

(1994) 08 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No's. 3124, 3125 and 3917 of 1993

Parry and Co. Ltd.

APPELLANT

Vs

Second Addl. Labour Court and others

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33

Citation : (1994) 08 MAD CK 0036

Hon'ble Judges : Somasundaram, J;K.A. Swami, J

Bench : Division Bench

Advocate : P. Chidambaram, for the Appellant; K.T. Palpandian, for the Respondent

Judgement

Somasundaram, J.—These writ petitions are filed to quash the common order dated October 12, 1992, passed by the first respondent in a

batch of claim petitions filed by the employees of the petitioners u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the

Act"), directing the petitioners to pay various sums to the employees as retiring allowance pension in terms of General Office Order No. 26

(hereinafter referred to as G.O.O. 26), dated December 1, 1943. As these three writ petitions arise out of the common order of the Labour Court

and the points involved in them are same, they are disposed of by this common order.

Writ Petition No. 3124 of 1993 relates to the employees in Parry and Company Limited, while Writ Petition No. 3125 of 1993 relates to the

workmen in E.I.D. Parry (India) Ltd. Writ Petition No. 3917 of 1993 relates to eight employees in Parry and Company. The three writ petitions

cover 245 employees. Of these 56 were recruited prior to January 1, 1947, and 189 were recruited after January 1, 1947. E.I.D. Parry (India)

Ltd., the petitioners in Writ Petition No. 3125 of 1993, has factories and commercial establishments and one such factory is at Ranipet. Parry and

Company Ltd., a subsidiary company has only commercial establishments. The claim by the employees was u/s 33-C(2) of the Act seeking to

compute the pension payable to each of the employees as per G.O.O. 26 and for a direction to pay the same with interest at 12 per cent per

annum from May 2, 1991, onwards. The claim petitions were opposed by the petitioners on the grounds of maintainability as well as on factual

aspects. The petitioners opposed the claim petitions contending that the claim of the employees u/s 33-C(2) of the Act was barred by the principle

of res judicata by reason of the award in I.D. No. 55 of 1968 as confirmed by the order of a Division Bench of this Court in Writ Petition No.

4696 of 1975, dated October 19, 1978, and cannot be sustained because, the benefit could not be computed in terms of money as there is no

award or settlement entitling the employees to the benefit of pension. It was also contended that most of the employees had retired under a

voluntary retirement scheme. It was further contended on behalf of the petitioners that G.O.O. 26 has to be read along with subsequent settlements

and the prevailing practice between 1956 and 1985. The further case of the petitioners in the claim petitions was that only one of the benefits,

namely, pension or gratuity was being extended to the employees. According to the petitioners, after coming into force of the Payment of Gratuity

Act, 1972, the pension scheme of the petitioners under G.O.O. 26 got scrapped automatically.

3. The Labour Court, after considering the rival contentions of the parties, by the common order dated October 12, 1992, came to the conclusion

that the claim petitions filed by the employees were not barred by the principle of res judicata. The Labour Court following the interpretation

placed by a Division Bench of this Court in Writ Appeals Nos. 864 to 870 of 1988, on G.O.O. 26, as confirmed by the Supreme Court in The

General Manager, E.I.D. Parry (India) Ltd. Vs. The Presiding Officer, 2nd Addl. Labour Court, Madras and others, held that the employees are

entitled to get the retiring allowance as per the said G.O.O. 26. The Labour Court also found that the employees who retired voluntarily under the

voluntary retirement scheme and the employees retrenched from service are also entitled to get the retiring allowance. The Labour Court further

held that the petitions filed by the employees u/s 33-C(2) of the Act for computation of pension in terms of G.O.O. 26 are maintainable. The

Labour Court accepted the computation made by the employees in their respective claim petitions and consequently in respect of each of the

employees a lump sum amount being the arrears of pension was directed to be paid on or before December 31, 1992, and in default the said

amounts were to carry interest at 12 per cent per annum from January 1, 1993. The said common order of the Labour Court, dated October 12,

1992, is being challenged by the petitioners in these writ petitions.

4. Mr. P. Chidambaram, learned senior counsel appearing for the petitioners, submitted that the impugned order of the Labour Court passed on

the petitions u/s 33-C(2) of the Act is illegal and liable to be set aside on the following grounds :

(a) The conclusion of the Labour Court that the judgment of the Division Bench in Writ Appeals Nos. 864 to 870 of 1988 as confirmed by the

Supreme Court should apply to the present case is not correct in view of the specific observation of the Supreme Court in paragraph 8 of the

judgment reported in E. I. D. Parry (1) Ltd. v. Labour Court, (supra). Further, Parry and Company Limited was not a party to those proceedings.

Of the 245 workmen involved in the present writ petitions, 205 belonged to Parry and Company Limited. Further, both before the Division Bench

and the Apex Court, the documents now placed were not placed and that they reached a conclusion on the basis of the materials placed before

them. In the present proceedings, the employees are not entitled to the retiring allowance under G.O.O. 26 on the basis of the decision in E.I.D.

Parry (1) Ltd. v. Labour Court, (supra).

(b) The order in Writ Petition No. 3029 of 1971, the award in I.D. No. 55 of 1968, and the order of the Division Bench in Writ Petition No.

4696 of 1975 are binding upon the parties, that the demand of the employees proceeded on the basis that post-1947 employees did not have a

right to for retiring allowance in lieu of gratuity and that such an option should be given to them, that the said demand was rejected in I.D. No. 55

of 1968, which was confirmed by the Division Bench of this Court in Writ Petition

No. 4696 of 1975 and that the finding conclusions in the

aforesaid judicial orders constitute a resjudicata and, therefore, it is not open to the workmen in the present proceedings to claim that the post -

1947 employees had always the right to opt for retiring allowance in lieu of gratuity.

(c) After the award in I.D. No. 55 of 1968, the employees raised a demand on December 1, 1975, for optional retiring allowance and this was

settled by the demand being given, by the settlement dated April 21, 1978, that subsequently a demand for retiring allowance in addition to gratuity

was made on January 22, 1981, and this demand was settled by the demand being given up in the settlement dated May 17, 1985. According to

learned senior counsel for the petitioner, the workmen further agreed that no dispute would be raised in respect of these matters and in the light of

the two settlements referred above, particularly the settlement dated May 17, 1985, the employees are not entitled to claim any right for retiring

allowance either in lieu of gratuity or in addition to gratuity.

(d) Proceedings u/s 33-C(2) of the Act is in the nature of execution proceedings and that such proceedings must be based on existing rights.

Learned senior counsel further contended that on November 18, 1974, when the award in I.D. No. 55 of 1968 was made, it was held that there

were no existing right to claim retiring allowance in lieu of gratuity, that subsequently by the settlements dated April 21, 1978, and May 17, 1985,

the employees affirmed that they have no such existing right and that unless the employees are able to point a source of right arising after May 17,

1985, there is no question of computing such a right in the proceedings u/s 33-C(2) of the Act. According to learned senior counsel, if the

settlements exists and continue to operate, no claim can be made u/s 33-C(2) inconsistent with the said settlement. Therefore, the present claim

petitions u/s 33-C(2) are not maintainable.

(e) The employees of the petitioners are not entitled to claim retiring allowance in the proceedings u/s 33-C(2), in view of their earlier conduct.

Throughout the employees have based their claim on the fact that the option for retiring allowance was in lieu of gratuity and that was available only

to the pre-1947 employees and the present claims in the petitions that retiring allowance is in addition to gratuity and that it was a right available to

both the pre-1947 and post-1947 employees runs contrary to the consistent stand of the employees between 1966 and 1985, and, therefore, this

Court should not countenance such inconsistent plea of the employees.

(f) In any event the case of workmen who left the services of the petitioners under the voluntary retirement scheme or whose services were

terminated by way of retrenchment would stand on a different footing and they are not entitled to the retiring allowance under G.O.O. 26, in view

of clause (4) of the said General Office Order.

Mr. K. T. Palpandian, learned counsel for the contesting respondents/employees, submitted that there is no merit in any one of the grounds raised

by learned senior counsel for the petitioners and that the common order of the Labour Court challenged in these writ petitions is just, legal and is

not liable to be quashed. Learned counsel for the respondents also contented that the three writ petitions filed at the instance of the management

against the common order of the Labour Court dated October 12, 1992, disposing of 245 claim petitions filed u/s 33-C(2) of the Act are not

maintainable.

5. In the light of the rival contentions of counsel for the parties, the following points arise for consideration in these writ petitions.

(1) Whether the three writ petitions filed at the instance of the management challenging the common order of the Labour Court dated October 12,

1992, disposing of 245 claim petitions filed u/s 33-C(2) are maintainable ?

(1A) Whether, the employees of the petitioners are entitled to receive retiring allowance/pension under G.O.O. 26, dated December 1, 1943, and

whether the decision of the Supreme Court in E.I.D. Parry (I) Ltd. v. Labour Court, (supra) has to be confined to the workmen of the Ranipet

Factory of E.I.D. Parry (I) Limited and cannot be invoked in support of the claim of the workmen employed in the establishments of the petitioners

for retiring allowance/pension under G.O.O. 26 ?

(2) Whether the right of employees of the petitioners to claim retiring allowance/pension under G.O.O. 26 has been negated by the order of this

Court dated March 5, 1974, in Writ Petition No. 3029 of 1971, and by the award in I.D. No. 55 of 1968, as confirmed by the order of a Division

Bench of this Court in Writ Petition No. 4696 of 1975, dated October 19, 1978, and whether the order in Writ Petition No. 3029 of 1972 and

the award in I.D. No. 55 of 1968 as confirmed by the order in Writ Petition No. 4696 of 1975 will operate as res judicata and whether it is not

open to the employees of the petitioners to claim retiring allowance/pension in the proceedings u/s 33-C(2) of the Act ?

