
(2016) 08 CAL CK 0067

In the Calcutta High Court

Case No : M.A.T. 1446 of 2015 and C.A.N. 9278 of 2015

M/s. Hindustan Cables Ltd.

APPELLANT

Vs

Tapan Kumar Sarkar

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2016) 4 CalLT 220 : (2017) 1 CLR 383 : (2016) LIC 3860 : (2016) 4 LLJ 93

Hon'ble Judges : Manjula Chellur, CJ. and Arijit Banerjee, J.

Bench : Division Bench

Advocate : Mr. Partha Sarathi Sengupta, Senior Advocate, Mr. P.B. Choudhury, Advocate, for the Appellants; Ms. Debjani Sengupta, Mr. Sobhan Majumdar, Ms. Tiya Banerjee, Ms. Shreya Bhatteerjee, Advocates, for the Respondents; Mr. Sajal Kanti Bhattacharyya, Advocate,

Final Decision : Allowed

Judgement

Arijit Banerjee, J.—Both the appeals mentioned above arise from same judgment and order dated 19 June, 2015 passed by the Learned Single Judge whereby WP 3572 (W) of 2012 was allowed. Since both the appeals involve same set of facts, the same are taken up together for hearing and disposal by this judgment.

2. The writ petitioners are employees or ex-employees of the appellant company at the Rupnarainpur Unit of the Company. Contending that their age of retirement is 60 years, the writ petitioners approached the Learned Single Judge alleging that the appellant company has not been making payment of their salaries and other allowances after attaining the age of 58 years though they continued or are continuing in service till the age of 60 years. The writ petitioners accordingly, prayed for a writ in the nature of mandamus commanding the respondent company and the Union of India to release their salaries and allowances and further pay their monthly salary till their

superannuation and directing the respondents to release retiral benefits of the petitioners who have superannuated. The Learned Judge allowed the writ petition. The operative portion of the judgment of the Learned First Court is as follows:-

"I thus, allow the writ petition and direct the respondent company to take necessary steps for payment of admissible dues to the petitioners who have already retired from service and to release the unpaid salaries and allowances to the petitioners who are still in service and to go on paying the same till they attain the age of superannuation. Such steps are to be taken within a period of ten weeks from the date of the communication of the order.

Needless to mention, if necessary, the respondent no. 1 shall provide the requisite financial assistance to the respondent company for making necessary payment to the writ petitioners in terms of this order if the respondent no. 1 is otherwise obliged to bear the financial burden of the company in this regard."

Challenging the aforesaid judgment and order the appellant company and the Union of India have filed separate appeals which are before us.

Submission on behalf of the Hindustan Cables Ltd. (appellant No.1 in MAT no. 1446 of 2015)

3. Appearing on behalf of the Hindustan Cables Ltd. (in short the 'Company?'), Mr. Partha Sarathi Sengupta, Learned Senior Counsel urged a preliminary point of maintainability of the writ petition. He submitted that the writ petitioners have filed the instant proceeding to enforce a money claim simpliciter. Mr. Sengupta then submitted that a contractual right and that too a plain and simple money claim cannot form the basis of a writ petition. In this connection he relied on a decision of the Hon'ble Supreme Court in the case of M/s. Burmah Construction Company v. The State of Orissa, AIR 1962 SC 1320, wherein at paragraph 6 of the judgment the Hon'ble Apex Court observed that the High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit filed for that purpose. However, an order for payment of money may sometimes be made in a petition under Article 226 against the State or against an officer of the State to enforce a statutory obligation. He also relied on a decision of the Hon'ble Supreme Court in the case of Suganmal v. State of Madhya Pradesh, AIR 1965 SC 1740.

4. Mr. Sengupta then submitted that as per the Standing Orders, 1964 issued under the Industrial Employment (Standing Orders) Act, 1946, which apply to the company and its employees/workmen, every employee shall retire from service on attaining the age of 58 years. Extension for two years in all, but not more than one year at a time may be given at the discretion of the Management (clause 4(i)). He then referred to the Standing Orders, 1977 and submitted that the same have no provision with respect to superannuation. He submitted that in

the absence of superannuation clause, the 1977 Standing Orders are not valid. Hence, 1964 Standing Orders continued to remain in force. He contended that even assuming that the 1977 Standing Orders are valid, since the same do not contain a superannuation clause, the clause under 1964 Standing Orders would prevail.

In this connection Mr. Sengupta referred to Section 2(g) and Section 3 of the Industrial Employment (Standing Orders) Act, 1946 and also to the Schedule to the said Act. Section 2(g) of the said Act defines 'Standing Order' as rules relating to matters set out in the Schedule. Section 3(1) provides that within six months from the date on which the 1946 Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in his industrial establishment. Section 3(2) of the Act stipulates that provision shall be made in such draft Standing Orders of every matter set out in the Schedule which may be applicable to the industrial establishment and where model Standing Orders have been prescribed, shall be, in so far as practicable, in conformity with such model. Clause 11 of the Schedule to the 1946 Act reads as 'in every matter in which may be prescribed'. Clause 2A of the Bengal Industrial Employment (Standing Orders) Rules, 1946 provides that matters relating to payment, transfer, over-time and superannuation shall be additional matters to be included in the Schedule to the Industrial Employment (Standing Orders) Act, 1946 and shall be treated as item Nos.12 to 15 of the said Schedule. Mr. Sengupta submitted that on a conjoint reading of the aforesaid provisions, it follows that all Standing Orders must contain a clause relating to superannuation. Otherwise it is not a Standing Order at all. Since the 1977 Standing Orders do not contain a superannuation clause, it is not a valid Standing Order.

5. Learned Counsel then referred to a Tripartite Agreement dated 7 June, 1974 entered into by and between the Management of the Company and the Four Unions of the Company subject to the approval of the Addl. Labour Commissioner and Conciliation Officer. He submitted that although clause 12 of the said agreement provides that subject to the approval of the Board of Directors, the employees will retire on attaining the age of 60 years instead of attaining 58 years of which, this purported increase in the age of retirement was never made part of the Standing Orders. He submitted that in case of conflict between Standing Orders and Private Contract with regard to the service conditions, Standing Orders would prevail. In this connection he relied on a decision of the Hon'ble Supreme Court in the case of Western India Match Company Ltd. v. Workmen, 1973 (II) LLJ 403, wherein it was inter alia, observed that as long as the Standing Orders are in force, it is binding on the company as well as the workmen. To uphold any special agreement would mean giving a go-by to the 1946 Act's principle of the three-party participation in the settlement of terms of employment. Inconsistent part of the special agreement is ineffective and unenforceable.

