1979) 2 LLJ 343

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Judgement

Sathiadev, J.—These 60 writ petitions have been filed against a common order dated 23.6.1975 made by the first respondent Labour Court, Madurai in C.P. Nos. 253 of 1974, etc., The petitioner is the management of Pudukottah Textiles Ltd., Namanasamudram, Pudukottah District. 61 claim petitions were filed before the first respondent u/s 33C(2) of the Industrial Disputes Act., (hereinafter to be referred to as the Act), claiming payment of wages for the period 1.4.1970 to 12.11.1971, nearly seventeen months, during which period the Mill was kept closed. In the affidavit filed in support of these petitions, it is claimed by the workmen that till 1970, the mill was under the management of one L. Narayanan Chettiar, who was designated as Director, and who had taken over the management in or about 1959. Due to continued financial difficulties, the management which was in charge of its affairs in 1970, issued notice dated 28.3.70 under Ext. M10, informing its workers that the mill will be closed for 30.3.1970 and that they need not come for work thereafter, except such of those workmen who have been individually informed to carry on work. On 30.3.1970, the mill was closed. The workmen were represented by more than one union and during the period when the mill was closed, it appears that the workmen had

approached the Handloom Board to take over the mill by submitting individual representations. Workmen have stated in their individual memorials dated 12.3.1971 that if the Handloom Board is to take over the affairs of the mill, they will not claim any compensation during the period when they are out of employment. Subsequently, since the Handloom Board was not inclined to take over the management of the mill, talks were held between the representatives of Trichy District Thozhilalar Munnetra Sangam, and Pudukottah Textiles National Workers Union with the new management and an agreement u/s 18(1) of the Act was entered into on 30.10.1971 under Ext. M2., stating therein that since Tamil Nadu Handloom Board is not willing to take over the mill, representatives of the union, agreed to the new management taking over the mill so that the workmen who have been without employment, may get back jobs. Clause "(sic)" of the agreement is to the effect that from the date of closure, till the date of reopening, the workmen will not be entitled to any compensation or wages. After securing such an undertaking, the new management reopened the mill on 12.9.1971. Individual letters of undertaking to this effect had also been secured. It is at this stage, the Trichy District Textiles Workers' Union raised an industrial dispute against the management, claiming that during the period 30.3.1970 to 15.11.1971, there was a lock-out in the mill and, therefore, the workers are entitled to compensation. But after the filing of the conciliation report by the Labour Officer, Pudukottah, by G.O. Rt. No. 1978, Labour Employment and Housing Department, dated 17.10.1974, under Ext. M7, Government rejected the demand and refused reference, In the meanwhile these sixty-one workmen have filed petitions u/s 33C(2) of the Act claiming that they have been unjustly kept away during the period in question, and that they are entitled to be paid wages in full for the period of closure of the mill. The management filed a counter-affidavit on 26.7.74 and thereafter filed an additional counter-affidavit on 16.6.1975 stating among other things, that the question as to whether the closure is legal or illegal cannot be agitated in a petition u/s 33C(2) of the Act, and that the workmen were unsuccessful in getting a reference made u/s 10 of the Act, in the present proceedings, and hence this aspect cannot be considered. Therefore, it was claimed in the affidavit that the petitions filed by the workmen are not maintainable before the first respondent, who had erroneously held that the workmen will be entitled to the claim of lay-off compensation without understanding the nature of the claim that have been made by the workmen.

2. Being aggrieved with order made by the first respondent, the management has preferred these writ petitions.

3. The points taken in these writ petitions are:

(1) The first respondent had exercised a jurisdiction not vested in it in disposing of the petitions u/s 33C(2) of the Act;

(2) First respondent had not understood the concepts of lay-off compensation and closure compensation.

(3) Even assuming that workmen are entitled to closure compensation, it cannot be claimed from the New Management.

(4) When closure has been established, the relationship of Master and Servant has come to an end, and there is no scope for first respondent to hold that it was only a lay-off;

(5) When the Government had refused to make a reference by order dated 17.10.1974, what can be decided as an industrial dispute, cannot be disputed in petitions filed u/s 33C(2) of the Act;

(6) First respondent has not even understood the scope of the Exts. M. 1, 2 and 7;

(7) When W.W. 1 had admitted that individual undertakings have been given by every workman in the mill not to claim compensation, they cannot, later on, claim the amount by filing petitions u/s 33C(2) of the Act.

(8) When an agreement has been entered into u/s 18(1) of the Industrial Dispute Act, once it is made out that it is fair and reasonable, it is binding on all workmen including the respondents in these petitions.

The first respondent held that the petitions filed by the workmen are maintainable in that when petitions are filed u/s 33C(2) of the Act, it is open to the Labour Court to find out the basis of the claim, and merely because they have inadvertently moved the Government for reference, it cannot be said that they have been deprived of their right to file petitions like the present one. Regarding agreement under Ext. M2 dated 30.10.1971 u/s 18(1) of the Act, it held that it cannot be binding on the workmen who are not members of these unions which signed the agreement, and even with regard to individual letters of undertaking, it held that they cannot constitute an estoppel as to deprive the workmen of their rights to claim compensation under the Act. The Labour Court further held that there was only a lay-off, and except for one workman, others will be entitled to half of the wages for seventeen months, since it was not the case of the workmen or their union that lay-off was illegal.

4. Mr.M.R. Narayanaswami, learned Counsel for the management contends that the main points that require to be considered in these writ petitions will be follows:

(1) Whether petitions filed before the first respondent u/s 33C(2) of the Act are maintainable or not;

(2) Whether the agreement entered into u/s 18(1) of the Act under Ext. M2 is fair and reasonable, and if so, will it not be binding on these sixty-one workmen?

(3) Whether there was a closure or a lay-off?

(4) When the Government had refused to refer the dispute, can the workman, without challenging the said order dated 17.10.1974, prefer petitions u/s 33C(2)

of the Act and seek a determination whether it was a closure or otherwise?

(5) When individual letters of undertaking have been given by the workmen giving up their right to claim compensation, can they still in law sustain a claim for compensation?

(6) Can the new management be made liable for the compensation now claimed?

5. On the first point, whether, in petitions filed u/s 33C(2) of the Act, the Labour Court can go into the determination as to whether it was a closure or a lay-off which are aspects which can be decided only when an industrial dispute is raised u/s 10 of the Act, Mr. M.R. Narayanaswami, learned Counsel for the management placed reliance on the following decisions:

(1) The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., .

(2) Ramakrishna Ramnath Vs. The Presiding Officer, Labour Court, Nagpur and Another, .