(3) Whether the employees of the petitioners by entering into the settlements dated April 21, 1978, and May 17, 1985, have given up their rights

to claim retiring allowance/pension under G.O.O. 26, dated December 1, 1943 ?

(4) Whether there is an existing right available to the employees of the petitioners to claim retiring allowance under G.O.O. 26 and whether the

petitions filed by the employees of the petitioners u/s 33-C(2) for computation of retiring allowance as per G.O.O. 26 are maintainable ?

(5) Whether the employees of the petitioners are not entitled to claim retiring allowance in addition to gratuity in the proceedings u/s 33-C(2) of the

Act, in view of their earlier conduct ?

(6) Whether the employees who served for 20 years and above but below 30 years and who retired under the voluntary retirement scheme are

entitled to receive the retiring allowance under G.O.O. 26 ?

(7) Whether the employees who served for 20 years and above but below 40 years and who retired on reaching the age of superannuation are

entitled to receive the retiring allowance under G.O.O. 26 ?

(8) Whether the employees whose services were terminated by way of retrenchment are entitled to receive the retiring allowance under clause 4 of

General Office Order 26 ? and

(9) Whether the employees with 30 years of service and more and who retired under the voluntary retirement scheme are entitled to receive the

retiring allowance under G.O.O. 26 ?

Point No. 1. - Learned counsel for the respondents contended that the management has filed three writ petitions; Writ Petition No. 3124 of 1993

has been filed against the common order of the Labour Court disposing of 199 claim petitions. Writ Petition No. 3125 of 1993 has been filed

against the common order disposing of 38 claim petitions and Writ Petition No. 3917 of 1993 has been filed against the common order in eight

claim petitions, that the management ought to have filed separate writ petition against the order in each claim petition filed u/s 33-C(2) and that the

three writ petitions filed against the common order dated October 12, 1992, disposing of 245 claim petitions are not maintainable. In support of the above contention, learned counsel for the respondents relied on the order of Bakthavatsalam J., in Writ Petition No. 12995 of 1993. We are unable to accept the above Contention of learned counsel for the respondents. As against the order of Bakthavatsalam, J., in Writ Petition No. 12995 of 1993, holding that a single writ petition filed against the common order disposing of several claim petitions filed u/s 33-C(2) of the Act at the instance of the management is not maintainable, the management filed Writ Appeal No. 332 of 1994. A Division Bench of this Court by the judgment dated June 25, 1994, in Writ Appeal No. 332 of 1994 (See E.I.D. Parry (India) Ltd. Vs. Labour Court and Others, reversed the order of Bakthavatsalam J., in Writ Petition No. 12995 of 1993, holding that a single writ petition filed by the management against the common order of the Labour Court disposing of several claim petitions filed u/s 33-C(2) of the Act is maintainable. The Division Bench in the said writ appeal held as follows :

The learned single Judge has relied on the judgment of a Division Bench of this Court in Sellakumar Talkies v. Board of Revenue, (1984) WLR (Suppl.) 113, in support of his conclusion that one writ petition is not maintainable in the present case. The observation relied on by the learned Judge is really obiter. On the facts of the case, the Bench found that one writ petition was maintainable, as the Commissioner for Land Revenue had consolidated 18 revision petitions and given only one number to the said proceeding. The Bench said that the ratio laid down in the case of Chandrabhan Gosain v. State of Orissa, (1963) 14 STC 918, was applicable to the said case and extracted the relevant portion from the judgment of the Supreme Court. Thereafter, the Bench observed :

The position, however, would be otherwise if the board had treated all the revisions before it as different proceedings giving them different numbers and disposing them all by a common order. That would necessitate filing separate writ petitions in the High Court as ordinarily and generally as many writ petitions as there are orders complained of and sought to be quashed have to be filed. Where the order complained of has been passed in different cases, the order, though one, is really as many orders as there are

cases requiring separate writ petitions for challenging those orders.

There are no rules relevant on the point framed by the High Court under Article 226 of the Constitution. Nor the procedural rule made under

Article 226 would have the effect of substantial law, as held by the Supreme Court in the case of Prabhu Narayan Vs. A.K. Srivastava, . All that

we find is that a fee of Rs. 100 has to be paid for each writ petition under Schedule H of Article 11-A of the Tamil Nadu Court Fees and Suits

Valuation Act, 1955, other than a writ of habeas corpus or a petition under Article 227 of the Constitution. The Court may, therefore, insist that

where there are a number of cases disposed of by a common order, there should be as many writ petitions registered as there are cases in which a

common order was passed. This is a self-imposed limitation adopted by the Court in exercise of its own power under Article 226 and does not

flow from the ambit of power under Article 226 of the Constitution. The observation made in the above passage was wholly unnecessary for the

disposal of that case. We are unable to accept that whenever different numbers are given in the proceedings before a Tribunal or a Lower Court,

there should be different writ petitions challenging the orders in those proceedings. As pointed out in the above passage itself, there is no limitation

imposed or procedure indicated under Article 226 of the Constitution. The rules framed by the High Court under Article 225 of the Constitution

do not contain any provision applicable to the present case. Neither rule 2-A nor Rule 2-B will come into play. The question has to be decided

only on first principles. Under the Code of Civil Procedure, appeals are against the decrees. Hence, there must be an appeal against each decree

because there will be a separate decree in each suit. Therefore, even if there is one common judgment in several suits, an appeal has to be filed

against each decree is not applicable. (See Explanation to Section 141 of the Civil Procedure Code, 1908). If the common award of the Labour

Court is quashed, the orders in favour of the claimants get nullified. If all the claimants are made parties to the writ petition, the requirements of law

is satisfied. The matter considered in the order is common to all the employees. In fact, by consent of both the parties, the petitions were all heard

together and evidence was recorded in common. The Labour Court has not gone into the individual claims of each employee. In the absence of

any express Rule insisting on a separate writ petition against each claim petition, one writ petition will suffice.

We are in entire agreement with the view expressed by the Division Bench of this Court in Writ Appeal No. 332 of 1994 (See E. I. D. Parry

(India) Ltd. v. Labour Court (Supra)). Accordingly on point No. 1, we hold that the three writ petitions as filed by the management are maintainable.

Point No. 1-A - The claim petitions out of which these writ petitions arise were filed by the employees of the petitioners to compute the benefits

available to them under General Office Order 26. A scheme was formulated by the petitioners for pension which is called retiring allowance as per

G.O.O. 26 marked as exhibit P-1 in the batch of claim petitions filed by the employees G.O.O. 26 reads thus :

Non-covenanted Staff Retirement Benefits : Retiring allowance. - (1) Normally, only employees with 30 years of service or more are eligible to

receive a retiring allowance. 2. Until further notice, the basis on which monthly retiring allowance will be calculated will be the sum of the following;

(a) 10 per cent of the last monthly basic salary drawn

(b) A bonus for grade, as follows :

(i) Non-covenanted staff (including lower grade employees) other than those categories specified under sub-clause (ii) below;

Nil

(ii) senior stenographers, senior salesmen and senior or grade V clerks, erectors and service engineers, work staff grade W.V. & W.X. and cane

assistant inspectors and inspectors in grades A and B.

Rs. 5

(c) A graded service bonus for service over 30 years.

(i) Non-covenanted staff (including lower grade employees) other than those categories specified under sub-clause (ii) below;

Re. 1 per year of service over 30 years (ii) Senior stenographers, senior salesmen and senior or grade V clerks, erectors and service engineers,

work staff grades W.V. and X.W. and cane assistant inspectors in grades A and B.

Re. 1.50 per year of service over 30 years

(d) One half of the average monthly dearness allowance drawn during the twelve

months preceding retirement.

(3) The Board reserves the right to alter the scale of retiring allowances, either generally or in respect of individuals in the light of circumstances that may exist at any particular time.

(4) The Board may also grant proportionate retiring allowances to those retired on reaching the age of superannuation, that is to say, on completing

the age of 55, or those who have to retire on account of reasons beyond their control, and have completed more than 20 years, e.g. an employee

retiring after 25 years service would be granted a retiring allowance calculated at 25th/30th of the amount arrived at as per para 2 supra.

(5) All retiring allowances must receive the formal sanction of the Board when first granted, and thereafter, they will be subject to an annual review.

(6) For the purpose of the annual review, the average rate of dearness allowance paid during the preceding twelve months and applicable to the

grade of each retired employee will be taken into consideration and the necessary upward or downward adjustment will be made accordingly.

Gratuities

1. All permanent employees (other than workers who qualify for gratuities as per factory certified standing orders) who were in the company's

service prior to January 1, 1947, and who do not qualify for a retiring allowance on retirement, will be eligible for gratuity on finally leaving the

company's service subject to one or other of the following conditions being fulfilled.

(a) That the employee's continuous service with the company has been not less than 15 years.

(b) That the employee's services are terminated on account of illness certified by the company's Medical Officer or a Medical Officer appointed

by the company for such purposes, whose certificates shall be final and binding.

(c) Death of the employee (in which case the gratuity is payable to his dependents).

(d) Retirement of the employee at the age of 55 or thereafter.

2. If an employee is dismissed by the company for misconduct, or after his voluntary resignation or retirement the company has evidence to prove

that there were in existence circumstances which would have justified dismissal, such an employee will not be entitled to the payment of gratuity.