Mr. Sengupta also cited a judgment of the Full Bench of the Allahabad High Court in the case of *Srivastava (S.P.) v. Banaras Electric Light and Power Company Ltd.*, 1968 (II) LLJ 483, wherein it was held that the Standing Orders are meant to constitute a set of basic general rules which could not be ignored or abandoned. Special agreements may be permissible for providing special terms and benefits to workmen having special value to their employees. But the basic and general conditions contained in the Standing Orders could not be by-passed by adopting the device of special agreements. If the general conditions on matters expressly provided by the Standing Orders could be avoided by special agreements, the whole object of the Standing Orders would be frustrated and the elaborate machinery provided for their certification and enforcement would become meaningless. The Standing Orders which have passed through the carefully devised mechanism of the Act were meant by the Act to be complied with by the employers and the employees alike.

Learned Counsel also relied on a Division Bench judgment of the Allahabad High Court in the case of *The U.P. Co-operative Spinning Mills Ltd. v. State of UP*, 1978 LAB IC 1137, which is also to the effect that the terms of the Standing Orders would prevail over the corresponding terms in the contract of service.

6. Mr. Sengupta referred to Section 10 of the Industrial Employment (Standing Orders) Act, 1946 which lays down the procedure for modification of Standing Orders. He submitted that the Standing Orders of 1964 were never modified following the said procedure and hence the retirement age of 58 years prevailed at all material times.

7. Mr. Sengupta then submitted that the impugned judgment was passed following the judgment and order dated 13 September, 2011 passed by a Division Bench of this Court in FMA 725 of 2011. The said appeal had arisen from an order dismissing the writ petition of 141 other employees of the Rupnaraianpur Unit of the Company (WP No.14269 (W) of 2010) praying for a direction on the company to pay the salaries of the writ petitioners beyond their age of 58 years till their superannuation at the age of 60 years. The Division Bench allowed the appeal and directed the company to pay the admissible dues of the writ petitioners. A Special Leave Petition preferred against the said Division Bench order was dismissed and the review petition filed before the Supreme Court was also dismissed. However, Mr. Sengupta submitted that none of the issues involved in the present case as urged on behalf of the company was argued or considered by the Division Bench while passing the order dated 13 September, 2011 in the earlier appeal. Learned Counsel submitted that the said order of the Division Bench ought not to have been followed by the Learned Single Judge in the present case. Even though the earlier order has attained finality, a subsequent similar claim can still be resisted by the company because if the court shuts out the company from challenging such claim, it would perpetuate illegality. In this connection Mr. Sengupta relied on a decision of the Hon'ble Apex Court in the case of *Union of India v. A.S. Gangoli*, (2007) 6 SCC

196, wherein at paragraph 17 of the judgment the Hon^{ble} Supreme Court referred to its earlier decision in the case of Col. B.J. Akkara (Retired) v. Govt. of India, (2006) 11 SCC 709, wherein it had been observed as follows:-

"A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the noncomprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a "pick and choose" method only to exclude petitioners on account of mala fides or ulterior motives." Learned Counsel also cited the decision in State of U.P. v. Om Prakash, (2006) 6 SCC 474. In that case Counsel for the respondents had contended that since the earlier order of the High Court had attained finality, the challenge to the subsequent order of the High Court which was passed following the earlier order must also fail. The Supreme Court rejected such contention and held that accepting such contention would amount to allowing the perpetuation of illegality. Learned Counsel also relied on a decision of the Hon^{ble} Supreme Court in the case of Maharaj Krishan Bhatt v. State of Jammu and Kashmir, (2008) 9 SCC 24, wherein at paragraphs 21 and 22 of the judgment, the Hon^{ble} Apex Court accepted the submission of Learned Counsel for the respondent State that Articles 14 or 16 of the Constitution cannot be invoked or pressed into service to perpetuate illegality. If one illegal action is taken, a person whose case is similar, cannot invoke Articles 14 or 16 and demand similar relief illegally or against a statute.

8. It was then urged by Mr. Sengupta that the Settlement dated 7 June, 1974 is void for non-compliance with Section 2(p) of the Industrial Disputes Act, 1947 (in short the ID Act). Section 2(p) of the ID Act provides as follows:-

"S. 2(p) 'Settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to (an officer authorised in this behalf by) the appropriate Government and the conciliation officer."

Learned Counsel submitted that copy of the said purported settlement was not sent to the officer authorised by the appropriate Government and as such it was not a settlement within the meaning of Section 2(p) of the ID Act and not enforceable under Section 18 of the Act.

9. Mr. Sengupta then referred to an Office Memorandum dated 19 May, 1998 issued by the Director (M & I), Department of Public Enterprise, Ministry of Industry, which stated, inter alia, that except as otherwise provided specifically every employee at below board level in the Central Public Enterprises whose age of retirement is currently 58 years shall now retire from service of the enterprise upon attaining the age of 60 years. He submitted that the respondent employees could claim no right under the said Office Memorandum as held by the Hon^{ble} Supreme Court in the case of *Sureshchandra Singh v. Fertilizer Corporation of India*, (2004) 1 SCC 592, that the very same Office Memorandum dated 19 May, 1998 itself does not raise the retirement age to 60 years. It is only an administrative direction and court cannot issue a writ to enforce such administrative instructions that does not have the force of law.

10. Learned Counsel then referred to a notice issued by the Department of Heavy Industry, Government of India, with reference to the Presidential Directive order dated 23 May, 2001 which stated, inter alia, that the age of retirement would be reduced from 60 years to 58 years. He submitted that rolling back the age of superannuation is justified when the company cannot run and had to run only on the strength of Government grants. In this connection he relied on a decision of a Learned Judge of this court in the case of *Tyre Corporation of India Officers' Association v. Union of India*, 2001 (3) CHN 774, para 9.

11. Mr. Sengupta then submitted that the Learned Judge erred in law in not appreciating that if the remedies lie under the ID Act, writ petition is not maintainable. He cited the decision in the case of *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha*, (2009) 5 SCC 694. In that case Cachar and Karimganj District Milk Producers' Cooperative Union Ltd. (in short CAMUL) was a society registered under the Assam Cooperative Societies Act, 1949. The respondent before the Supreme Court which was a trade union representing the workers of CAMUL filed a writ petition praying for a direction on the State Government to sanction finance assistance by way of grant-in-aid to CAMUL to enable CAMUL to make regular payment of monthly salaries, allowances as well as arrears of its employees. Learned Single Judge allowed the writ petition and such order was upheld by the Division Bench. The Supreme Court allowed the appeal of the State Government, inter alia, holding that if the salaries are not paid, the remedy of the employees of CAMUL was to proceed against CAMUL in accordance with law, by approaching the forum under the appropriate labour legislation or the Cooperative Societies Act. A trade union representing the employees of a cooperative society cannot, by filing a writ petition, require the Government to bear and pay the salaries of the employees of the cooperative society, howsoever pervasive the control of the State Government over such society.