(3) Ambika Tobacco Company, Gondia Vs. Labour Court, Nagpur and Others, .

6. Mr. N.G.R. Prasad, learned Counsel for the respondents workmen, contended that on the petitions filed u/s 33C(2) of the Act, the Labour Court is invested with powers to decide as to whether the applicants will be entitled to closure compensation, and in doing so, it can also decide incidental matters thereto and for this proposition he relies upon the decisions reported in Ramakrishna Ramnath v. Presiding Officer, Labour Court, 1970 II L.L.J. S.C. 306; Sahu Minerals Ltd. v. Presiding Officer, (Labour Court) 1975 II L.L.J. S.C. 341 and Namer Ali Choudhury and Others Vs. The Central Inland Water Transport Corporation Ltd. and Another, .

6A. The decision rendered in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , dealt with the scope of Section 33C(2) of the Act and to what extent, the Labour Court can deal with the petition filed under that Section in order to determine the reliefs claimed. On a fair and reasonable construction of Section 33C(2) of the Act, the Supreme Court has laid down in the said decision that if the right of workman to receive the benefit is disputed, then it will have to be determined by the Labour Court. Before computing the benefit in terms of money, if the entitlement is not disputed, there will be no need for the Labour Court to find out what would be the basis for the claim. But if the right is disputed, the workman has a right to receive the benefit as alleged by him, and it is only if the Labour Court answers this point in favour of the workman, the next question of making the necessary computation can arise. It was also held therein:

The claim u/s 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of that right and such an enquiry must be held to be incidental to the main determination which has been assigned to

the Labour Court by Sub-section (2).

7. This view has been reiterated by the Supreme Court in Ramakrishna Ramnath Vs. The Presiding Officer, Labour Court, Nagpur and Another, , wherein the question arose as to whether the workman will be entitled to the benefits of the proviso to Section 25FFF(1) and will be entitled to closure compensation. Petitions were filed u/s 33C(2) of the Act seeking relief and the management opposed the claim by taking up the position that the Labour Court had gone beyond its jurisdiction in adjudicating upon a dispute, which cannot be comprehended within the scope of Section 33C(2) of the Act. Referring to the earlier decisions rendered by the Supreme Court in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., and Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , it was held:

As was pointed out in the case of the Central Bank (supra) the examination of the claim u/s 33C(2) may in some cases have to be preceded by an enquiry into the existence of the right. A mere denial of the fact of retrenchment would not be enough to take the matter out of the jurisdiction of the Labour Court.

8. The Central Bank case referred to herein is the one reported in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , wherein, it has been held that Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry, into the existence of the right, and such an enquiry must be held to be incidental to the main question which has been assigned to the Labour Court by Sub-section (2).

9. In Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , the Supreme Court, in dealing with the scope of Section 33C(2) relating to the claim of bonus under Coal Mines Provident Fund and Bonus Scheme Act, 1948, by referring to the earlier decisions, made out 8 propositions that can be deduced from the earlier decisions. Here again it has been held by the Supreme Court:

Though the Court did not indicate which cases other than those under Sub-section 1 would fall under Sub-section 2, it pointed out illustrative cases which would appropriately be adjudicated u/s 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.

It was further held that the nature of proceedings taken in Section 33C(2) are analogous to execution proceedings, and it will be open to the Labour Court to interpret the award or settlement to which the workman's right rest. It was also held that though in determining the scope of Section 33C, care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance u/s 10(1) cannot be brought u/s 33C. Therefore, in formulating the eight propositions, it has been held that the Labour Court would be well within its right to find out about entitlement of the workman to get relief u/s 33C(2), if his right to claim is disputed. It cannot be contended that the only purpose of the

Labour Court u/s 33C(2) is to compute the money value and not to go into the question whether there has been a closure or lock-out or lay-off, etc....

10. Another decision rendered by the Supreme Court in *Sahu Minerals and Properties Ltd. Vs. Presiding Officer, Labour Court and Others*, also deals with the interpretation of Section 25FFF and Section 33C(2) and it was held:

We hold that in this case it was competent to the Labour Court to decide whether the case before it was a case of retrenchment compensation or the proviso to Sub-section (1) of Section 25FFF was attracted on closure of the establishment. The question even according to the employer falls u/s 25FFF and, therefore, in deciding that question, the Labour Court has necessarily to decide ,whether the proviso has been satisfied.

Ambika Tobacco Company, Gondia Vs. Labour Court, Nagpur and Others, , is a decision rendered by the Bombay High Court. The scope of Section 33C(2) of the Act has been dealt with in this decision also. It has been held that even though recourse may be available to a workman under another statute, like the Minimum Wages Act, still a workman will not be disentitled to make him claim u/s 33C(2) and in such proceedings, the Labour Court can consider his entitlement to the relief before it and computes it in money value.

11. It was a case wherein the claim made by the workman under the Minimum Wages Act, was dismissed for default, and there being no decision on merits, it was held that such a disposal will not be a bar to the entertainment of the application u/s 33C(2). It was further held therein:

In our opinion, if all these decisions of the Supreme, Court and the facts leading to this case were brought to the notice of the Division Bench a different view might have been taken. We are, therefore, inclined to hold that the claim of the respondent-workers in each of these cases could properly be made in an application u/s 33C(2) and that there was no inherent lack of jurisdiction in the Labour Court to entertain the claim and adjudicate upon it. That the claim required adjudication is patent on the issues raised. The petitioner denied the very existence of relationship of employer and employee between the petitioner and any of the respondent-workman. The Court had, therefore, first to determine the status of each of the respondent-workers to claim from the petitioner the minimum wage as its employee.

Therefore, it is quite apparent that when a petition is filed u/s 33C(2) of the Act, the Labour Court is not to be confined only to compute the money value of the benefits claimed, but if the entitlement is disputed by the Management, the Labour Court will be well within its jurisdiction to go into the question of finding out whether the workman has acquired the right to make a claim, and in so doing, it can decide whether there was a closure or lay-off. In this case that there was a closure of the Mill between 1.4.1970 and 12.11.1971. The Labour Court had come to the conclusion that there was a lay-off. To what extent this conclusion will be correct or not will be dealt with by me later on. But on the

point whether the Labour Court can decide this aspect, in view of the decision rendered by the Supreme Court in the cases cited supra, it has to be held that the Labour Court was well within its jurisdiction in entertaining these applications filed by the workmen and deciding the question whether there was a closure or lay-off.