3. The gratuity will be arrived at by taking 10 per cent of the sum resulting from multiplying the rate of basic pay drawn by the employee during his last month of service by 12 and multiplying this by the number of completed years of service of the employee as at December 31, 1946. From this sum will be deducted the total of all sums contributed by the company to the employer's provident fund account with interest thereon, from the date of his joining to December 31, 1946.

6. G.O.O. 26 consists of two parts. As per the first part containing six clauses, there is conferment of retiring allowance/pension subject to the terms set out thereon. The second part of G.O.O. 26 deals with conferment of gratuity. The sum and substance of G.O.O. 26 can be stated as follows :

Employees with 30 years of service or more are eligible to receive a retirement allowance which is called pension. The Board of management has to sanction the pension when first granted and, thereafter, the pension is subject to annual review. All the employees in service prior to January 1, 1947, called the pre-1947 employees who had not qualified for pension on retirement would be eligible for gratuity. All the post-1947 employees would not be entitled to any gratuity. There was a settlement between the management and the employees on April 19, 1956, marked as exhibit R-2 in the claim petitions. This settlement dated April 19, 1956, while laying down revision of the terms of service of the employees dealt with gratuity in clause IV thereof, clause IV(d) deals with pre-1947 employees which reads thus :

(d) Employees in service prior to January 1, 1947, may opt at the time of leaving service either for :

(i) gratuity calculated in accordance with these rules or in accordance with the current provisions of General Office Order 26, whichever he prefers, or

(ii) in lieu of a gratuity, a retiring allowance calculated in accordance with the current provisions of General Office Order 26.

7. Clause IV(d) gives the option to the pre-1947 employees to have one or other of the three benefits. One is gratuity calculated in accordance with the terms laid down in the settlement. The second one is gratuity calculated in accordance with the current provisions of G.O.O. 26. The third

one is in lieu of gratuity a retiring allowance calculated in accordance with the current provisions of G.O.O. 26. So far as the post-1947 employees are concerned their right to receive retiring allowance as per G.O.O. 26 has not been touched. The Payment of Gratuity Act, 1972 (Act 39 of 1972), came into force on September 16, 1972. Until the Act came into force, G.O.O. 26 and the settlement dated April 19, 1956, governed the relevant aspects. In 1973, the management refused to pay pension to the retiring employees taking the stand that after coming into force of the Payment of Gratuity Act, 1972, the pension scheme stood statutorily scrapped. In the above circumstances, the employees of the petitioners filed claim petitions before the first respondent, out of which these writ petitions arise, claiming amounts as representing the quantum of pension denied to them. Before proceeding further, we must also refer to the General Office Order 1 of the petitioners which deals with the effect of office orders of the companies in the following terms :

1. General office orders. - These are permanent orders for application in head office, all branch offices and to staff employees in factories.

The scope of G.O.O. 26 and the effect of the settlement dated October 23, 1956, which is similar to the settlement dated April 19, 1956, referred

to above, came up for consideration before the Supreme Court in E. I. D. Parry (I) Ltd. v. Labour Court (supra) in the following circumstances :

In that case also, the retired employees of the Ranipet factory of E.I.D. Parry (India) Ltd. filed claim petitions u/s 33-C(2) of the Act for

computation of retiring allowance due to them as per G.O.O. 26. Simultaneously, the union of the employees also raised an industrial dispute

seeking restoration of pension and the following dispute was referred for adjudication by the Industrial Tribunal in I.D. No. 60 of 1982.

Whether the demand for restoration of pension to the staff employees is justified ?

8. The claim petitions were allowed on May 30, 1983, by the Second Additional Labour Court, Madras. However, the Industrial Tribunal in I.D.

No. 60 of 1982, held that the demand for restoration of pension was not justified by the award dated February 15, 1985. Both the orders were

challenged in Writ Petitions Nos. 7741 of 1983 and 3637 of 1985 and a learned single Judge of this Court upheld the stand of the management in

both the cases. On appeal by the employees, in Writ Appeals Nos. 864 to 870 of 1988, a Division Bench of this Court by judgment dated

November 21, 1988, set aside the judgment of the learned single Judge and held in favour of the workmen in both the claim petitions as well as in

the industrial dispute. The Division Bench in Writ Appeals Nos. 860 to 870 of 1988, by the judgment dated November 21, 1988, while allowing

the writ appeals interpreted G.O.O. 26 and clause VI(d) of the settlement dated October 23, 1956, which corresponds to clause IV(d) of the

settlement dated April 19, 1956, with which we are concerned in the present proceedings, and held as follows :

4. The present dispute is only with reference to disbursement of pension or what is called "retiring allowance.

For convenience sake, we shall call it "pension". As already noted, G.O.O. 26 by its first limb has conferred the benefit of pension, subject to the

terms, set out therefor. The second limb has dealt with gratuity. By the settlement of October 23, 1956, under which there was a revision of the

terms of service with the management, the aspect of gratuity has also been dealt with. Clause 6(d) speaks about three fold options available to the

pre-1947 employees. We shall cull out from these documents, the implications with reference to pension. The retiring employees for the purpose of

gratuity alone have been categorised under two heads : (i) the pre-1947 employees and the post-1947 employees. Both the categories are eligible

for pension, if they satisfy the terms therefor, by force of the first limb of G.O.O. 26. The second limb of G.O.O. 26 qualified and curtailed the

award of gratuity only, making a distinction between the pre-1947 employees and the post-1947 employees, with which aspect we are not directly

concerned here. But, it must be noted that the conferment of the benefit of pension as per the terms of the first limb of G.O.O. 26 has not been

touched by its second limb dealing with gratuity. As already noted, there were standing orders certified in December, 1953, laying down the norms

for pension and gratuity and the position reflected in the standing orders was more or less the same, except for variation with regard to the

qualifying period of service. We are refraining from referring to these standing orders, because an argument on behalf of the management was

advanced before and accepted by the learned single Judge that these standing orders could not have sanctity in the eye of law on account of the

subjects covered by them having not been provided for in the statute governing the framing of the, standing orders. We find that the controversy could be tested and resolved de hors these standing orders. The settlement of October 23, 1956, dealt with also gratuity while setting the revision of the terms of service. Clause 6(d) thereof dealt with options to the pre-1947 employees with regard to gratuity. One of the three options as per clause 6(d)(ii) is to get pension in lieu of gratuity. If opted for, pension alone would be payable and gratuity will not be paid. By specific terms of this clause, there has been no abrogation, no mutation and not taking away of the conferment of pension, either on the pre-1947 employees or on the post-1947 employees. It only speaks about gratuity being lost and not available to the pre-1947 employees if they opt for pension. At the risk of repetition, we must say that this clause in the settlement of October 23, 1956, dealt with only gratuity for the pre-1947 employees. In any event, it does not at all touch the post-1947 employees, even on the question of gratuity. Before September 16, 1972, when the Act came into force, the term denying gratuity to the post-1947 employees and the term regarding option giving up gratuity and taking pension in lieu thereof were certainly workable and no exception could be taken to them in law. These arrangements or bargains struck inter se the parties in the concern could survive only until the Act came into force. After the coming into force of the Act, there could not be a denial of gratuity to any particular category of employees and in particular the post-1947 employees, despite their coming within the ambit of the Act. Prior to the Act, by opting for and accepting pension, the pre-1947 employees could have forgone, gratuity. But the Act brought about a drastic change providing for an uniform scheme for the payment of gratuity in all the concerns covered by the Act. With regard to the pre-1947 employees, the question that arises for consideration is, if they opt for pension, should they lose gratuity ? Though this question does not strictly arise for consideration by us in the present matters, yet we must point out that the provisions of the Act will have overriding effect on the question of gratuity and the implications of Section 14 of the Act cannot be lost sight of. In our view, clause 6(d)(ii) of the settlement of October 23, 1956, has only a limited relevance on the question of pension. It squarely deals with gratuity, and it merely states that if the pre-1947 employees opt for pension, they will have to be content

with that and forego gratuity. It does not by itself confer any right to pension, which stands already conferred under G.O.O. 26, and it does not take away by its specific terms the right to pension. There are two independent benefits conferred on the employees - one gratuity and the other pension. There having been qualification and curtailment with regard to gratuity in G.O.O. 26, in the pre-1947 employees if they are not eligible for pension, shall get gratuity and the post-1947 employees are not at all eligible for gratuity. The settlement of October 23, 1956, denied gratuity to the pre-1947 employees if they opt for pension. These clauses, so far they deny gratuity which is now a statutory conferment, cannot survive and since they come into conflict with the provisions of the Act. But, by the reading of any of these documents, never an implication factual could be spelt out, to say that the benefit of pension conferred on the employees, be they so, the pre-1947 or the post-1947, has been taken away from them. Regarding clause 6(d)(ii) of the settlement of October 23, 1956, it is not a case of the pre-1947 employees losing their right to pension on account of the payment of gratuity or to put it in other words, it is not a case of payment of gratuity in lieu of pension. If the pre-1947 employee opts for pension, he will lose the right to gratuity. The converse position that if he opts for gratuity he will lose his right to pension is not one expressed in the settlement of October 23, 1956. We do not find a warrant to imply the same. To read these documents in any other manner will be putting a premium on the express language used therein and bringing in and inserting into them something not found therein. They have treated pension and gratuity as two different concepts. How far the qualifications and curtailments regarding gratuity could survive after the coming into force of the Act is a different question, which we are not called upon to directly answer here. While trying to answer the question that directly arises for consideration here, we are obliged to refer to the implications and impact of the coming into force of the Act. Until the Act came into force, the curtailment of gratuity to a particular category of employees and giving options to another category of employees were perfectly workable. After the Act, they come into conflict with the provisions of the Act. Gratuity could not be totally curtailed for a particular category of employees and equally so that on the exercise of option for pension, which is an independent benefit, there could not be a losing of gratuity, which

stands protected under the Act.