12. Mr. Sengupta then referred to Section 33C of the ID Act and submitted that the said provision provides an efficacious alternative mode to an employee for recovery of money due from an employer. He submitted that in view of such

provision, the Learned Judge should not have entertained the writ petition.

13. Learned Counsel then submitted that if the employees are desirous of enforcing the superannuation clause in any agreement between them and the Management, the Writ Court is not the proper forum. He relied on a decision of the Hon^{ble} Apex Court in the case of Kerala State Electricity Board v. Kurien E. Kalathil, (2000) 6 SCC 293, wherein at paragraph 10 of the judgment the Hon^{ble} Supreme Court observed that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether a contract envisages actual payment or not is a question of construction of the contract. If a term of a contract is violated, ordinarily the remedy is not a writ petition.

14. Mr. Sengupta then submitted that the earlier Division Bench had erroneously allowed the writ petition before it. The Learned Judge in this case should not have followed the said Division Bench order and another set of employees cannot insist on a similar order being passed since no one can insist on perpetuation of a wrong. In this connection he relied on a decision of the Hon^{ble} Supreme Court in the case of Indian Council of Agricultural Research v. T.K. Suryanarayan, (1997) 6 SCC 766, where at paragraph 8 of the judgment, the Hon^{ble} Supreme Court observed in the facts of that case that even if in some cases erroneous promotions had been given contrary to the Service Rules and consequently such employees were allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the Department by misreading the Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetuating infringement of statutory Service Rules.

15. Mr. Sengupta then referred to page 26 of the judgment and order impugned before us wherein the Learned Judge observed that the crux of the problem can be reduced to a proposition i.e., whether the petitioners who had although been working or have worked in the company after reaching the age of 58 years are entitled to get their salaries and other benefits for the period between 58 and 60 years. Learned Counsel submitted that the Learned Judge has posed a wrong question. The question is whether the writ petition is maintainable. Posing a wrong question leads to a wrong answer. The learned Judge assumed that the employees/writ petitioners actually worked beyond 58 years. This is a disputed question of fact. In this connection he cited a decision of the Hon^{ble} Apex Court in the case of Sonapat Cooperative Sugar Mills Ltd. v. Ajit Singh, (2005) 3 SCC 232, wherein at paragraph 23 of the judgment the Hon^{ble} Supreme Court observed that the High Court applied wrong legal tests in upholding the views of the Labour Court which itself approached the matter from a wrong angle. The Labour Court as also the High Court posed a wrong question unto themselves and thus, misdirected themselves in law. He also relied on a judgment of the Hon^{ble} Supreme Court in the case of Cholan Roadways Ltd. v. G.

Thirugnanasambandam, (2005) 3 SCC 241, wherein at paragraph 34 of the judgment the Hon'ble Supreme Court observed that in the facts of the case, Industrial Tribunal as also the Learned Single Judge and the Division Bench of the High Court misdirected themselves in law in so far as they failed to pose unto themselves correct questions. It is now well settled that a quasi judicial authority must pose unto themselves a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer.

16. Mr. Sengupta finally submitted that the Learned Judge held in favour of the appellant company on all points but gave relief to the petitioners solely on the basis of the earlier Division Bench order which did not have occasion to consider the points raised in the present proceedings. He prayed for setting aside of the judgment and order impugned.

Submissions made on behalf of Union of India:-

17. Appearing on behalf of the Union of India, Learned Addl. Solicitor General submitted that the Central Government is aggrieved by the order impugned to the extent it imposes a conditional obligation on the Central Government to make payment of the alleged dues of the workers. In the concluding portion of the impugned judgment and order the learned Judge directed the Union of India to provide requisite financial assistance to the company for making necessary payment to the writ petitioners in terms of the said order if the Union of India is otherwise obliged to bear the financial burden of the company in this regard. (Emphasis added is ours). He submitted that the Union of India is not obligated to make any payment towards the wages of the workers for their alleged service beyond the age of 58 years.

18. Learned Counsel referred to the minutes of the meeting dated 28 March, 2001 held by the Board of Directors of the company wherein it was decided that the new Wage Settlement for the workers of the company may be finalised within the overall ceiling of 12 per cent increase over the existing wage bill and further the retirement age of all the employees of the company below the board level would be brought down from 60 to 58 years. It was like a package. The workers enjoyed an increase in wages but also want to take advantage of the retirement age of 60 years. Even under the bipartite agreement dated 20 August, 2001, the employees who availed of pay revision were to retire at the age of 58 years.

19. Learned Counsel submitted that the writ petitioners before the learned Single Judge relied on a decision of the Hon'ble Supreme Court in the case of Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1, for the proposition that the Union of India or the State cannot escape its liability towards payment of the workmen's dues in the event a Government undertaking or company has no financial means for the same. However, Kopila Hingorani's (supra) case was passed in the peculiar facts of the case and no law within the meaning of Article 141 of the Constitution was laid down by the Hon'ble Supreme Court in that case.

20. Learned Counsel referred to the Supreme Court Decision in the case of State

of U.P. v. Uptron Employees' Union CMD, (2006) 5 SCC 319, wherein the Apex Court referred to its decision in Kapila Hingorani's (supra), case and observed that in that case the Supreme Court did not lay down any principle of law of universal application and passed appropriate orders only in the compelling circumstances noticed by it.

21. Learned Addl. Solicitor General then submitted that a Government company has an independent identity and is separate from the Government. The Government cannot be made responsible to discharge the financial obligations of a Government company. In this connection he relied on a decision of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. v. National Union Water Front Workers, AIR 2001 SC 3527, wherein at paragraph 37 of the judgment, the Hon'ble Supreme Court observed as follows:-

"37. We wish to clear the air that the principle, while discharging functions and duties the Govt. companies/Corporations/Societies which are instrumentality or agencies of the Government must be subjected to the same limitations in the field of public law ? constitutional or administrative law ? as the Government itself, do not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law."

22. Learned Counsel then referred to the decision in the case of M/s. Electronics Company of India Ltd. v. Secretary, Revenue Department, Government of Andhra Pradesh, AIR 1999 SC 1734, wherein at paragraphs 15 and 16 of the judgment a Constitutional Bench of the Hon'ble Supreme Court held that a clear distinction must be drawn between a company and its shareholders, even though there may be only one shareholder and that may be the Central or State Government. In the eye of law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. Finally Learned Counsel cited the case of Hindustan Aeronautics Ltd. v. Dan Bahadur Singh, (2007) 6 SCC 207, wherein it has been held that the position of a Government servant is different from that of a workman who is working in an industrial establishment. A Government servant enjoys a status and security of tenure on account of certain constitutional provisions. A permanent Government servant has a right to hold the post and he cannot be dismissed or removed or reduced in rank unless the requirements of Article 311 of the Constitution or the rules governing his service are complied with. However, an employee in an industrial establishment cannot be treated at par with a Government servant.