12. The second point taken by Mr. M.R. Narayanaswami, counsel for the writ petitioners management is, what is the legal effect that can be given to Ext. M2, the settlement that was arrived at by the representatives of two unions u/s 18(1) of the Act? When majority of workmen are covered by this settlement u/s 18(1) of the Act, and when it is a fair and reasonable settlement, is it (sic) binding on these sixty-one workmen, who (sic) now filed claim petitions before the (sic) Court, and furthermore whether the settlement is fair and reasonable, can be decided only by a reference made u/s 10 of the Act, and not in petitions filed u/s 33C(2) of the Act.

13. In this case, on 30.3.1970, the mill closed. On 11.5.1970, the union which had represented these sixty-one workmen under Ext. M8, had addressed the Collector and on 25.7.1970 under Ext. W9, the Commissioner of Labour, demanding lay-off wages. Long thereafter individual letters have been taken from all the workmen including these sixty-one workers on 12.8.1971 under Ext. M1 series, addressed to the Tamil Nadu Handloom Board requesting it to take over the Management of the mill, and in that event they are ready to give up all claims regarding compensation to which they may be entitled to, during the period of closures. Under Ext. W15 dated 13.9.1971, the union representing these sixty-one workmen, sent a notice stating that the settlement had been obtained under coercion and undue influence. It is after the negotiations between the two unions mentioned in Ext. M2 and the new Management, that the settlement u/s 18(1) of the Act had been arrived at, and on 12.11.1971, the mill started functioning under the New Management. All the sixty-one workmen have also given similar letters as given by the other workmen and they have rejoined the mills, On 1.3.1972, the union called "Trichy District Panchalai Thozhilazhar Sangam" representing the cause of these sixty-one workmen, addressed the Government of Tamil Nadu for a reference to be made u/s 10(1) of the Act and it was rejected under Ext. M7 dated 17.10.1974. In the meanwhile on 24.6.1974, claim statements were filed before the first respondent claiming lay-off compensation.

14. Referring to these sequence of events, counsel for the petitioners contends that the settlement arrived at under Ext. M2, being a fair and reasonable one, is binding in the 61 workmen and securing the benefits of the settlement and after having taken up the employment they cannot, by filing petitions u/s 33C(2) claim compensation for the period of closure. In support of this contention, he relies upon the following decisions:

(1) Workers employed in 32 Textile Mills in Coimbatore Vs. Management of Dhanalakshmi Mills Ltd., Tiruppur and Others, .

(2) *Workmen, Indian Cable Ltd. v. Indian Cable Ltd.* (1973) L.I.C. 208.

(3) *Herbertsons Ltd. v. Workmen* (1977) L.I.C. 162, AIR 1977 S.C. 322.

15. The earliest of the decisions relied upon by him dealt with the case of a settlement that was arrived at between the management and three trade unions compromising the subject-matter of reference pending adjudication proceedings. Dispute relating to the claim for bonus for three years between the workmen and management of 32 Textiles Mills in Coimbatore District was referred to by the Government for adjudication u/s 10 of the Act, The Tribunal proceeded to decide the matter without considering the question as to whether the compromise arrived at, pending adjudication was fair and just and whether it is in the interest of the workmen. Under those circumstances, it was held that the award deserves to be quashed and the Tribunal was directed by this Court to go into the question of finding out whether the compromise was just and fair and whether it should be adopted as the basis for the ultimate award. It was held therein:

A compromise by a few cannot, therefore, amount to a settlement of the dispute, for a compromise can only bind those who are parties to it. It is, therefore, necessary that the Industrial Tribunal should either make its own award or adopt compromise entered into by the parties as a part of its award after considering whether it is a proper one from the point of all the workmen concerned in the dispute.

Therefore, that was a case where the reasonableness of the settlement had to be considered in a matter which was pending before the Tribunal and that, if the settlement was found to be fair and reasonable then that would be binding on all workmen.

16. The decision rendered by the Patna High Court in *Workmen, Indian Cable Ltd. v. Indian Cable Ltd.* (1973) L.I.C. 208, is again another matter wherein a settlement was arrived at, on the suggestion made by the Supreme Court, and it went into the question whether the settlement was a fair and reasonable one, and whether it was binding upon all the workmen.

16A. Equally the decision rendered by the Supreme Court in *Herbertsons Ltd. v. Workmen* AIR 1977 S.C. 322, refers to a settlement arrived at u/s 18(1) of the Act, at a time when the matter was pending appeal before the Supreme Court. To find out whether the settlement arrived at was fair and binding on the workers, the matter was sent to the Tribunal which held that the settlement was incomplete. But the Supreme Court took the view that the settlement has to be taken as a package deal, and when labour has gained in the matter of wages, mere fact that there has been some reduction in dearness allowance, cannot make a settlement unfair and unjust one. Therefore, it was held that what should concern a Tribunal is to find out the justness and fairness of a settlement in the light of the conditions that were in force at the time of reference, and it should be taken as a package deal which would bring about industrial peace in which event, it will be binding on all the workmen, though backed by a large majority

of workmen only.

17. The decision rendered by the High" Court of Andhra Pradesh in Amadalavalsa Coop. Agrl. Indl. Socty. v. Indl. Tribunal (1978) II A.W.R. 360, was also relied upon and in this case, it was a reference made to the Industrial Tribunal, and relying upon the decision of the Supreme Court above referred to, it was held that a settlement arrived at with a union which was the sole collective bargaining agent behind the workmen, will be binding on those workmen and any one of the workmen of the said union cannot later on challenge the fairness and justness of the settlement.

18. Reference was also made to the decision of the Supreme Court in Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others, , in which the scope of Section 18 and Section 22(1)(d) and Section 24 of the Act came up for considering and in dealing with the settlement arrived at u/s 18(3) of the Act, it has been held that all persons who are employed in the establishment or part of the establishment to which the dispute relates, all persons, who subsequently became employed in the establishment, would be bound by the settlement. In order to bind the workman, it is not necessary to show that they belong to the union which was a party before the conciliator, Therefore, when a Section 18(3) settlement is brought about, pending conciliation proceedings, it will be binding on all the workmen.