With this background, and the factual concept set clear as above, we proceed to consider the contention of the management that the pension

scheme stood statutorily scrapped after the coming into force of the Act. The Act is a piece of legislation forming a milestone in the annals of labour

welfare schemes in this country. Gratuity, as the term itself suggests, is a gratuitous payment given to an employee on discharge or retirement. The

Act is not intended to do away with other retiral benefits already existing and available to the employees. In brief the Act, the legislation clearly

intended to confer extra benefits on the employees. The Court, while construing the provisions of the Act, which is a piece of social legislation,

must construe them so as to help achieving the object of the legislation. The retiral benefits which stood conferred already on the employee do not

militate against the benefit of gratuity. The endeavour must be to see that the retiral benefit schemes already existing and the scheme of gratuity

under the Act co-exist in a concern.

In paragraph 9 of the said judgment, the Division Bench of this Court, further held as follows :

9. In the present matters, the learned single judge, after adverting to the two pronouncements - one of the Supreme Court of India and the other

of the Bench of the High Court of Calcutta, already referred to by us has drawn factual inference with regard to the present matters with which we

are not able to concur, in view of our discussion of the factual implications. The learned single Judge is of the view that the two benefits, namely,

pension and gratuity, are only available to the employees in the alternative and the employees generally are entitled to claim only gratuity and not

pension and the pre-employees referred to in clause 6(d) of the settlement of October 23, 1956, are given the option to prefer one or the other.

This view, we could not adopt and sustain, and we differ from the same.

Ultimately, the Division Bench, while allowing the writ appeals and Writ Petition No. 3637 of 1985, directed that there will be an award in I.D.

No. 60 of 1982 restoring the pension scheme as it prevailed with the management prior to September 16, 1972, the date of coming into force of

the Payment of Gratuity Act. Aggrieved by the said judgment of the Division Bench of this Court, E.I.D. Parry (India) Limited filed appeals before

the Supreme Court. The Apex Court, in *E. I. D. Parry (i) Ltd., v. Labour Court*, (supra), while confirming the judgment of the Division Bench in

Writ Appeals Nos. 864 to 870 of 1988, held as follows (at page 284) :

We are satisfied that the Appellate Bench of the High Court was right in holding that the entitlement to pension had not been substituted by the

settlement of 1956, and, therefore, the claim to pension subject to qualification being satisfied was available to be maintained notwithstanding the

settlement of 1956. The High Court rightly came to the conclusion that the Labour Court had justifiably worked out the dues and the claim

petitions u/s 33-C(2) of the 1947 Act. We uphold the judgment of the High Court and dismiss these appeals"".

9. In the above decision, the Apex Court, on a consideration of the terms of G.O.O. 26 and the relevant clauses in the 1956 settlement

countenanced the plea of the employees that entitlement of pension under G.O.O. 26 had not been substituted by the 1956 settlement and,

therefore, the claim of the employees to pension under G.O.O. 26 is available to be maintained notwithstanding the 1956 settlement. It is not in

dispute that the Division Bench of this Court in Writ Appeals Nos. 864 to 870 of 1988, and the Apex Court in *E. I. D. Parry (I) Limited v. Labour*

Court, (Supra) held that the right to retiring allowance is contained in G.O.O. 26, that the 1956 settlement or the subsequent Payment of Gratuity

Act did not take away this right to retiring allowance and that ad employees pre-1947 as well as the post-1947 employees were entitled to both

the benefits, namely, the retiring allowance under G.O.O. 26 and gratuity under the Payment of Gratuity Act, 1972. However, the learned senior

counsel for the petitioners relied on the following observations of the Supreme Court in *E. I. D. Parry (I) Limited v. Labour Court*, (supra) in order

to distinguish the said decision of the Supreme Court and in support of his contention that the above decision will not apply to the facts of the

present case (at page 284).

Mr. Narayanaswamy had emphatically contended that what was being decided was not a claim of 347 employees but it had its repercussion on

the industrial peace between the employer and the employee at other places. We would like to make it clear that we have gone into the question

confined to the claim of the employees of the Ranipet factory and not the liability

of the employer generally. Besides, Mr. Narayanaswamy had also told us at the bearing that there are special features in the arrangement in regard to employees elsewhere.

The special features in the arrangements in regard to the employees elsewhere"" mentioned in para. 8 of the decision in E. I. D. Parry (I) Limited v.

Labour Court, (Supra) according to the senior counsel for the petitioners, relate to the plea of res judicata put forth by the petitioners in the present

cases and the further plea that the employees of the petitioners by entering into settlements dated April 21, 1978, and May 17, 1985, have given

up their rights to claim retiring allowance under G.O.O. 26. We propose to deal with those aspects later under points Nos. 2, 3 and 5.

10. We have already referred to G.O.O. 1 which says that the General Officer Orders are permanent orders for application in head office, all

branch offices and to staff employees in factories. We must point out that E.I.D. Parry (1) Limited - the petitioner in W.P. No. 3125 of 1993 - has

factories and commercial establishments and one such factory is at Ranipet. Parry and Company Limited is a subsidiary company and has only

commercial establishments and those cases relate to commercial establishments of both E.I.D. Parry (India) Limited and Parry and Company. We

must also point out that the Division Bench of this Court in Writ Appeals Nos. 864 to 870 of 1988 and the Apex Court in E. I. D. Parry (India)

Limited v. Labour Court, (Supra) in the cases relating to the workmen of the Ranipet factory of E.I.D. Parry (India) Limited interpreted the very

same G.O.O. 26 and the settlement dated October 23, 1956, which is similar to the settlement dated April 19, 1956, with which we are

concerned in these cases and on a construction placed on the relevant terms of G.O.O. 26 and the relevant clauses in the 1956 settlement, the

Division Bench of this Court as well as the Apex Court came to the conclusion that by the 1956 settlement, the right of pension available to the

employees under G.O.O. 26 is not impaired and, therefore, the workmen, of the Ranipet factory of E.I.D. Parry (I) Limited are entitled to claim

retiring allowance under G.O.O. 26. In as much as G.O.O. 26 concerned in the proceedings which culminated in the decision of the Apex Court in

E. I. D. Parry (I) Limited v. Labour Court, (Supra), and in the present proceedings is common and the 1956 settlement is similar in both the cases,

the ratio of the above decision of the Apex Court in interpreting G.O.O. 26 and the effect of the 1956 settlement on G.O.O. 26, will equally apply

to the facts of the present cases. When the Apex Court has interpreted the scope of G.O.O. 26 and the effect of the 1956 1 settlement on G.O.O.

26 in a particular manner, it is not at all possible for us to place a different interpretation on the very same documents. Therefore, we are bound to

follow the interpretation placed by the Apex Court on G.O.O. 26 and the 1956 settlement in E. I. D. Parry (I) Limited v. Labour Court, (Supra)

and if we apply the ratio of the said decision of the Supreme Court to the facts of the present case, we have no hesitation in coming to the

conclusion that the employees of the petitioners are entitled to claim retiring allowance under G.O.O. 26

In view of the specific observation of the Supreme Court in para. 8 of the judgment that it has gone into the question confined to the claim of the

employees of the Ranipet factory and not to the liability of the employer generally, we are relying on the decision of the Supreme Court in E. I. D.

Parry (I) Limited v. Labour Court, (Supra) only - for the limited purpose of construing the scope of G.O.O. 26 and considering the effect of the

1956 settlement on G.O.O. 26. However, we make it clear that the finding of ours on point No. 1A that the workmen of the petitioners are

entitled to retiring allowance under G.O.O. 26 is subject to our findings on points No. 2 to 5 framed for our consideration with regard to the

special features in the arrangement in regard to the employees of the petitioners in the present cases, namely, the plea of res judicata and the effect

to the two settlements dated April 21, 1978, and May 17, 1985, on G.O.O. 26.

In view of the above discussion, we record our finding on point No. 1A as follows :

Though the decision in E. I. D. Parry (I) Limited v. Labour Court, (Supra) has to be confined to the workmen of the Ranipet factory, the

employees in the present cases are entitled to rely on the ratio of the said decision of the Apex Court and the construction placed by the Apex

Court on G.O.O. 26 and the effect of the 1956 settlement in support of their claim for retiring allowance under G.O.O. 26. Relying on the ratio of

the decision of the Apex Court in E. I. D. Parry (I) Limited v. Labour Court, (Supra) only for the limited purpose of construing G.O.O. 26 and

considering the effect of the 1956 settlement on G.O.O. 26, we are inclined to

hold that the employees of the petitioners are eligible for retiring allowance/pension as per the terms of G.O.O. 26 and that the 1956 settlement will not in any way impair the said rights available to the employees

under G.O.O. 26. However, in view of the observation of the Supreme Court in para. 8 of the judgment, this finding rendered by us on point No.

1A in subject to our finding on points 2 to 9 framed for our consideration where we propose to deal with the effect of the special features pleaded

by the petitioners on the right of the employees to claim retiring allowance under G.O.O. 26.

Point No. 2 - On the question of res judicata, Mr. P. Chidambaram, learned senior counsel for the petitioners, submitted that the employees of the

petitioners submitted charter of demands on August 8, 1966, that one of the demands was that the right to exercise the option for payment of

gratuity or retiring allowance should be extended to all employees irrespective of the date of the initial recruitment and that the issue was referred to

the Industrial Tribunal for adjudication in I.D. No. 55 of 1968. The following issue was referred for adjudication in I.D. No. 55 of 1968.