23. Learned Counsel submitted that there is no finding in the judgment and order impugned before this court that there is any legal obligation on the Union of India to provide funds for payment of the wages of the employees of the company who have allegedly served beyond the age of 58 years. Hence the direction on the Union of India to provide such finance, albeit, a conditional direction, should be set aside.

Contention of the respondents/writ petitioners:-

24. Appearing for the respondents/writ petitioners, Ms. Sengupta, Learned Counsel referred to Section 2(b) of the Industrial Employment (Standing Orders) Act, 1946 which provides that "appropriate Government" means in respect of industrial establishments under the control of the Central Government, the Central Government, and in all other cases, the State Government, provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workman or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties. Learned Counsel submitted that in the present case the appropriate Government is the Central Government since the company is under the control of the Central Government.

Learned Counsel then referred to Section 2(f) of the 1946 Act which defines "prescribed" as meaning prescribed by Rules made by the appropriate Government under the said Act. Hence, learned Counsel submitted, that it would be the Central Government Rules that would apply to the company. She then referred to Rule 1(2) of the Industrial Employment (Standing Orders) Industrial Rules, 1946 which provide that the said Rules extend to all union territories and shall also apply in any State to industrial establishments under the control of the Central Government. Rule 2A prescribes that the age of retirement must be in the standing order. However, this rule came by way of amendment in 1983. Hence, the age of retirement was not required to be mentioned in the Standing Orders of 1964 and 1977. The mentioning of the retirement age as 58 years in the 1964 Standing Orders was contrary to law. That is why the 1973 tripartite agreement was entered into. Subsequently, the 1977 Standing Orders rightly omitted the clause pertaining to age of retirement. Learned Counsel referred to Schedule 1B to the Central Rules of 1946 which contains Model Standing Orders On Additional Items Applicable To All Industries. This was inserted with effect from 17 January, 1983. Clause 3 of the Model Standing Orders provides that the age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of 58 years of age by the workman. She submitted that in this case since there was an agreement of 1973, where under the age of retirement was stipulated as 60 years, the same would prevail.

25. Ms. Sengupta submitted that the writ petitioners were all allowed to work till 60 years of age. In support of such submission she drew this court's attention to the office orders of retirement notices, individual service certificates issued by the company to the writ petitioners indicating date of birth, date of appointment and date of retirement at the age of 60 years, family pension certificates issued

by the company to the writ petitioners, a note dated 13 August, 2010 relating to Employees Family Pension Scheme, 1995 and no demand certificate issued by the company to the writ petitioners when they attained 60 years of age to enable them to get the retiral benefits. She submitted that till August, 2005, all employees were paid salary till they reached 60 years of age. However, after that, the company stopped paying salary beyond the age of 58 years. Such stoppage of salary was in violation of the tripartite agreement of 1974.

26. The Union of India also raised the age of retirement from 58 years to 60 years of all employees of Central Public Sector Enterprises by memo dated 19 May, 1998. In 2001 the company entered into a bipartite settlement with the unions of the employees at its Rupnarainpur Unit reaffirming the retirement age at 60 years. The company acted in terms of such settlement and followed the retirement age of 60 years. After the company's case was registered with BIFR in 2002, the Central Government acted in terms of the settlement and released funds for payment of salary to the staff of the company up to the age of 60 years. Such fund was last released in October, 2005.

27. However, the next grant released under cover of letter dated 9 June, 2006 was for payment of salary and wages to the employees of the company who had not attained the age of 58 years as on 31 December, 2005 and those who attained the age of 58 years during August, 2005 to October, 2005. Such communication of the Central Government prompted the several units of the company to take up the matter with the Conciliation Officer, being the Labour Commissioner. After several meetings the Conciliation Officer submitted a failure report to the Central Government by letter dated 24 May, 2011 with regard to the revision of age of retirement to 60 years from 58 years, payment of gratuity and pay slip to the employees, etc.

28. The Government of India refused to refer any industrial dispute and by letter dated 14 October, 2011 informed the company and the employees' unions that the Ministry of Labour did not consider such dispute fit for adjudication as an industrial dispute since reduction of age of retirement from 60 years to 58 years, payment of gratuity/provident fund or issuance of Pay Slip to the employees beyond 58 years is a matter to be determined by the Management.

29. Up to December, 2014, the company did not take any steps for reduction of retirement age of its non-executive employees at the Rupnarainpur Unit from 60 years to 58 years. For the first time by a notice dated 20 December, 2014 the company informed the employees that the retirement age is fixed at 58 years effective after 60 days notice period is over. Learned Counsel submitted that the 60 days notice period was given to comply with the requirement of Section 19(2) of the ID Act. Under Section 18(1) of the ID Act a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Section 19(2) of the Act provides that a settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon for a period of

six months from the date on which the memorandum of settlement is signed by the parties and shall continue to be binding on the parties after the expiry of the aforesaid period until the expiry of two months from date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party to the settlement. (emphasis added is ours). Learned Counsel submitted that by allowing for the 60 days notice period, the company admitted that there was a binding settlement between the parties as regards the retirement age being 60 years.

30. Learned Counsel then referred to the rules pertaining to the Companies Employees' Gratuity fund. Rule 1(xix) provides that 'Normal Retirement Date' shall mean in respect of the member the date on which he attains the age of 60 years unless otherwise specified in the individual appointment letters. She submitted that the letters of appointment do not mention any retirement age. Hence, the retirement age is 60 years. Learned Counsel referred to a document at page 23A of the supplementary affidavit filed by the respondents which evidenced release of the provident fund dues of one of the employees. The said document shows the retirement age of the employee as 60 years. However, no salary was paid for the last two years of service and retirement benefit was paid only for the period up to 58 years.

31. Learned Counsel then submitted that the tripartite agreement of 1974 contained a clause regarding the retirement age being 60 years subject to approval of the Board of Directors. The Managing Director was one of the signatories on behalf of the company. The Board of Directors ratified the tripartite agreement in its 125th meeting held on 17 July, 1974. Further, copy of the bipartite agreement of 2001 was also duly sent to the Deputy Labour Commissioner as required under the law as would appear from a letter dated 10 October, 2001 written by the company to the Deputy Labour Commissioner, Government of West Bengal.