19. Mr. N.G.R. Prasad, learned Counsel would rely upon the decision of the Supreme Court in The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, . To show that a settlement arrived at by agreement otherwise than in the course of conciliation proceedings, will not be binding on workmen, who are not parties to the settlement. In this case, i.e., the case cited above, when the matter was pending in the Labour Court, on petitions filed u/s 33C(2) of the Act, a settlement was arrived at between the management and union of workmen. But the other workmen were not parties to it. Copies of the agreement were sent to the concerned parties. It is on the terms of the agreement that the workers, who are not parties to the settlement, had drawn the variable dearness allowance in accordance with the settlement. But still it was held that the settlement cannot be enforced as against them, because they are not parties to the settlement. Hence it was further held therein as follows;

Assuming that the Act does not inhibit the employers and the workmen from arriving at a settlement during the pendency of proceedings u/s 33C(2) of the Act, such a settlement not being one arrived at in the course of conciliation proceedings would be enforceable only against the parties thereto. In the present case, respondents 4 to 173 and others who were not parties to the settlement dated October 22, 1969, would not be bound by it.

20. He further substantiates his contention by relying upon the decision of the Supreme Court in Tata Chemicals Ltd. Vs. The Workmen represented by

Chemicals Kamdar Sangh, , wherein the consequences which followed out of two categories of settlement u/s 18 of the Act, came up for consideration and it was held:

A bare perusal of the above quoted section would show that whereas a settlement arrived at by agreement the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement ,a settlement arrived at in the course of conciliation proceedings under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in Clause (b), (c) and (d) of Sub-section (3) of Section 18 of the Act.

Dealing with the aspect as to whether, acceptance of the benefits flowing, from the settlement not only of the members of the majority union, but also by the members of the Sangh which disputes it, would operate as an implied agreement by acquiescence and prevent the Sangh from raising the demand, their Lordships of the Supreme Court, relying upon the earlier decision of the Supreme Court in The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, , held:

that the theory of implied agreement by acquiescence sought to be built up on behalf of the appellant on the basis of the acceptance of the benefits flowing from the agreement even by the workmen who were not signatories is not acceptable and the settlement is of no avail to the appellant-company, and cannot operate as an estoppel against the Sangh or its members.

On this aspect, the first respondent held that the settlement in the present case, namely, Ext. M2, arrived at u/s 18(1) of the Act, will not be binding on the workmen. It referred to the letters written by all the workmen to the Tamil Nadu Handloom Board under Ext. M1 series, and about the protest made under Ext. W15, and held that there is no scope for pleading estoppel as against these workmen, and hence the right to claim lay-off compensation by the workmen cannot be refused by the present management.

21. Mr. Narayanaswami, learned Counsel for the management contends that only on a reference made u/s 10 of the Act, the fairness and reasonableness of a settlement u/s 33C(2) of the Act, the Labour Court is bound by the settlement arrived at under Ext. M2, and it cannot reject it in the manner in which the Tribunal has done. The decisions relied by him, dealt with cases wherein settlement had been arrived at during the pendency of the proceedings, and naturally the Court went into the question of finding out whether it is a fair and reasonable one, so as to make it binding on other workmen. In this case, it was the management that relied upon Ext. M2, to resist the claim of the workmen stating that they are bound by the settlement under Ext. M2, and more so, when they have taken the benefits under the settlement. So far as the workmen are concerned, they claimed that the closure of the mill resulted in a lay-off and

deprived them of their right to earn their wages, and therefore, they are entitled to compensation which has to be computed u/s 33C(2) of the Act. They have stated that Ext. M2 will not be binding upon them because they are not parties to the settlement. If the management is to impose a settlement on a set of workmen who are not parties to it, the obligation is on them to show that it is a fair and reasonable settlement and the settlement was brought about during the pendency of the proceedings or during the course of conciliation proceedings. In this case, Ext. M2 was entered into, when no conciliation proceedings were pending. The order made by the first respondent refers to Ext. M2, a conciliation report dated 24.1.1970 which had evidently taken place long prior to Ext. M2. If it is a settlement which has been arrived at u/s 18(3) of the Act, it will naturally be binding on these workmen. Therefore, the first respondent had not committed an error in holding that Ext. M2 cannot be held as against the workmen as constituting estoppel, because they have taken the benefits under the said settlement. The decision rendered in *Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh*, is to the effect that acceptance of benefits flowing from an agreement to which the workmen are not signatories, cannot prevent them from pleading that such an agreement cannot operate as an estoppel against them. Workmen have come before the first respondent seeking a decision that Ext. M2 is not fair and reasonable. They have stated that it is not binding upon them, because they are not parties to it. If the management is to impose upon them, the settlement u/s 18(1) of the Act, the Management will have to demonstrate on other workmen. Hence, it cannot be said that the first respondent had committed an error in not going into the aspect whether Ext. M2 is fair and reasonable, more so when the contention of the writ petitioner before this Court is that this is an aspect that can be considered only on a reference made u/s 10 of the Act and not in a petition filed u/s 33C(2) of the Act. This being their stand, it cannot be pleaded that the first respondent was in error in not going into the aspect as whether Ext. M2 was fair and reasonable. In view of the clear pronouncements made by the Supreme Court in the above said decisions, in spite of the settlement under Ext. M2, these workmen can still maintain petitions u/s 33C(2) of the Act and claim compensation in spite of their deriving benefits under the settlement.

22. Third point is, whether the stoppage of functioning of the mill on 30.3.1970, after the issue of notice under Ext. M10, dated 28.3.1970 would constitute a closure or lay-off? The Labour Court came to the conclusion that when the affected persons have understood the closure as only lay-off and when they have demanded lay-off wages Ext. W8, and as the management did not move its little finger to inform that it is not lay-off, but only closure once for all what has transpired is only a layoff.

23. It was the definite case of the management that when Ext. M10 notice dated 28.3.1970 was issued, it was informed that except for such of those workers who have been independently informed for reporting to duty, all the other workmen need not come for work as and from 30.3.1970 and that, because of the set back

in the business and financial difficulties and as nobody had come forward to take over the management of the mills, notice was issued in such a manner. Construing the contents of this notice, the Labour Court, came to the conclusion that there has been no closure of business permanently or temporarily, but it was only a lay-off and held that the workmen will be entitled to half of the wages for seventeen months.

24. Mr. M.R. Narayanaswami, learned Counsel for the writ petitioners, contends that the Labour Court had not understood the law relating to closure and it had proceeded on a misconception that, if it is not closure, it can only be lay-off without realising that it can be anything less also. Furthermore, he would state that the concept of estoppel does not come into play. But what was intended was that the claim is not maintainable because these workmen have relinquished their rights not only under Ext. M1 series which formed the basis for the settlement under Ext. M2 dated 30.10.1971, but even on the date when the workmen were taken back into service by the new Management, without exception, individual letters have been taken from them and, therefore, these workmen cannot claim any compensation whatsoever.