Whether the demand for revision of optional retiring allowance is justified; if so, to what extent ?

The learned senior counsel further submitted that the demand under the head ""Revision of optional retiring allowance"" was

that the quantum should be increased and that the scope should be extended to the post-1947 employees also. The award in I.D. No. 55 of 1968

was made on March 18, 1971. The workmen challenged it in Writ Petition No. 3029 of 1971. By the order dated March 5, 1971, a learned

single Judge of this Court set aside the award so far as the demand relating to revision of optional retiring allowance was concerned and remanded

the matter to the Tribunal for fresh disposal. On remand, the Tribunal made an award on November 12, 1974, rejecting the demand for revision of

optional retiring allowance. According to the learned senior counsel for the petitioner, both the aspects of the demand, namely, increasing the

quantum and extending the option to the post-1947 employees were rejected by the Tribunal in I.D. No. 55 of 1968. The further contention of the

learned senior counsel for the petitioners is that the order in Writ Petition No. 3029 of 1971, the award in I.D. No. 55 of 1968 and the order of

the Division Bench of this Court in Writ Petition No. 4696 of 1975 are binding upon the parties, that the demand of the workmen proceeded on

the basis that the post-1947 employees did not have the right to opt for retiring allowance in lieu of gratuity and that such an option should be given

to them, that this demand was rejected by the Tribunal in I.D. No. 55 of 1968, which was confirmed by the Division Bench of this Court in Writ

Petition No. 4696 of 1975, that the findings/conclusions in the aforesaid judicial orders constitute resjudicata and that it is not open to the

workmen in the proceedings u/s 33-C(2) of the Act to claim that the post-1947 employees had always the right of option for retiring allowance in

lieu of gratuity. In support of his contention, the learned senior counsel relied on the following decisions.

1. Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., para 24,

2. Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, ,

3. Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Haldar,

4. Abdul Salam Vs. State of Jammu and Kashmir and Others, , and

5. Sankar Prasad Banerjee Vs. Central Government, Labour Court and Others, para 17

11. We are unable to accept the above contention of the learned senior counsel for the petitioners. The points that arise for consideration in the

applications filed by the employees u/s 33-C(2) of the Act, out of which the present writ petitions arise are, whether the right of workmen to claim

retiring allowance is conferred under G.O.O. 26; whether the 1956 settlement or the Payment of Gratuity Act, 1972, which was enacted

subsequently, take away the right available to the employees to retiring allowance and whether all the employees pre-1947 as well as post-1947

employees are entitled to both the benefits, namely, retiring allowance under G.O.O. 26 and gratuity under the Payment of Gratuity Act, 1972. A

careful examination of the order dated March 5, 1974, in Writ Petition No. 3029 of 1971, the award in I.D. No. 55 of 1968, dated November

12, 1974, and the order of the Division Bench of this Court in Writ Petition No. 4696 of 1975, dated October 19, 1978, goes to show that the

points involved and decided in the present proceedings u/s 33-C(2) of the Act have not been directly and substantially in issue in the earlier

proceedings in I.D. No. 55 of 1968, Writ Petition No. 3029 of 1971, and Writ Petition No. 4696 of 1975, and the said points have not been

finally decided therein, for the principle of res judicata to apply. As already pointed out, the issue referred to the Tribunal for adjudication in I.D.

No. 55 of 1968 is ""Whether the demand for revision of optional retiring allowance is justified; if so to what extent ?"" The question that was decided

by the Tribunal in I.D. No. 55 of 1968, by the award dated November 12, 1974, as seen from para 6 of the award was whether the employees

can ask for retiring allowance in lieu of gratuity after coming into force of the Payment of Gratuity Act. In I.D. No. 55 of 1968, the Tribunal was

not at all dealt with the question whether the workmen are entitled to retiring allowance under G.O.O. 26, in addition to gratuity, which is the

question involved in the present proceedings u/s 33-C(2) of the Act. In I.D. No. 55 of 1968, the Tribunal has also not considered the question

whether the employees are entitled to retiring allowance under G.O.O. 26, without any reference to the Payment of Gratuity Act. Further, the

question whether all the employees both pre-1947 and the post-1947 employees are eligible to both benefits, namely, retiring allowance under

G.O.O. 26 and gratuity under the Payment of Gratuity Act was never decided in the earlier proceedings in I.D. No. 55 of 1968. The Tribunal in

para 7 of the award in I.D. No. 55 of 1968, has recorded a finding in the following terms :

7. Learned counsel for the union, Mr. N. G. R. Prasad, argued that the Payment of Gratuity Act is a legislation as one form of retirement benefit.

We are now concerned with the question, namely, whether the Tribunal can grant any other retirement benefit such as the pension in lieu of

gratuity. I am of the view that the Tribunal had no jurisdiction to give pension instead of gratuity after the coming into force of the Payment of

Gratuity Act. Counsel for the union, Mr. N. G. R. Prasad, argued that no social legislation will take away the right which existed prior to the

coming into force of this Act and as pension benefit was in force prior to the coming into force and as a matter of the pre-1947 employees were

getting and also the post-1947 employees were getting till September 16, 1972, there is no prohibition for granting pension benefit in lieu of

gratuity. Both sides did not cite any authorities in support of their contentions. We are now concerned only with the interpretation with the Sections

of the Payment of Gratuity Act. On a careful consideration on the several Sections of the Act, I am of the view that even if pension is granted in lieu

of gratuity, Section 14 is a bar. Counsel for the union also argued that Section 5 does not show that exemption is necessary to pay pension. I am

unable to agree with the above contention of learned counsel for the union in the matter of interpretation of Section 5. As already stated the very

object of enacting the exemption clause (i.e.) clause 5 shows that if the employer wants to change to any other form of retirement benefit instead of

gratuity after the coming into force of the Gratuity Act, the employer should necessarily get exemption. In view of my discussion above, I held that

the demand for revision of the optional retiring allowance is not justified and thus the later part of the issue does not arise for consideration.

The specific finding recorded by the Tribunal in I.D. No. 55 of 1968, is that it had no jurisdiction to direct the management to give pension instead

of gratuity after coming into force of the Payment of Gratuity Act in view of Section 14 of the said Act. The award in I.D. No. 55 of 1968 was

confirmed by the Division Bench of this Court in Writ Petition No. 4696 of 1975, and the Division Bench by the order dated October 19, 1978,

has held as follows :

The revision asked for in the demands and the reference made to the Industrial Tribunal required an answer only as to whether the workmen are

entitled to ask for pensionary benefit in lieu of gratuity and a revision of the existing scheme of gratuity was justified. Since the Tribunal has no

jurisdiction in view of the provisions of Section 14, to grant any such relief except gratuity, the Industrial Tribunal rejected the contention of the

workmen and held that they are entitled only to gratuity as per the Act, and not as per the scheme. We are, therefore, unable to find any illegality in

the order of the Tribunal to interfere under Article 226 of the Constitution. This Writ Petition No. 4696 of 1975 is liable to be dismissed.

12. Thus, it is clear that the Tribunal in I.D. No. 55 of 1968 and this Court in Writ Petition No. 4696 of 1975 have not decided the question

whether the workmen are entitled to retiring allowance under General Office Order 26 in addition to gratuity under the Payment of Gratuity Act.

From the award of the Tribunal in I.D. No. 55 of 1968 and the order of this Court in Writ Petition No. 4696 of 1975, it is clear that in the earlier

proceedings, the Tribunal and this Court proceeded on the basis that the Industrial Tribunal had no jurisdiction to decide the question whether the

workmen are entitled to pension in lieu of gratuity after coming into force of the Payment of Gratuity Act and that the dispute involved in the

present proceedings u/s 33-C(2) of the Act has not at all been in issue in the earlier proceedings and, therefore, we are of the view that the award

in I.D. No. 55 of 1968 and the order in Writ Petition No. 3029 of 1971 and the order in Writ Petition No. 4696 of 1975 cannot operate as res

judicata. It is also clear from the award in I.D. No. 45 of 1967, dated January 27, 1968, that as a matter of fact the distinction between the pre-

1947 employees and the post-1947 employees was removed and such distinction did not exist in view of clause IV of the settlement dated January

22, 1968, which formed the basis of the award dated January 27, 1968, in I.D. No. 45 of 1967. Clause IV of the terms of settlement referred

above reads thus :

IV. Gratuity Scheme. - The modified gratuity scheme will be as per Schedule B and this scheme will be substituted for the existing gratuity

scheme, provided that it shall be open to employees to opt for the company's existing retiring allowance, if eligible in lieu of this gratuity scheme.

This position is also clear from paragraphs 11 and 12 of the counter-affidavit filed on behalf of the management in Writ Petition No. 3029 of 1971,

which runs as follows :

11. With regard to the allegations made in paragraph 12 which deal with the issue relating to the demand for revision of the optional retiring

allowance, I submit as follows :

12. There was an earlier settlement dated January 22, 1968, entered into between the workmen and the management of the respondent

companies. Clause IV of the settlement referred to the gratuity scheme which was modified as per Schedule B annexed to the settlement and which

clearly gave an option to all the employees to choose the company's existing retiring allowance provided they were otherwise eligible, in lieu of the

gratuity scheme. I submit, therefore, that in terms of this settlement which was raised by the workmen, the existing retiring allowance was affirmed

and accepted by the workmen. I, therefore, submit that as long as the said settlement was in force it was not open to the workmen to seek to

modify the scheme relating to retiring allowance. The Industrial Tribunal after discussing this question held that the previous settlement dated

January 22, 1968, was binding on the employees of the company and the retiring allowance which had also been referred to in that settlement was

also accepted by the workmen under that settlement. The Tribunal, therefore, held that the workmen are not entitled to any further relief. I submit

that this conclusion of the Tribunal is correct and it was not open to the workmen to reagitate the question over again in the present writ petition.