32. Learned Counsel then submitted that in the past, similarly situated employees had approached this court and the Division Bench by its order dated 13 September, 2011 directed the company to pay the employee's dues up to the age of 60 years. All challenges to the said order whether by way of review before this court or by way of appeal before the Hon'ble Supreme Court failed. Thereafter, the company sent request to the Union of India by letter dated 13 August, 2013 for release of funds for payment of arrear salaries to those employees up to the age of 60 years. Subsequently, the company released payment of differential amount of gratuity up to the age of 60 years to those employees as per letter dated 15 November, 2013. After all challenges to the aforesaid Division Bench order failed, the Union of India released necessary funds to the company for making payment of arrear salary to its ex-employees who had attained the age of 60 years but had received payment only up to 58 years. In this connection she referred to a memorandum of settlement dated 26 August, 2014 issued by the Under Secretary to the Government of India (page

260 of A/O). She also referred to a letter dated 9 September, 2014 written by the Under Secretary to the Government of India to the Pay and Accounts Officer, Department of Heavy Industry, Government of India (page 254 of A/O).

33. Prior to making submissions on points of law, Learned Counsel summed up her submissions as follows:-

(i) Rupnarayan Unit is still running.

(ii) The employees are working. Retirement notices are being issued every month.

(iii) Union of India is releasing fund towards salary of the Employees till they attain the age of 58 years.

(iv) The Standing Order can be modified by agreement between the Employer and Workmen.

(v) The tri-partite agreement of 1974 has been given effect to by the company and Central Government for last 32 years, the retirement age fixed at 60 years was acted upon, the employees received retirement benefits and salaries upto the age of 60 years till 2005. Now, both the company and Union of India are estopped from throwing challenge to the terms of the agreements with retrospective effect.

(vi) The proceeding for recovery of dues of the employees are treated as a separate category of proceeding and does not come within the expression ? execution? or ?distress? as used in Section 22(1) of the SICA.

34. Learned Counsel cited the case of Rohtak and Hissar Districts Electric Supply Company Ltd. *Amitabh Textile v. State of Uttar Pradesh*, AIR 1966 SC 1471, in support of her submission that something not in the Schedule to the Standing Orders Act cannot be included in the company's Standing Orders and if so included the same will have no effect. The Hon'ble Apex Court observed that under Section 3(2) of the Act, the Employers have to frame draft Standing Orders and they must normally cover the items in the Schedule to the Act. If, however, it appears to the appropriate authority that having regard to the relevant facts and circumstances, it would not 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 Orders which relates to a matter which is not included in the Schedule.

35. In *Air Gases Mazdoor Sangh v. Indian Air Gases Ltd.*, 1977 LAB IC 575, a Division Bench of the Allahabad High Court following the decision in *Rohtak and Hissar Districts Electric Supply Company Ltd. Amitabh Textile v. State of Uttar Pradesh* (supra), held that the certifying officer has no jurisdiction to certify Standing Orders in respect of a matter not included in the Schedule to the Standing Orders Act. To the same effect is the decision of the Orissa High Court in the case of *Saroj Kumar Ghosh v. Chairman, Orissa State Electricity Board*, AIR 1970 Orissa 126 and the decision of the Hon'ble Apex Court in the case of

United Provinces Electric Supply Company Ltd, Allahabad v. Their Workmen, AIR 1972 SC 1201.

36. Ms. Sengupta then referred to the decision of the Hon^{ble} Supreme Court in the case of Life Insurance Corporation of India v. D.J. Bahadur, (1981) 1 SCC 315, in support of her contention that a settlement, like an award, is also binding because of the statutory sanction of Section 18 of the ID Act.

37. Learned Counsel referred to a decision of the Division Bench of the Allahabad High Court in the case of Raghavendra Mathur v. Allahabad Bank, 1990 (1) LLJ 273, wherein it was observed that the terms of a settlement become a part of the contract of employment of each individual workman. Even if the settlement is not in accordance with the prescribed form as contemplated under Rule 58 of the Industrial Disputes (Central) Rules, 1957, it does not suffer from any defect.

38. The decision in Herbertsons Ltd. v. The Workmen of Herbertsons Ltd., (1976) 4 SCC 736, was cited in support of the proposition that a settlement must be accepted or rejected as a whole. It is not possible to scan a settlement in bits and pieces and hold some parts good and acceptable and other parts bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust.

39. Ms. Sengupta relied on the decision in the case of State of Uttaranchal v. Jagpal Singh Tyagi, (2005) 8 SCC 49, to contend that if there was dispute on the question as to whether a settlement was bona fide or was obtained by fraud, misrepresentation or concealment of facts, the same can only be the subject matter of another industrial dispute. She submitted that in the facts of the case in hand, the Management did not raise an industrial dispute in respect of any of the settlements arrived at with the workmen.

40. Learned Counsel then relied on the case of Maharaj Krishan Bhatt v. State of Jammu and Kashmir, (2008) 9 SCC 24. Paragraphs 12 and 19 on which Learned Counsel relied are set out hereunder:-

"12. The learned counsel for the appellants vehemently contended that the Division Bench of the High Court was wholly in error in allowing the appeal and in setting aside the order passed by the learned Single Judge. It was submitted that when in an identical case, a petition was allowed by a Single Judge and the said order was confirmed not only by the Division Bench of the High Court but also by this Court, the matter was finally concluded in favour of the appellants and the Division Bench ought not to have reversed the decision of the Single Judge.

19. But, once a similar case of Abdul Rashid Rather came up for consideration before a Single Judge and his writ petition was allowed, a direction was issued to the authorities to appoint him as PSI by granting consequential benefits, the learned Single Judge could not be said to have committed any error of law in following the said decision, in allowing the writ petition filed by the present

appellants-writ petitioners and in issuing similar directions to the State Authorities. This was particularly true because the judgment and order of the learned Single Judge was confirmed by the Division Bench and even by this Court inasmuch as Special Leave Petition was also dismissed."

Relying on the above decision, Learned Counsel submitted that in the present case the Learned Single Judge did not commit any error in passing the impugned order on the basis of the earlier Division Bench order of this Court.

41. Ms. Sengupta then cited the case of Life Corporation of India v. Retired LIC Officers' Association, (2008) 3 SCC 321, in support of her contention that if a benefit has been extended to a set of employees of a company, another set of employees similarly situated is entitled to receive the same benefits.

42. Learned Counsel then submitted that there is a distinction between a permanent employee and a temporary employee. The writ petitioners are all permanent employees. A permanent employee has a right to the post, a temporary employee has no right to the post. A permanent employee has a right to continue in service till the age of retirement (unless he is dismissed or removed after an enquiry or his service is terminated due to some other valid reason earlier), but a temporary employee has no such right. In support of this proposition, she relied on a decision in the case of Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceutical Ltd., (2007) 1 SCC 408, para 14.