25. Mr. Prasad, by referring to Ext. M10, pleads that there is no definite indication therein that the mill was closed, but only pleaded its inability to continue to operate the mills and if it was closure, in Ext. M10 itself the management, knowing the law so much on the aspect of closure or lay-off or lock-out, would have indicated to the workmen about the compensation payable to them. When Ext. M10 was issued, there was no occasion for the management to visualise about workmen addressing independent letters to Tamil Nadu Handloom Board nearly 18 months thereafter under Ext. M1 series, and about their being prepared to forego the compensation amount to which they will be entitled to under the Industrial Dispute Act. If Ext. M10 is to be understood as an intimation of closure, in law it should also provide for payment of closure compensation to the workmen who have been told not to report for duty on and from 30.3.70. In any event, he pleads that whether it is lay-off or closure, the management is bound to pay compensation accordingly. But in this case, when there has been no proper notice and no compensation had been paid, it cannot now be Contended relying on subsequent events that what had transpired on 30.3.1970 was only a closure. Even so, their liability to pay compensation under the provisions of the Act cannot be absolved. Reliance placed on Ext. M1 series or what has been settled under Ext. M2, cannot have any binding effect on these workmen, and merely because they have been taken back to service, they cannot be deprived of their right to claim compensation. These workmen, being taken back into service, is not due to any benevolence extended by the so called new management, which is nothing but change of directors.

26. On the aspect as to whether under given circumstances it would constitute a closure or lay-off, the following decisions have been placed before me. To contend that it is only the intention of the management that will have to be spelt

out from the notices issued and the circumstances that have preceded the eventuality of non-functioning of the establishment, the decision of this Court in Chinnappan (H.) Vs. Kaleeswarar Mills Ltd. and Others, , was relied upon to show that "lay-off" is a refusal or inability of an employer due to reasons beyond his control to give employment to a workman, whereas "closure" is closing of the business permanently or temporarily. Relying upon the decision of the Supreme Court in C.A. No. 1005 of 1963, it has held that the closure of the mills, until there can be a reopening on a safe and profitable basis, has to uphold. The closure can be as well as for a temporary period. There can be no doubt that the management intended to close the mills for the time being, with the hope that the matters would improve and they would be in a position to reopen the same. Though the closure was intended for the time being, it is nonetheless closure which the management is entitled to. The learned Judge by referring to Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, , has held that whether notice was given and compensation was paid or not, would not make the closure nonetheless effective and that the contention that because no notice of termination was served and no compensation was paid, the closure, is not valid, has, therefore, to be rejected. Therefore, in this decision, it has been held that it is the intention of the management to close or otherwise, which has to be made out and it may be temporary or permanent, and it will have to be established that it is the closure of the business and not a mere refusal to give work to some workmen.

27. The next decision relied upon by the counsel for the management is Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, , wherein the scope of lay-off in Section 2(KKK) of the Act was considered and whether lockout would constitute "lay-off" also came up for consideration. He referred to this decision to show that if the closure is not made out, it need not be only lay-off, as sought to be made out by the Labour Court, but it may also mean anything else. In this case, it was contended that there was only a lock-out. It occasions when there is a closure of business where as lay-off generally occurs in a continuing business. On the facts of the matter, it was held that what had happened in the said case was only a lockout.

28. He then refers to the decision of the Supreme Court reported in Workmen of Dewan Tea Estate and Others Vs. The Management, , which also dealt with the scope of Section 2(KKK) of the Act, and it was held therein, it would be legitimate to hold that lay-off which primarily gives rise to a claim for compensation u/s 25C must be a lay-off as defined by Section 2(kkk). But as to whether the expression "for any reasons", found in Section 2(KKK) would include a lay-off effected due to financial difficulties was left undecided.

29. The decision of the Supreme Court in Ramakrishna Ramnath Vs. The Presiding Officer, Labour Court, Nagpur and Another, , dealt with a case where the employer closed down the business on ground of financial difficulties but subsequently reopened the business taking back all the employees who were

working at the time of closure. As has happened in the present case, some of the workmen filed applications u/s 33C(2) of the Act, claiming closure compensation under proviso 2 of the Section 25FFF(1) of the Act. The Labour Court held that the closure was not due to unavoidable circumstances beyond the control of the employer within the meaning of proviso 2 of Section 25FFF(1) of the Act. It was held by the Supreme Court that applications u/s 33C(2) will be maintainable and some of the workmen can agitate their right for closure compensation. It was held therein that u/s 33C(2), a Labour Court, specified in that behalf by the appropriate Government had, therefore, to determine the benefit due to a worker which is capable of being computed in terms of money if Section 25FFF is applicable to the facts of the case.... The Labour Court had jurisdiction to make a preliminary enquiry as to whether there had been a closure of the business on the basis of notice of closure issued by the appellant and the text of the notice...made the determination of the question quite a simple affair.... On the fact of this case, we find ourselves unable to hold that the undertaking was closed down on account of the unavoidable circumstances beyond the control of the employer within the meaning of Section 25FFF. Hence in this decision, it has been clearly held by the Supreme Court that some workmen in an establishment can file petitions u/s 33C(2) of the Act claiming closure compensation and the Labour Court has the necessary jurisdiction to hold an enquiry on the aspect whether it is a closure or not, and whether the essential ingredients of closure had been made out or not, and a decision thereon will depend upon the facts and circumstances of each case.

30. The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, , was referred to for the purpose of showing the difference between closure and lock-out and in my view, it has no relevance to the point involved in these writ petitions. It was held therein:

The theoretical distinction between a closure and a lock-out is well settled. In the case of a closure, the employer, does not merely close down the place of business, but he closes the business itself; and so, the closure indicate the final and irrevocable termination of the business itself. Lock-out on the other hand, indicates the closure of the place of business and not the closure of business itself.... Though the distinction between the concepts is thus clear in theory, in actual practice it is not always easy to decide whether the act of closure really amounts to a closure property so called, or whether it is a disguise for a lock-out. In dealing with this question industrial adjudication has to take into account several relevant facts and these facts may be proved before the Industrial Tribunal either by oral evidence or by documentary evidences and by evidence of conduct and circumstances.