In view of the above factual position, we are unable to appreciate and accept the contention of the learned senior counsel for the petitioners that

the demand under the head revision of optional retiring allowance included not only that the quantum should be increased but also that the scope

should be extended to the post-1947 employees also.

By the order dated March 5, 1974, a learned single Judge of this Court in Writ Petition No. 3029 of 1971 has only set aside the findings of the

Tribunal in I.D. No. 55 of 1968 and remanded the matter to the Tribunal for fresh disposal and as such it is not an order on merits and it cannot be

contended that such an order of remand will operate as res judicata

In any event, the employees of the petitioners initiated the present proceedings u/s 33-C(2) of the Act for computing the retiring allowance on the

basis of the law declared by the Supreme Court in *The General Manager, E.I.D. Parry (India) Ltd. Vs. The Presiding Officer, 2nd Addl. Labour*

Court, Madras and others, , interpreting the very same G.O.O. 26 and considering the effect of the provisions of the Payment of Gratuity Act and

the relevant clauses in the 1956 settlement which are similar to the terms in the settlement dated April 19, 1956, on G.O.O. 26. In *The General*

Manager, E.I.D. Parry (India) Ltd. Vs. The Presiding Officer, 2nd Addl. Labour Court, Madras and others, , their Lordships of the Supreme

Court have declared that the right to retiring allowance was contained in G.O.O. 26, that the 1956 settlement or the subsequent Payment of

Gratuity Act did not take away the right to retiring allowance contained in G.O.O. 26, and that all the employees pre-1947 as well as the post-

1947 employees were entitled to both the benefits, namely, retiring allowance under G.O.O. 26 and gratuity under the Payment of Gratuity Act. In

view of the law declared by the Supreme Court as aforesaid, the consequence of

holding that the employees in the present cases are barred by the principles analogous to res judicata from claiming retiring allowance under G.O.O. 26 would lead to an anomalous position of having two sets of conditions of service regarding retiral benefits under the very same office Order 26 - one in respect of workmen employed in the Ranipet factory of E.I.D. Parry (India) Limited - the petitioner in Writ Petition No. 3125 of 1993 and another in respect of workmen employed in other establishments of the petitioners companies, that is to say, workmen in the Ranipet factory of E.I.D. Parry (India) Limited will be entitled to retiring allowance under G.O.O. 26, whereas the workmen employed in other establishments of the petitioners would not be entitled to retiring allowance under the very same G.O.O. 26. This is wholly incompatible with the object and policy of the Act. It must be pointed out that the common order challenged in these writ petitions was passed by the Labour Court following the ratio of the decision of the Apex Court in E. I. D. Parry (I) Limited v. Labour Court, (supra), in interpreting the scope of G.O.O. 26. Thus, we are of the view that the common order challenged in these writ petitions was passed by the Labour Court under the circumstances different from those which prevailed when the award in I.D. No. 55 of 1968 was passed by the Tribunal. Therefore, the principles analogous to res judicata cannot be applied to the facts of the present cases.

13. In Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others, , the Labour Court in that case, inter alia, held that the retirement of three employees was not valid as the Standing Orders providing the age of retirement were certified after the employees joined the services and that when they joined the services, there was no age of superannuation fixed. The award of the Labour Court was sought to be sustained on behalf of the workmen. An appeal by special leave was filed before the Apex Court on the ground that the provisions of the Standing Orders in this respect could not govern the employees who joined the services prior to its certification and also on the ground that in a prior dispute between the employer and the workmen in regard to the retirement of six employees, the Labour Court had held that the standing orders would not apply to the employees who joined the services of the establishment prior to their certification and that a special leave application against the earlier order was

also refused by the Supreme Court and hence the employer was precluded from rearguing the same question by the principle of analogy to the

principle of res judicata. Their Lordships of the Supreme Court, while negating both the grounds raised in the appeal, held as follows (at page

423) :

The argument, however, was that even if that award was erroneous, the company did not appeal against it, consequently it became final and the

issue there decided being the same and between the same parties, principle analogous to the principle of res judicata would apply and, therefore,

no relief should be granted in the present case to the company. It is true, as stated in *The Newspapers Ltd. Vs. The State Industrial Tribunal,*

U.P., that an award binds not only the individuals present or represented but all workmen employed in the establishment and even future entrants.

But that principle is founded on the essential conditions for the raising of an industrial dispute itself. If an industrial dispute can be raised only by a

group of workmen acting on their own or through their union, the conclusion must be that all those who sponsored the dispute are concerned in it

and, therefore, bound by the decision of such dispute. (see *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, . Such a consideration,

however, is not the same as the principle of res judicata or principles analogous to res judicata. In *Workmen of Balmer Lawrie and Co. Vs. Balmer*

Lawrie and Co., , no doubt, a case of revision of wage scale, this Court cautioned against applying technical considerations of res judicata thereby

hampering the discretion of industrial adjudication. (See also *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway*

Workers' Union, . How inexpedient it is to apply such a principle is evident from the fact that the award in Reference No. 91 of 1964 was based

on the decision in *Kettlewell Bullen and Co. Ltd.* 1964 I LLJ 146, which in turn had followed the case of *Guest, Keen, Williams Private Ltd. Vs.*

P.J. Sterling and Others, , on the supposition (which, as aforesaid, was not correct) that standing orders are not binding on those who are

employed prior to their certification and their coming into force. The company, presumably, did not challenge the correctness of that award

because it was perhaps then thought that that was the law laid down in *Guest Keen Williams Private Ltd.*, (supra). The consequence of holding that

the company is barred by principles analogous to res judicata would be that there would be two sets of service, one for those previously employed

and the order for those employed after the standing orders were certified, a consequence wholly incompatible with the object and policy of the Act.

The very basis of the award in Reference No. 91 of 1964, namely the wrong understanding of the decision in Guest Keen Williams Private Ltd.

(supra), having gone, it becomes all the more difficult and undesirable to perpetuate the distinction made therein between those who were

previously appointed and those appointed subsequently and to refuse on such an untenable distinction relief to the company. The award in

Reference No. 91 of 1964 was made on May 24, 1965, when it was believed that the decision in Guest Keen Williams Private Ltd. (Supra), laid

down the Principle that Standing Orders would not bind workmen previously employed. That that was not so clarified in the case of Salem

Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, the decision in which was

pronounced on November 3, 1965, removing thereby any possible misapprehension. The present reference was made on June 23, 1966, long

after the decision in Salem Erode Electricity Distribution Co. (P) Ltd. (supra) and the Labour Court gave the award impugned in this appeal on

July 24, 1968. Thus, Both the reference and the award were made in circumstances different from those which prevailed when Reference No. 91

of 1964 was made and disposed of, a factor making doubtful the application of a principle such as res judicata.

In our view, the ratio of the above decision directly applies to the facts of the present cases.

14. In Workmen of Straw Board Manufacturing Company Ltd. v. Straw Boards Mfg. Co. Ltd. (supra), Apex Court, while dealing with the

applicability of the principle analogous to the principle of res judicata to industrial adjudication, held as follows (at page 510) :

It is now well established that, although the entire CPC is not applicable to industrial adjudication, the principles of res judicata laid down u/s 11 of

the Code Civil Procedure, however, are applicable. wherever possible, for very good reasons. This is so since multiplicity of litigation and agitation

and re-agitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which is the

principal object of all labour legislations bearing on industrial adjudication. But, whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be of pertinent consideration and will have to be determined before holding in a particular case that the principles of res judicata are attracted. Learned counsel faced with the problem drew our attention to rule 18 of the U.P. Industrial Tribunal and Labour Court Rules of Procedure, 1967, which provides that after the written statements and rejoinders if any, of both the parties are filed and after examination of parties if any, the Industrial Tribunal or Labour Court may frame such other issues, if any, as may arise from the pleadings. It is clear that these issues are framed by the Tribunal to assist in adjudication. While it cannot be absolutely ruled out that in a given case such an additional issue may some times attract the principle of res judicata, the heart of the ill always be What was the matter with substantial question that came up for decision in the earlier proceedings ? Some additional issues may be framed in order to assist the Tribunal to better appreciate the case of the parties with reference to the principal issue which has been referred to for adjudication and on the basis of which, for example, as to whether it is an industrial dispute or not, the jurisdiction of the Tribunal will have to be determined. The reasons for the decision in connection with the adjudication of the principal issue cannot be considered as the decision itself to attract the plea of res judicata. The earlier question at issue must be relevant and germane in determining the question in the subsequent proceedings. The real character of the controversy between the parties is the determining factor and in complex and manifold human relations between labour and capital giving rise to diverse kinds of ruptures of varying nuances no cast iron rule can be laid down. Some distinction, of whatever shade or magnitude, may have to be borne in mind in application of the principles of res judicata. In industrial adjudication in contra distinction to civil proceeding. Extremely technical considerations, usually invoked in civil proceedings, may not be allowed to outweigh substantial justice to the parties in an industrial adjudication. The principles laid down in the other decisions relied on by the learned senior counsel for the petitioners have no bearing on the issue involved in

the present cases and, therefore, they are not helpful to the petitioners.