43. Union of India v. R.G. Kashikar, (1986) 1 SCC 458, para 8 was relied on by learned Counsel to buttress her submission that deprivation of benefits in matters relating to employment which includes matters relating to salary, periodic increments, age of superannuation etc is violative of Article 14 and Article 16 of the Constitution.

44. Learned Counsel then relied on the decision in the case of S.K. Dua v. State of Haryana, (2008) 3 SCC 44, para 14 in support of her submission that if there is delay in payment of retiral benefits, the concerned employee is entitled to receive interest thereon.

45. The decision in the case of State of Orissa v. Mangalam Timber Products Ltd., (2004) 1 SCC 139, was cited by Learned Counsel wherein the Hon'ble Supreme Court held, inter alia, that to attract the applicability of the principle of estoppel it is not necessary that there must be a contract in writing between the parties. Holding out a representation may estop the representor from retracting from the promise. In Grid Corporation of Orissa v. Rasananda Das, (2003) 10 SCC 297, on facts the Hon'ble Supreme Court held that the service conditions of the petitioner were to be protected and could not be changed to his detriment by virtue of the regulation of Orissa State Electricity Board.

46. Learned Counsel then referred to a decision of a Learned Single Judge in the case of Jenson Nicholson (I) Ltd v. Controlling Authority Under the Payment of

Gratuity Act, 1972, 2008 (2) CHN 954. Learned Counsel relied on paragraph 23 of the judgment wherein the Learned Judge referred to a Full Bench decision of the Madras High Court to the effect that the provision of Section 22(1) of the Sick Industrial Companies Act has no application to the provident fund dues and the provisions of the EPF Act would not come within the purview thereof. The provident fund and other dues payable under the EPF Act are part of the legitimate statutory settlements of the workers. Proceedings for recovery of money to which employees are entitled by way of social security scheme cannot be stayed under Section 22(1) of the SICA.

47. To counter the argument of the appellants on alternative remedy being available to the writ petitioners, Learned Counsel relied on the decision in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1, wherein at paragraph 15 of the judgment the Hon'ble Supreme Court observed as follows:-

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic ?whirlpool?, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

48. On the point of alternative remedy, Learned Counsel also relied on the decision in the case of BCPP Mazdoor Sangh v. NTPC, (2007) 14 SCC 234, where in at paragraph 8 of the judgment the Hon'ble Supreme Court observed as follows:-

"8?????. Though no serious objection was made as to the maintainability of the writ petition, however, learned senior counsel appearing for the Management pointed out that even if there is any breach by BALCO of its obligations in the matter of terms and conditions of employment, the appellants have appropriate remedy under Industrial Law. Inasmuch as the claim of the employees relates to interpretation of certain clauses in the agreement, appointment letters and no disputed facts are involved and taking note of the fact that the issue relates to employment of few hundreds of employees and in the light of the assertion that transferring them to private organisation from a public sector undertaking without their specific consent is arbitrary and unreasonable and also of the settled position that alternative remedy is rule of discretion and not the rule of law, we accept the conclusion of the High Court and hold that the writ petitions

under Article 226 of the Constitution filed by the employees are maintainable????"

49. Learned Counsel then relied on the case of *Kapila Hingorani v. State of Bihar* (supra), which has been referred to while noting the submissions made on behalf of Union of India.

50. To counter the argument of the appellants that the writ petitioners in fact did not work or render any service as the production of the Rupnarainpur Unit of the company stopped in 2003 and there was no work to be done thereafter, Learned Counsel relied on a decision of the Apex Court in the case of *J.N. Srivastava v. Union of India*, (1998) 9 SCC 559. Learned Counsel relied on the following observation of the Hon'ble Apex Court:-

"It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31-1-1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest."

51. The last decision relied on by Learned Counsel was that of the Hon'ble Apex Court in the case of *B. Prabhakar Rao v. State of AP*, (1985) Supp. 1 SC 432, in support of her contention that it is not permissible to arbitrarily reduce the age of retirement of the employees.

Company in reply:-

52. In reply, Mr. Sengupta, Learned Sr. Advocate submitted that the writ petitioners admitted that the company has no money. That is why they pray for a direction on the Union of India to put the company in funds for payment of the wages of the workmen for their service beyond 58 years of age. Hence, even if the court directs the company to pay it shall not be able to do so. It will be an order incapable of implementation. Even if contempt proceeding is filed for violation of the order of the court, the officers will contend that there is no money for paying the alleged claim of the petitioners. A non-implementable order should not be passed by the Writ Court. On the contrary, Section 33C(2) of the ID Act provides the proper forum. The Labour Court's Award can be executed under the Public Debts Recovery Act.

53. Finally, Learned Counsel submitted that the earlier Division Bench judgment is not binding on this court because:-

(i) The questions arising in the present proceeding were not considered by the earlier Division Bench.

(ii) The earlier judgment was passed in ignorance of the Hon'ble Supreme Court?

s judgment reported in (2009) 5 SCC 694 and hence was rendered per incuriam.

(iii) A decision is an authority for what it decides and not what is deducible from it. The earlier Division Bench did not decide any law.

(iv) If a Division Bench of a High Court is faced with a Supreme Court decision and a decision of an earlier Division Bench of the same High Court which cannot be reconciled, obviously the Supreme Court decision has to be followed.

Our View (In MAT 1446 of 2015)

54. The contention of the company is that the 1964 Standing Orders stipulate 58 years of age as the retirement age of the employees/workmen. Two extensions of one year each could be granted but it is nobody's case that such extensions were granted. The 1977 Standing Orders did not contain a clause relating to retirement of the employees and as such the 1964 Standing Orders would prevail. There was never any amendment to the 1964 Standing Orders following the procedure prescribed in law. To the extent there is inconsistency between agreements/settlements entered into by and between the Management and the workmen on the one hand and the Standing Orders on the other hand, the provisions of the Standing Orders would prevail.

55. On the other hand, the writ petitioners contend that the Industrial Employment (Standing Orders) Industrial Rules, 1946 which apply to the company, did not prescribe mentioning of retirement age at the time the 1964 and 1977 Standing Orders were framed. The requirement of having a retirement clause came in by way of amendment in 1983. Hence, the retirement clause mentioning age of superannuation as 58 years in the 1964 Standing Orders was superfluous and of no effect. The 1973 tripartite agreement and the subsequent 2001 bipartite agreement would be holding the field in so far as retirement age is concerned. Under both the agreements retirement age was stipulated as 60 years. Hence, according to the petitioners, they would be entitled to receive salary for the services rendered beyond the age of 58 years and up to the age of 60 years. On the contrary, the company contends that there was no occasion for the writ petitioners to render any service beyond the age of 58 years as from 2003 the production of the company had shut down.