The last of the decisions referred to on this aspect is the one rendered by the Supreme Court in The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., , which dealt with the meaning of "lay-off" and as to how the compensation has to be computed as provided under

Chapter V-A of the Industrial Disputes Act. It was held therein that taking into account the justifiability or otherwise of a lay-off, when a reference is made to the Tribunal it had the necessary jurisdiction to decide what should be the quantum payable. It was held therein

In a reference u/s 10(1) of the Act it is open to the Tribunal or the Court to award compensation which may not be equal to the full amount of basic wages and dearness allowance. But no such power exists in the Labour Court u/s 33C(2) of the Act. Only the money due has got to be quantified. If the lay-off could be held to be in accordance with the terms of the contract of service, no compensation at all could be allowed u/s 33C(2) of the Act, while, in the reference some compensation could be allowed. Similarly, on the view expressed above that the respondent-company had no power to lay-off any workmen there is no escape from the position that the entire sum payable or compromised, has got to be computed and quantified u/s 33C(2) of the Act for the period of lay-off.

It will be pertinent to refer to the stand taken by the management in the affidavit to the following effect:

The notice of 28.3.1970 marked as Ext. M10 is clear and categories in its effect that what was contemplated was only a closure and there is no scope for holding that there has been a lay-off.

In these cases, it is the admitted case of the management that there was a closure and in spite of it, they have not paid even the closure compensation. It cannot be contended by them that under the Act, they are not liable to pay closure compensation u/s 25FFF. Notice dated, 28.3.1970 (Ext. M10) does not inform the workers that the management will pay compensation, i.e., closure compensation. The notice is not addressed to concerned authorities to whom an intimation should be sent about the closure. The only resistance made to the claim of closure compensation is based on subsequent events that have transpired 18 months thereafter, when all the affected workmen intimated the Handloom Board under Ext. M1 series stating that, if the Board is to take over the management of the mills, they will not claim any compensation for the period for which they have not worked. No doubt, this offer formed the basis of settlement under Ext. M2 in respect of two unions. Regarding these workmen, even on the admitted case of the management that it is closure, they cannot avoid their liability to pay compensation as provided under the Act, unless in law and as specifically provided under the Industrial Disputes Act, they prove that the entitlement of the workers to get closure compensation has been given up. The Labour Court had taken into account the aspect of individual letters under Ext. M1 series and about the workmen being taken back into service on 12.11.1971 to conclude that there is no estoppel that can be pleaded as against them. On this aspect Mr. M.R. Narayanaswami, counsel for the management contends that it has not a case of any plea of estoppel, but this is a case where the concerned workmen have relinquished their rights to claim compensation. I have already dealt with the aspect as to how far the settlement arrived at u/s 18(1) of the Act

and as reflected in Ext. M2 has any binding effect on these workmen. Whether it is "closure" or "Lay-off", it has to be established by the management that their obligation to pay compensation has been satisfied under the provisions of the Act, either by payment made by them or on a relinquishment made by the workmen, strictly in accordance with the provisions of the Act. For the present purposes, regarding this point, it has to be seen whether the Labour Court has considered the aspect as to whether it was a "closure" or "lay-off" by taking into account all the relevant circumstances as has been held in the decisions above referred to.

31. In paragraphs 8 and 9 of its judgment, after making reference to exhibits (Ext. M1, Ext. M10, Ext. W3, Ext. VV8, Ext. W9 and Ext. W10), the Labour Court has come to the conclusion that what has happened is only a "lay-off", because the management did not move its little finger to inform the affected parties that it is not "lay-off", but only "closure" once and for all. Closure need not be always a closure of business once and for all. It may be for a temporary duration as has been held by this Court. To establish that it is a closure, whether the grounds stated by the management are sufficient to constitute a justifiable closure, have to be gone into. To reject the claim of closure, as pointed out in the decisions above referred to, the Labour Court has to find out from the oral and documentary evidence as to whether the cessation of the functioning of the establishment was a "closure" or a "lock-out" or it had resulted in lay-off of only a few workmen. It is not the case of the management that what happened is not anyone of these things, but rather they take up the firm position that it was a "closure", and even on that basis, their liability to pay compensation exists, unless they are able to establish that the concerned workmen have relinquished the statutory rights. Regarding workmen covered by Ext. M2, agreement, they having relinquished their rights, as provided under the Act, only these 60 workmen can claim that they have not relinquished their claims. In my view the Labour Court has not borne in mind the principles laid down in the decisions above referred to in dealing with the aspect as to whether what was happened on 30.3.1970 is a "closure" or "lay-off" there has been only a summary consideration on this aspect, based only on the few exhibits above referred to, and, therefore, on this aspect, the Labour Court has to consider the matter afresh bearing in mind the principles enunciated in the decisions above referred to, by enabling the parties to adduce necessary evidence for ascertaining whether there was a closure within the scope of Section 25FFF or not, and if it is a closure, as admittedly claimed by the management, compensation has to be necessarily computed by the Labour Court for these workmen. Technicalities of procedure should not stand in the way of granting relief to industrial workmen, to which they are entitled to under Chapter V-A of the Act, merely because they have not claimed compensation for closure but mentioned only lay-off in their 33C(2) petitions. The substance of their claim is for compensation for the period of non-functioning of mills and, therefore, the nature of relief claimed in petition is not determinative, but what has been ultimately established, will form the

foundation for computing money value of their claim.

32. The 4th point taken is that when the Government of Tamil Nadu has refused under Ext. M7 dated 17.10.1974 to refer the dispute, raised by Trichy District Textile Workers' Union, Namanasamudram for "payment" of full wages to the workers during the period of lock-out from 30.3.1970 to 15.11.1971 and payment of arrears of bonus and leave wages, etc. If at all either the union or the individual workman were aggrieved by this order of refusal, the aggrieved party should have filled only a writ petition, but instead of doing that, the workmen cannot file petitions u/s 33C(2) of the Act, and have the dispute decided. The issue that was raised was that, there was a lock-out during the period in question. But what is claimed by the workmen is that for the period during which they were kept out of employment they are entitled to "lay off" compensation. Merely because the Government had refused to make a reference, it cannot be said that the matter has become, final, because it has been held that in spite of an earlier order of refusal, the Government has the power to make a reference later on. Any order made by the Government refusing to make a reference u/s 10 of the Act, cannot act as a bar for the maintainability of a petition u/s 33C(2) of the Act. My attention has not been drawn to any authority disputing this proposition. The Labour Court in dealing with this aspect has stated:

Merely because, inadvertently, the petitioners moved the Government for reference to this Court as dispute and the same was rejected. I do not think, the petitioners will be deemed to have conceded that it is a dispute to be raised and referred by the competent Government to clothe this Court with the jurisdiction. This Court, under these circumstances, is certainly entitled to entertain these applications.

In refusing to refer the dispute, the Government has taken into account the contents of Ext. M1 series, letters addressed to Tamil Nadu Handloom Board.