In view of the factual and legal position stated above, it is not at all possible to accept the contention of the learned senior counsel for the

petitioners that the findings/conclusions in Writ Petition No. 3029 of 1971, I.D. No. 55 of 1968 and Writ Petition No. 4696 of 1975, will

constitute res judicata and that it is not open to the employees of the petitioners to claim in the proceeding u/s 33-C(2) of the Act to claim that the

post-1947 employees have the right to opt for retiring allowance either in lieu of gratuity or in addition to gratuity. Accordingly, point No. 2 is

answered in the negative and in favour of the employees of the petitioners.

Point No. 3 - So far as point No. 3 is concerned, the case of the petitioners can be summarised as follows : Between the date of the award in I.D.

No. 55 of 1968 and the date of the judgment in Writ Petition No. 4696 of 1975, the workmen and the management made a joint application to the

Central Government for exemption from the provisions of the Payment of Gratuity Act u/s 5 of that Act on May 4, 1976, and the Central

Government rejected the said joint application on August 2, 1976. When the validity of the award dated November 12, 1974, in I.D. No. 55 of

1968 was challenged before this Court in Writ Petition No. 4696 of 1975, and when the said writ petition was pending before this Court, the

workmen raised a fresh charter of demands on December 1, 1975. Demand No. 16 of the charter of demands reads as follows :

Demand No. 16 : Pension :

Subject to exemption from the Government of India for continuing the payment of pension in lieu of gratuity, the present system of paying pension

should be changed as 60 per cent. of the total wages last drawn, as pension to all employees who opt for it. In case of death of a pensioner before

he gets his pension which will be equal to the gratuity if he had opted for, the balanced proportionate gratuity should be paid.

The parties arrived at a settlement on April 21, 1978. So far as the demand regarding pension was concerned, the settlement was to the effect that

the question had already been dealt with by the Central Government. According to the petitioners, since the demand itself was for optional retiring

allowance subject to the Central Government granting permission, once when the Central Government declined the exemption and rejected the

joint application on August 2, 1976, the demand for pension itself fell to the ground and, therefore, the workmen are not entitled to the retiring

allowance. After April 21, 1978, another charter of demands was made on January 22, 1981 and one of the demands was for retiring

allowance/pension in addition to gratuity payable under the Payment of Gratuity Act. A settlement was arrived at on May 17, 1985. So, far as the

retiring allowance/pension is concerned the settlement dated May 17, 1985, reads as follows :

The union agrees that the clauses relating to the above matters and the subject of pension as contained in the settlement of pension dated April 21,

1978, is binding. No dispute shall be raised in respect of any of these matters.

15. Mr. P. Chidambaram, learned senior counsel for the petitioners, referring to the relevant clause 2 in the settlements dated April 21, 1978, and

May 17, 1985, submitted that after the award in I.D. No. 55 of 1968, the workmen raised a demand on December 1, 1975, for optional retiring

allowance and by the settlement dated April 21, 1978, the demand for optional retiring allowance was given up, that subsequently a demand for

retiring allowance in addition to gratuity was made on January 22, 1981, and this demand was settled by as the demand being given up in the

settlement dated May 17, 1985, and that by the settlement dated May 17, 1985, the workmen further agreed that no dispute shall be raised in

respect of any of those matters, and that in the light of the two settlements, particularly the settlement dated May 17, 1985 the workmen are not

entitled to claim any right for retiring allowance either in lieu of gratuity or in addition to gratuity. The learned senior counsel further contended that

the impugned order of the Labour Court passed without considering the effect of the two settlements is invalid and liable to be quashed. However,

we are unable to agree with the above contention of the learned senior counsel for the petitioners.

On May 4, 1976, the workmen and the management made a joint application to the Central Government seeking exemption from the provisions of

the Payment of Gratuity Act u/s 5 of the said Act on the ground that the existing retiring benefits as set forth in annexure ""A"" attached to the joint

application are not less favourable than the benefits under the Payments of Gratuity Act, 1972. Annexure ""A"" to the joint application sets out the

existing retirement benefits scheme for non-covenanted staff and lower grade employees in its commercial establishments of Parry and Co, Ltd.,

(Part B of the said annexure reads thus :

B. Retiring allowance in lieu of gratuity in the case of those retired on the grounds of superannuation. - Employees who are retired on having

attained the age of superannuation will be given option of choosing gratuity as laid down in Part VI(a) or (b), as the case may be, of the E.I.D.

Parry non-covenanted staff, labour and lower grade employees gratuity fund or a retiring allowance calculated on the following basis subject to the

condition that the employee had not less than 30 years services at the time of superannuation. Provided further that proportionate retiring allowance

may be granted to those reaching the age of superannuation, that is to say on completing the age of 58 years, those who have to retire on account

of reasons beyond their control and have completed more than 20 years service, e.g., an employee retiring after 25 years service would be granted

a retiring allowance calculated at 25/30ths of the amount arrived at as per para 2 below.

2. The basis on which monthly retiring allowance in lieu of gratuity will be calculated will be the sum of the following :

(a) 10 Per cent. of the last monthly basic salary drawn.

(b) A graded service bonus for service over 30 years.

Re. 1 per year of service over 30 years.

(c) One half of the average monthly dearness allowance drawn during the twelve months preceding retirement.

3. An employee who has the requisite service at the time of retirement on grounds of superannuation who wishes to opt for a retiring in lieu of

gratuity must submit his application in writing to the company within 30 days from the date of retirement exercising his option failing which it will be

deemed that he does not wish to opt for a retiring allowance in lieu of gratuity and in this event he will be eligible for gratuity only as provided for in

the E.I.D. Parry noncovenanted staff, labour and lower grade employees gratuity fund.

17. On August 2, 1976, the Central Government passed an order refusing exemption on the ground that the employees of Parry and Company

Limited cannot be said to be in receipt of benefits not less favourable than the

benefits conferred under the Payment of Gratuity Act. The settlement dated May 17, 1985, with regard to pension is to the following effect :

The union agrees that the clause relating to the above matters and the subject of pension as contained in the settlement dated April 21, 1985, is

binding. No dispute shall be raised in respect of any of these matters.

Therefore, the effects of the settlements dated May 17, 1985, on the question of pension depends on the nature of settlement dated April 21,

1978. The Settlement dated April 21, 1978, with regard to pension is as follows :

VI. Pension. - This has already been dealt with by the Central Government.

Then, we have to examine the effect of the order of the Central Government dated August 2, 1976, refusing exemption claimed u/s 5 of the

Payment of Gratuity Act on the joint application made by the workmen and the management. We have extracted above annexure ""A"" to the joint

application dated May 4, 1976, seeking exemption u/s 5 of the Payment of Gratuity Act which gives the details of the existing scheme. Part B of

annexure ""A"" deals with retiring allowance in lieu of gratuity in the case of those retiring on the ground of superannuation. The said Part B provides

that the employees who are retired on having attained the age of superannuation will be given the option of choosing gratuity as laid down in Part

VI(a) or (b), as the case may be of the E.I.D. Parry non-covenanted staff, labour and lower grade employees gratuity fund or a retiring allowance

calculated on the following basis subject to the condition that the employee had not less than 30 years of service at the time of superannuation.

Paragraph 3 of Part B of annexure ""A"" provides that an employee who has the requisite service at the time of retirement on grounds of

superannuation who wishes to opt for a retiring allowance in lieu of gratuity must submit his application in writing to the company within 30 days

from the date of retirement exercising his option failing which it will be deemed that he does not wish to opt for a retiring allowance in lieu of

gratuity. On a careful consideration of the existing scheme set out in annexure ""A"" to the joint application and the order of the Central Government

dated August 2, 1976, refusing exemption we are of the view that the said order of the Central Government dated August 2, 1976, refusing to

grant exemption does not result in the extinction or abandonment of the existing scheme, filed as annexure ""A"" to the joint application and the rights

available to the employees under the said scheme, and that the order of the Central Government dated August 2, 1976 does not in any way affect

the continuance of the existing scheme set out in annexure ""A"" to the joint application. In the above circumstances, we are unable to accept the

contention of the learned senior counsel for the petitioners that once when the Central Government declined the exemption u/s 5 of the Payment of

Gratuity Act, on August 2, 1976, the demand for optional retiring allowance fell to the ground and that as a result, the management is liable to pay

only gratuity under the Payment of Gratuity Act and that the existing scheme providing for payment of retiring allowance did not survive and it

stood scrapped. We must also point out that by demand No. 16 which preceded the settlement dated April 21, 1978, the employees only

demanding that the present system of opting pension should be changed as 60 per cent of the total wages last drawn and such a demand cannot be

construed as a demand for optional retiring allowance subject to the Central Government granting exemption because, even under the scheme that

existed on the date of the joint application for exemption and which was attached as annexure ""I"" to the joint application, the employees are entitled

to optional retiring allowance/pension.

Again, as rightly contended by learned counsel for the employees there is no difference between the employees working in the Ranipet factory and

in the Madras establishments of the petitioners' companies. The settlement of the year 1956 is similar in both the cases. The joint application filed

before the Central Government claiming exemption u/s 5 of the Payment of Gratuity Act is also common. The order of the Central Government

rejecting the joint application is also common. The general office orders including G.O.O. 26 are common. The only distinction sought to be made

is based on the settlements dated April 21, 1978, and May 17, 1985. On a consideration of the relevant clauses in the two settlements, we are

clearly of the view, the employees by entering into the settlements dated April 21, 1978, and May 17, 1985, have never expressly agreed to give

up pension to which they are entitled to under G.O.O. 26. The settlements referred to above were to the effect that the order of the Central

Government dated August 2, 1976, will stand. As a matter of fact, the Supreme Court in E. I. D. Parry (I) Limited v. Labour Court, (supra) took

note of the joint application dated May 4, 1976, seeking exemption u/s 5 of the Payment of Gratuity Act and the order of the Central Government

dated August 2, 1976, refusing exemption and held as follows :

When that Act came into force, the employer and the employees" union jointly applied to the Government for exemption from the provisions of

the Statute. The exemption was, however, not granted. Payability of gratuity is no longer in dispute, What is challenged is the claim of the workmen

to retiring allowance (pension) under office Order No. 26.