56. We have noted in details the arguments advanced on behalf of the parties. We have given anxious consideration to the submissions of the parties. The subject matter of the writ petition is purely a monetary claim. The writ petitioners insist that they are entitled to salary and other benefits for service rendered between 58 years and 60 years of age while the company maintains that retirement age at all material times was 58 years and in any event, the employees, in fact, did not render any service beyond the age of 58 years. These are disputed questions of fact which, in our opinion, cannot be conveniently gone into in the exercise of writ jurisdiction. There is an alternative and much more efficacious statutory remedy available to the writ petitioners. Section 33C(2) of the Industrial Disputes Act provides for a mechanism for resolution of disputes

relating to a workman's claim for money or any benefit which can be computed in terms of money. The said Section is as follows:-

"S. 33C(2). Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate government.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

We are of the view that the claim of the writ petitioners projected in the present proceeding can be adjudicated properly, more conveniently and much more efficaciously by the Labour Court. It is the Labour Court which the writ petitioners should have approached instead of invoking the writ jurisdiction of this court.

57. The view we are taking is not only because of the existence of an alternative remedy. We are conscious that existence of an alternative remedy is not a complete bar to the maintainability of a writ petition. It is only a rule of self-imposed restriction that a court follows while exercising high prerogative writ jurisdiction under Article 226 of the Constitution of India. In several cases, including the case of Whirlpool Corporation (*supra*), the Apex Court has observed that availability of an alternative remedy per se does not denude the writ court of jurisdiction. Thus, in cases where the order/action challenged is without jurisdiction or the order has been passed or action taken in breach of the principles of natural justice, the writ court may be justified in entertaining an application under Article 226 of the Constitution in spite of an alternative remedy being available to the aggrieved party. However, that is not the case here. There is no reason why the writ petitioners should not approach the labour Court under Section 33C(2) of the ID Act.

58. Further, whether or not the writ petitioners, in fact, rendered service to the company beyond the age of 58 years is a question of fact that has to be established on the basis of proper evidence at a regular trial. If the writ petitioners did, in fact, render service to the company beyond the age of 58 years and till the age of 60 years, then and in that event, they should surely be entitled to receive salary for that period along with other benefits. This is irrespective of whether or not the retirement age was ever raised from 58 years to 60 years. The company having enjoyed services of the writ petitioners, it is only fair, just and equitable that the company should pay their salaries for that period. In that event, it would not lie in the mouth of the company to take the technical plea of the retirement age being 58 years.

However, if the company is able to establish that, in fact, the writ petitioners did

not render any service beyond the age of 58 years, the writ petitioners should not be entitled to any salary or other benefits beyond the age of 58 years. 'No work no pay', is an established principle of law.

59. In our considered opinion, the documents relied upon by the writ petitioners/respondents in respect of their contention that they served the company till the age of 60 years, are not conclusive. If the company is able to establish its case that since 2003 the Rupnarainpur Unit of the company was virtually lying closed and the writ petitioners showed attendance only on papers which were also prepared by them and their colleagues, it would be unfair to foist liability on the company for paying the wages and other benefits of the writ petitioners beyond the age of 58 years. That would also result in unjust enrichment of the writ petitioners. These are questions of fact, determination whereof requires a full-fledged trial with witness action, for which the writ court is not the forum. Labour Courts have been set up to entertain and adjudicate upon precisely the kind of dispute that is involved in the present writ proceeding.

60. Mr. Sengupta, Learned Sr. Counsel has urged before us that a simple money claim cannot be the subject matter of a writ petition. He relied on the Supreme Court decision in the cases of *M/s. Burmah Construction Company v. The State of Orissa* (supra) and *Suganmal v. State of Madhya Pradesh* (supra). We are, however, not impressed with such submission. The aforesaid two decisions of the Apex Court do not lay down any absolute principle of law that a money claim cannot be made the subject matter of a writ petition. It is true that ordinarily a Writ Court would not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a contract to pay money due to the claimant and would relegate the claimant to a civil suit. However, it cannot be said that the Writ Court does not have jurisdiction to direct the State or an instrumentality of the State or an authority under Article 12 of the Constitution to honour its financial obligation when such obligation is admitted or undisputed or beyond any doubt. In this connection reference may be had to the case of *ABL International Ltd. v. Export Credit Guarantee Corporation of India*, (2004) 3 SCC 553. However, in view of the nature of the disputes involved in this case as indicated above, this court is of the view that the Writ Court is not the appropriate forum for adjudication of such disputes.

61. It is also pertinent to note that in the case of *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* (supra), the Apex Court held that if salaries of the employees are not paid, their remedy is to proceed in accordance with law by approaching the forum under the appropriate labour legislation. A writ petition is not the appropriate forum. Further, in the case of *Kerala State Electricity Board v. Kurien E. Kalathil* (supra), the Apex Court held that a writ petition cannot be pressed into service for implementation of a clause in a contract. If a contractual term is violated ordinarily the remedy is not a writ petition. Hence, in the present case, even if the writ petitioners base their claim on the superannuation clause in the settlements arrived at by and between them and the management, writ

petition would not be the remedy.

62. Coming to the judgment and order impugned, we notice that the learned Judge at page 33 of the judgment observed that from the stand point of pure law and absolute logic the petitioners ought to have approached an industrial forum. The learned Judge also noted the decision in the case of *State of Uttarpradesh v. Uttar Pradesh Rajya Khanij Vikash Nigam Sangharsh Samity*, (2008) 12 SCC 675, wherein the Supreme Court observed that it is not a legal proposition that once a petition is admitted it cannot be dismissed on the ground of alternative remedy. However, the learned Judge felt that he was bound by the decision of the earlier Division Bench of this Court in WP No.14269 (W) of 2010, and accordingly allowed the writ petition.

63. We are of the view that the earlier Division Bench order dated 13 September, 2011 cannot operate as a binding precedent. The provision of Section 33C(2) of the ID Act was not brought to the attention of the earlier Division Bench. In fact, the question of alternative remedy was not urged at all before the court in that matter. Further, the Supreme Court decision in the case of *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* (supra), was not placed before the Division Bench. None of the issues raised in the present proceeding were urged before the earlier Division Bench. In our opinion, the earlier Division Bench order was passed per incuriam and as is settled law, a judgment or order passed per incuriam does not create a binding precedent. No law has been laid down in the earlier Division Bench judgment.

64. In this connection one may refer to the decision of the seven Judges Bench of the Hon^{ble} Apex Court in the case of *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602, wherein the Court observed that "per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account, to be demonstrably wrong. If a decision has been given per incuriam, the Court can ignore it. In *Government of A.P. v. B. Satyanarayana Rao*, (2000) 4 SCC 262, the Apex Court observed that the rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or a superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue.