33. Mr. Prasad, learned Counsel for the workers, rightly contends that these letters were given specifically to Tamil Nadu Handloom Board because it was thought that if such a Board is to take over, it will be for the common good for all and even in the letter, it is made clear that to persuade them to agree to take over the mills voluntarily, they come forward to abide themselves with the conditions stipulated therein, and one of them related to an offer not to claim compensation to which they will be entitled to under the Industrial Disputes Act. This offer when it had been made with the wanton desire to persuade a particular Board to take over the management, and which Board functions for public good, cannot be held as against the workmen by a change that has been brought about, limited to change of Directors in the mill and claim that the workmen cannot claim compensation to which they are entitled to under one or other head under Chapter V-A of Industrial Disputes Act. He also lays stress on the fact that Ext. M1 series was never sent to any of the authorities contemplated under the Act, and merely because they were all signed in the presence of village officers

and Tahsildars, it cannot be taken as a valid relinquishment within the scope of the Act.

34. Merely because Government has refused to refer the dispute as to whether there was a lock-out or not, it cannot be said that an individual workman who has been conferred with benefits under Chapter V-A of the Act, can be deprived of claiming their rights by filing application u/s 33C(2) of the Act. I have already held that such petitions are maintainable and in disposing of those petitions, the Labour Court can go into the question of finding out the nature of the claim and their entitlement under the provisions of the Act and thereafter computing such benefits in terms of money. The order of refusal by the Government, cannot take away the statutory right which the workmen have acquired under the Act and nowhere it has been held that whenever an Industrial dispute is refused to be referred u/s 10 of the Act, workmen cannot file petitions u/s 33C(2) of the Act claiming closure or lay-off compensation. In this view, petitioner-management cannot plead that consequent to the orders made in Ext. 7 by the Government, the workers will not be entitled to claim any compensation whatsoever.

35. The 5th point taken is that on individual letters given under Ext. M.1 series to Tamil Nadu Handloom Board and also of their acquiescence with it by taking up employment on 12.11.1971, whether the workmen are entitled to closure or lay-off compensation, since they have relinquished their rights to claim any sort of compensation. In dealing with the previous point the objections raised by Mr. Prasad, learned Counsel for the workmen regarding Ext. M.1 series and how far they can be held as against these workmen, have been already stated and they hold good for this point also. Mr. M.R. Narayanaswami, learned Counsel for the Management would refer to the fact that not only these workmen have given Ext. M1 series, but they have also executed separate letters on the date of taking up employment under the new management and though they have not been filed into the Labour Court, they would also show that the workmen knowing their rights have voluntarily relinquished their entitlement to claim compensation under Chapter V-A of the Act. The deposition of WW.1 to the effect is relied upon to claim that even though those letters have not been marked, the fact that workmen have executed such letters cannot be disputed and when the individual workmen have settled their claim in such manner, even if Ext. M.1 series cannot be relied upon as having been addressed only to benefit the Tamil Nadu Handloom Board, the workmen will be bound by what they did on the date when they joined the Mill, i.e. on 12.11.1971. It has been the claim of the Management that the period between 1.4.1970 and 12.11.1971 can be treated only as closure and two unions under Ext. M.2 had entered into Section 18(1) settlement foregoing the claim for closure compensation, to which the workmen belonging to those two unions will be entitled to and that all the workmen who were on the rolls of the mill on 30.3.1970 have all been taken into service when the Mill again started functioning. It is only these sixty-one workmen who claim that they have not entered into any valid settlement with the management agreeing to forego their entitlement to claim compensation. Further, it has also

been stressed that when the workmen have secured the benefit of continuity of employment, they cannot resile from such a position and plead that they are entitled to lay-off compensation, whereas in fact it was only a closure.

36. Mr. Prasad, learned Counsel for the workmen, countered these claims by referring to the fact that Ext. M.1 series were not addressed to any of the authorities and it was never intended to benefit the present set of management of the mills and as far as the letters that were given on the date when the Mill was opened, they are stereotype letters taken from every workman, and they do not satisfy the requirements under the Act as to deprive the workmen of their rights and claims assured to them under Chapter V-A of the Act. He further contended that it is not open to the management to rely on any one of those letters which have not been already marked and in any event an agreement of the nature pleaded by the management cannot prevail over what are secured for a workman under the Act.

37. The decision rendered by the Supreme Court in *Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh*, had been referred to, wherein it has been held that even if some of the workmen have derived benefits under a settlement in which they are not signatories, if it be shown that the settlement which is held as against them is not binding on them, it will not deprive such workmen from claiming the amounts to which they will be entitled to Ext. M1 series are letters only intended to Tamil Nadu Handloom Board and in arriving at Section 18(1) of the Act under Ext. M.2, if the concerned unions have relied upon, Ext. M.1 series of letters, it has been done at their own option. As far as the Trichy District Textile Workers Union, it is on record that even as early as 11.5.1970 under Ext. W. 8 on 25.7.1970.under Ext. W. 9 the union had demanded lay-off wages. After Ext. M.I series had been entered into in Ext. W. 15 dated 30.9.1971, it had protested that the letters have been taken by coercion and undue influence. Therefore, at the earliest point of time, a protest had been raised regarding Ext. M.1 series that they were not voluntarily executed. As far as the letters which according to W.W.1, had been given on the date of the opening of the mill, unless it be shown that they constitute a settlement or relinquishment, within the scope of the Act, they cannot be relied upon. Under General Law when an agreement is entered into between two parties, they will be bound by the terms and conditions of such an agreement. But, when certain rights conferred under Industrial Disputes Act are dealt with, such rights cannot be determined by ordinary agreements, unless it be establishment that the procedure contemplated under the enactment had been followed. In this context, provisions made u/s 27 of the Maternity Benefits Act, Section 14 of the Gratuity Act, Section 25 of the Minimum Wages Act, Section 40 of the Beedi & Cigar Workers (Conditions of Employment) Act, Section 27 of Motor Transport Workers Act and Section 79 of Factories Act, are referred to by Mr. Prasad, learned Counsel for the workmen. He relies upon Section 25J of the Industrial Disputes Act to contend that benefits conferred under Chapter V-A cannot be taken away by any agreement to the contrary and only the provisions

of the Act will prevail. Right to get compensation for "lay-off" and "closure" has been specifically provided for under Chapter V-A and Section 25J(1) states-

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law;...

Ext. M.A series are individual letters addressed to the Handloom Board agreeing to give up the right to claim compensation, and they have not come into existence by following the procedure contemplated under the Act. Equally the letters, which according to W.W.1, were given on the date when they were taken in, can be only agreements under general law, but they cannot be held as against the workmen whose right to get "lay-off" or "closure compensation" can be taken away only in the manner provided under Chapter V-A and such a procedure having not been followed, Section 25J will come into play and the management can neither rely on Ext. M1 series nor on what had been deposited by W. W. 1 which has been extracted above.

38. Counsel for workmen refers to the decision rendered in *Sree Rajendra Mills Ltd. v. Labour Court*, 37, *Factories Journal Reports*, 249, wherein it has been held.

As regards the other ground that agreement dehors the provisions of the Industrial Disputes Act can be pressed into Service in a claim u/s 33C(2) notwithstanding the presence of Section 25J, I am not able to appreciate this contention either, Sub-clause (2) of Section 25J of the Act makes it clear that the provisions of Chapter V-A of the Industrial Disputes Act ought to and will prevail at all material times when the question is as to what is the lay-off or retrenchment compensation which has to be paid by the management to the workers. The mandate in the sub-clause is imperative and it reads that the rights and liabilities of employers and workmen, in so far as they relate to lay-off and retrenchment, shall be determined in accordance with the provisions of this Chapter. This mandate in the later part of Sub-section (2) of Section 25J imports into the subject a compulsory following up of the provisions of Chapter V-A of the Act and on implied avoidance of any arrangement or settlement outside the provisions of that chapter between the employers and workmen. This being the scope of Sub-clause (2) of Section 25J, the Labour Court rightly found that the lay-off compensation was to be reckoned and determined in accordance with the provisions of the Act and not with reference to any settlement as projected by the management.

In view of what has been stated in this decision, in this case, individual letters which are relied upon by the management cannot deprive the workmen of their right to get such compensation to which they will be entitled to under Chapter V-A of the Act.

39. On the 6th point as to whether the new management will be liable to pay compensation, it is contended by Mr. M.R. Narayanaswami, learned Counsel for the writ petitioners that a new management had taken over the affairs of the Mill, which was faced with financial difficulties and business depression, from one

L. Narayanan, in November, 1971 who had been designated as Director and who had been operating the Mill between 1959 and till the date of closure. It is further claimed that the new management had taken over the mills from the old management, and therefore, even there is any liability to pay closure compensation, such a claim can be made only on the previous management. Mr. Prasad, learned Counsel for the workmen, relying upon Ext. M.8, would contend that there has been only a change in Directors, but the legal entity had continued to be the same. He refers to the decision in Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, for the proposition that the question as to whether there has been a new management or the same management continues, is a question of fact and it will have to be evaluated by reference to several relevant factors which have been pointed out in the said decision. It has been held therein that in deciding this question, industrial adjudication will look into the substance of the matter and not to act solely by the form of transfer. Several aspects which have to be taken into account, have been mentioned and it has also been held that the presence or absence of one or the other will not be conclusive and yet it will have to be decided only by looking into the substance of the matter. There is considerable force in the contention of the counsel for workmen that, mere change of some Directors cannot mean that a new management has come into office and that the same legal entity does not continue to exist. If really there is no force in this contention, there would have been no necessity for the revamped management to go after the two unions get Ext. M.2, wherein a provision is made that no compensation will be payable for the period of nonfunctioning of the Mills or even to take individual letters from the workmen to the effect that they are foregoing their claims for any compensation whatsoever. The change in the set up had been such that being fully aware that they are assuming the responsibilities of the Mill as on 30.3.1970, and of their liability to pay compensation during the period of non-functioning of the mills, the Management had taken back all the workmen covered by the two unions who had settled the claim as made out under Ext. M.2, but could not do so with these sixty workmen who had also been taken into service. Their own conduct is indicative of the fact, as seen from Ext. M.8, that there has been no transfer of interests in the mill to a management, which would enable it to claim that it is not bound by anything done by an erstwhile management.

40. In conclusion I hold that-

On the first point about the maintainability of the applications filed u/s 33C(2) of the Act, these workmen can invoke the jurisdiction of the first respondent by filing such petitions;

On the Second point about the binding nature of the settlement arrived at under Ext. M. 2 u/s 18(1) of the Act, these workmen are not bound by such a settlement;

On the third point as to whether it was a closure of lay-off or anything else as

contended by Mr. M.R. Narayanaswami, learned Counsel for the writ petitioners, the matter is being remanded to the first respondent for fresh consideration. It is the definite case of the management that the cessation of work between 1.4.1970 and 12.11.1971 constituted a closure under the Act, whereas the petitions have been filed by workmen claiming lay-off compensation. The first respondent had disposed of this aspect of the matter in a cursory manner by relying upon the fact that the management did not move its little finger to inform the workmen that it is not lay-off but closure of the business once and for all, when the workmen had written Ext. M.8 and Ext. W.9 demanding pay of wages. The Labour Court has not properly comprehended the necessary circumstances and the factors that will have to be taken into account to find out whether what had occasioned was closure or lay-off. When the management has claimed that what has happened was only closure, the "intention" behind it has to be made out and the principles enunciated in the decisions above referred to on this point have not been borne in mind by the first respondent. Consequent to such non-consideration of the relevant factors the necessity has arisen for the matter being remanded to the first respondent on this point. On the 4th point about the effect of refusal of the Government to refer the dispute u/s 10 of the Act, the order made under Ext. M.7 dated 17.10.1974 cannot deprive the entitlement of the workmen to payment of compensation to which they will be entitled, since such orders of the Government can have no finality or cannot have any binding nature when compensation is to be computed u/s 33C(2) of the Act. On the 5th point as to whether workmen have relinquished their rights to claim any type of compensation either because of Ext. M.I series dated 12.8.1971 or under Ext. M.2, being the settlement u/s 18(1) of the Act by the two unions; or by these workmen giving letters to the management on the date of reopening of the mills, as spoken to by W. W. 1, in my view, these workmen have not relinquished their entitlement to claim compensation by following a procedure known to Industrial adjudication and as contemplated under Chapter V-A of the Industrial Disputes Act. On the 6th point as to whether the present management will be liable to pay compensation to these workmen, the circumstances and the facts of the case do not show that the persons who are now in charge of the affairs of the mill can disown such a liability and hence they will be responsible to pay the compensation on the basis of the conclusions that will be arrived at by the first respondent.

41. In this view, as the matter is being remanded to the first respondent, to decide point No. 3 alone, the order of the first respondent is set aside and these writ petitions are allowed. No costs.