65. One point that arose for consideration in the course of hearing is the effect of dismissal of the special leave petitions preferred by the company as well as the Union of India against the earlier Division Bench Order dated 13 September, 2011. Did the Division Bench order merge with the Supreme Court? By dismissing the special leave petitions, did the Hon^{ble} Supreme Court affirm the said Division Bench order? By reason of dismissal of the special leave petitions, does the earlier Division Bench order become final and binding?

These questions need not detain us for long. The law in this regard is well-

settled. The orders by which the Supreme Court dismissed the special leave petitions are one line orders. The said orders do not contain any reasons nor discuss the merits of the case. Although the order dated 30 June, 2014 by which the special leave petition of the Union of India was dismissed is to the effect that the petitions are "dismissed both on the ground of delay and merits", in fact, there is no discussion on the merits of the case.

66. As regards the issue of merger, in the case of Saurashtra Oil Mills Association, Gujarat v. State of Gujarat, 2002 AIR SCW 885, the Hon'ble Apex Court held that dismissal of a special leave petition without a speaking order would only mean that the court was not inclined to exercise its discretion in granting leave to file the appeal. It does not attract the doctrine of merger and the view expressed in the impugned order does not become the view of the Supreme Court. The dismissal of special leave petition by a non-speaking order would remain a dismissal simpliciter in which permission to file the appeal to the Supreme Court is not granted, which may be for various reasons.

In the case of Narcotics Control Bureau v. Dilip Pralhad Namade, 2004 (3) Scale 474, at paragraph 13 of the judgment the Hon'ble Apex Court observed as follows:-

"13.Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. See Union of India and others v. Jaipal Singh, 2003(7) Supreme 676. This court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage see Kunhayammed and others v. State of Kerala and another, (2000)6 SCC 359 and Sri Ramnik Vallabhdas Madvane and Ors. v. Taraben Pravinlal Madhvani, 2003 (8) Supreme 208"

In Union of India v. Jaipal Singh, (2004) 1 SCC 121, the Supreme Court reiterated that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by the Apex Court or constitute a binding precedent.

In Kunha Yammed v. State of Kerala, (2000) 6 SCC 359, a three Judges Bench of the Supreme Court held that the dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. Such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under

Article 226 of the Constitution or by moving a petition for review. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution. Dismissal of a SLP by the words ? dismissed on merits? would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. The Supreme Court does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order also cannot be affirmed at the SLP stage.

67. It may be noted that the Apex Court in the cases of *State of U.P. v. Om Prakash* (supra) and *Maharaj Krishan Bhatt v. State of Jammu & Kashmir* (supra) observed that Articles 14 or 16 of the Constitution cannot be pressed into service to perpetuate illegality. It is settled law that if one illegal action is taken, a person whose case is similar, cannot invoke Articles 14 or 16 and demand similar relief illegally.

68. We appreciate the dilemma of the learned Single Judge who was faced with the earlier Division Bench order. However, we respectfully disagree with the earlier Division Bench order and the same is also not binding on us as having been passed per incuriam as indicated above. The writ petitioners cannot base his case on an order passed earlier erroneously. Article 14 of the Constitution cannot be invoked to enforce a negative right. In this connection reference may be had to the decision of the Hon'ble Supreme Court in the case of *Indian Council of Agricultural Research v. T.K. Suryanarayan* (supra), wherein the Apex Court held that incorrect promotion either given erroneously by the department by misreading the Service Rules or pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetuating infringement of statutory Service Rules.

69. For the reasons aforesaid this appeal succeeds. The judgment and order impugned is set aside. This will, however, not prevent the writ petitioners/respondents from approaching the appropriate forum to enforce their claim in accordance with law and the procedure contemplated. There will be no order as to costs.

Our decision (In MAT 1860 of 2015)

70. Since we have set aside the judgment and order impugned, this appeal becomes of academic interest. However, we wish to make same observations

regarding the liability of the Union of India as regards the claim of the writ petitioners.

71. The company may be under the control of the Central Government. However, in law, it is a separate legal entity. The age old principle of law laid down in *Saloman v. Saloman*, (1897) AC 22, still holds fort. A limited company has an independent personality in the eye of law and has an identity separate from its shareholders or Board of Directors. Even a wholly held subsidiary of a company has an independent entity separate from that of the holding company. The Central Government may be the only or single largest shareholder of a limited company, but still the company has a distinct entity and its rights and liabilities cannot be attributed to the Central Government. Government companies do not become agents of the Government so as to bind the Government for their acts, liabilities and obligations as held by the Hon^{ble} Apex Court in the case of *Steel Authority of India Ltd. v. National Union Water Front Workers*, (supra). In *M/s. Electronics Corporation of India Ltd. v. Secretary, Revenue Department, Govt. of A.P.*, (supra), the Apex Court emphasised the clear distinction between a company and its shareholder even though the shareholder may be only one i.e. the Central Government or the State Government. In the case of *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* (supra), the Supreme Court observed that a trade union representing the employees of a cooperative society cannot, by filing a writ petition, require the Government to bear and pay the salaries of the employees of the cooperative society, however pervasive the control of the State Government over such society.

72. The position in law is thus settled. Even if the Government is the sole shareholder of a company, the liabilities of the company cannot be said to be the liability of the Government. No doubt, the principle of 'lifting of corporate veil' has made an inroad into the concept of distinct legal entity of a limited company or corporation. However, the circumstances in which the corporate veil of a limited company is pierced are still very limited and the present case definitely does not warrant application of the principle of lifting the corporate veil. It is true that in the case of *Kapila Hingorani*, (supra) the Supreme Court had directed the State Government to make payment of the workmen since the Government undertaking had no financial means for the same. However, as has been held by the Apex Court in the case of *State of U.P. & Anr. v. Uptron Employees' Union CMD* (supra), the judgment and order in *Kapila Hingorani's* case (supra) was passed in the peculiar facts of the case and cannot be read as laying down any law to the effect that the Government is liable to discharge the financial obligations of a Government company or a Government undertaking.

73. In view of the aforesaid, we are of the opinion that there is no legal obligation on the part of the Central Government/Union of India to meet the claim of the writ petitioners on account of alleged unpaid salary. However, we make it clear that this judgment shall not stand in the way of the Union of India providing funds to the company for meeting the alleged claim of the writ

petitioners, if the Union of India otherwise deems it fit and proper.

74. The appeal stands allowed. There will, however, be no order as to costs.

75. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

Manjula Chellur, C.J. and Arijit Banerjee, J. - I Agree.

Later:-

76. After judgment is delivered, prayer is made for stay of operation of the judgment on behalf of the respondents. The prayer is considered and rejected.