Notwithstanding the joint application and the order of the Central Government refusing exemption the Supreme Court held in E. I. D. Parry (P)

Limited v. Labour Court (supra), that the employees of the Ranipet factory of E.I.D. Parry (India) Limited are entitled to pension. Applying the

reasoning of the Apex Court in the above said decision, we are of the view that similar benefits cannot be denied to the employees of the

petitioners" companies on the basis of the order of the Central Government dated August 21, 1978, and May 17, 1985. There is force in the

contention of learned counsel for the employees that the interpretation placed by the Supreme Court on G.O.O. 26 in E. I. D. Parry (I) Limited v.

Labour Court, (Supra) in respect of the employees of the Ranipet factory is equally applicable to the employees of the petitioners" companies for

the following reasons.

(i) In the notes of arguments filed on behalf of the management in I.D. No. 60 of 1982 (Ranipet case) marked as exhibit P-16 in the present

proceedings before the Labour Court, reference is made to the joint application filed before the Central Government. In exhibit P-16 the

management has submitted as follows;

Though in the above proceedings the present union was not directly a party it should be emphasised that the dispute related to the employees of

this establishment, E.I.D. Parry India limited, and the scheme referred was a common scheme for all applicable to all staff members whether

working in the head office or working in the factory at, Ranipet.

(ii) The order in Claim Petition No. 593 of 1985, dated April 22, 1987, is filed by the management and marked as exhibit R-22 before the Labour

Court. In exhibit R-22, the Labour Court has recorded the following finding :

Though the management originally contended that the service conditions of E.I.D. Parry and Co. at Ranipet are different it is now admitted in the

memo that the service conditions are the same in the head office as well as in all the branches of the of E.I.D. Parry and Co.

The Central Government by its order dated August 2, 1976, refused exemption on the joint application made by the management and the

workmen u/s 5 of the Payment of Gratuity Act. The said order of the Central Government refusing exemption, does not take away the existing right

of workmen to receive pension under G.O.O. 26. As already pointed out by the settlements dated April 21, 1978, and May 17, 1985, the

workmen have not given up their rights to receive pension under G.O.O. 26. It must be also pointed out that in the proceedings u/s 33-C(2) of the

Act the employees are not raising any dispute making a new demand as contended by the learned senior counsel for the petitioners. By filling the

petitions u/s 33-C(2) of the Act, the employees are only seeking for computation of the retiring allowance which is available to them under G.O.O.

26, on the basis of law declared by the Supreme Court interpreting G.O.O. 26, in E. I. D. Parry (I) Limited v. Labour Court (supra). In those

circumstances, we have no hesitation in holding that the employees of the petitioners have not given up their rights under G.O.O. 26 by entering

into the settlement dated April 21, 1978, and May 17, 1985, and that they are entitled to retiring allowance pension notwithstanding the two

settlements referred to above. Point No. 3 is accordingly answered.

Point No. 4. - This point relates to the maintainability of the petitions filed by the employees u/s 33-C(2) of the Act. The contention of learned

counsel for the petitioners is that proceedings u/s 33-C(2) are in the nature of execution proceedings and that there must be an existing right or

source of right to enable the employees to maintain petitions u/s 33-C(2) of the Act. The learned senior counsel submitted that on November 18,

1974, when the award in I.D. No. 55 of 1968 was made, it was held by the Tribunal that there was no existing right to claim retiring allowance in

lieu of gratuity, that subsequently by settlements dated April 21, 1978, and May 17, 1985, the employees affirmed that they had no such existing

right and that unless the employees are able to point to a source of right arising after May 17, 1985, there is no question of computing such a right in

the proceeding u/s 33-C(2). The learned senior counsel for the petitioners 1 relying on the decision in Central Bank of India v. P.S. Rajagopalan, 1963 XI LLJ 89, contended that if the settlement exists and continues to be operated no claim can be made u/s 33-C(2) inconsistent with the said settlement and, therefore, the claim petition filed by the employees u/s 33-C(2) during the currency of the operation of the 1956 settlement are not maintainable. It is not at all possible for us to accept the above contention of the learned senior counsel for the petitioners. No doubt, proceedings u/s 33-C(2) are in the nature of execution proceedings - and in that there must be an existing right on the basis of which the workmen can initiate proceedings A under the said Section for the computation of 1 the money value arising out of the existing rights. In the present case, the employees initiated proceedings u/s 33-C(2) for computation of retiring allowance/pension as per G.O.O. 26. The source of existing right on the basis of which the employees have filed then petitions u/s 33-C(2) in the present cases, is G.O.O. 26. The Supreme Court in E.I.D. Parry (1) Limited v. Labour Court (supra) while interpreting the very same G.O.O. 26 and considering the effect of the 1956 settlement has held that right to claim pension/retiring allowance under G.O.O. 26 is available to the employees of the Ranipet factory of E.I.D. Parry India Ltd. and that such entitlement to pension as per G.O.O. 26 had not been substituted by the 1956 settlement. No doubt, the Apex Court in the above decision considered the scope of Office Order 26 and the effect of the 1956 settlement in G.O.O. 26 while dealing with the case of employees of the Ranipet factory and the Apex Court also observed 1 that it has gone into the question confined to the claim of the employees of the Ranipet factory and not liability of the employer in general. However, we must point out that G.O.O. 26 which is the basis for making the claim for retiring allowance is common both to the employee of the Ranipet factory of E.I.D. Parry India Limited and the employees of the petitioners in other establishments in Madras and other places. "Re 1956 settlement is also similar in both the categories of employees. The joint application filed before the Central Government by the workmen and the management seeking exemption u/s 5 of the Payment of Gratuity Act and the order of the Central Government refusing exemption is common in both the cases. As already pointed out, the Supreme Court in E.I.D. Parry (1) Limited v.

Labour Court (supra), taking note of the order of the Central Government dated August 2, 1976, refusing exemption u/s 5 of the Payment of

Gratuity Act, has held that the workmen are entitled to retiring allowance under G. O. O. 26 and gratuity under the provisions of the Payment of

Gratuity Act. The two distinctions sought to be made by learned counsel for the petitioners between the Ranipet case and the employees in other

commercial establishments of the petitioners are that, (i) the award in 1. D. No. 55 of 1968 will operate as resjudicata and that, (ii) under the

settlements dated April 21, 1978, and May 17 1985, the employees of the petitioners have given up their rights to claim pension under G.O.O.

26. While dealing with point No. 3, we have already found that the settlement dated April 21, 1978 and May 17,1985, did not alter the right

available to the employees under G.O.O. 26 and by the said settlements the employees had not given up their-right to receive retiring Mowance

under G.O.O. 26. Further, we have also found that the joint application submitted by the management and the workmen seeking exemption from

the provisions of the Payment of Gratuity Act and the order of the Central Government dated August 2, 1976, refusing exemption also did not take

away the existing right available to the employees of the petitioners under G.O.O. 26 to receive retiring allowance. Again, while dealing with point

No. 2, we have found that in I.D. No. 55 of 1968, the Tribunal has not dealt with the question whether the employees are entitled to retiring

allowance tinder G.O.O. 26 in addition to gratuity under the Payment of Gratuity Act, which is the question involved in the present proceeding u/s

33-C(2) of the Act and, therefore, the findings and conclusions in I.D. No. 55 of 1968, Writ Petition No. 3629 of 1971 and Writ Petition No.

4696 of 1975, will not constitute res judicata . On a consideration of the entire facts and circumstances of the case, we are of the view that there is

no material difference between the Ranipet case of E.I.D. Parry dealt with by the Apex Court in E. I. D. Parry (I) Limited v. Labour Court,

(supra) and the petitioners are entitled to retiring allowance under G.O.O. 26 in view of the decision of the Supreme Court in E. I. D. Parry (I)

Limited v. Labour Court, (supra) and what is to be computed in the present proceeding u/s 33-C(2) is only the monetary claim of employees as

per G.O.O. 26. Further, the correctness of the contention of the petitioners that as a result of the order of the Central Government dated August 2,

1976, refusing exemption on the joint application submitted by the management and the workmen for exemption u/s 5 of the Payment of Gratuity

Act and the settlements dated August 2, 1978, and May 17, 1985, the employees have given up their right to claim pension under G.O.O. 26 can

be gone into incidentally in the proceedings, u/s 33-C(2) of the Act and also in the present writ Petitions arising out of the common orders passed

by the Labour Court in the Petitions filed u/s 33-C(2) of the Act, in view of the decision of the Supreme Court in *Central Bank of India v. P. S.*

Rajagopalan (supra), wherein the Apex Court has held as follows at (Page No. 95) :

The claim u/s 33-C(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 determination which

has been assigned to the Labour Court by sub-section (2). As Maxwell has observed :

"Where an act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary

to its execution". (Maxwell on the Interpretation of Statutes, at page 350).

We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled

should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers.

18. In *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , the Supreme Court, while holding that the bonus scheme

made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948, falls under sub-section (2) of Section 33-C and that the Labour

Court has jurisdiction to try claims arising under such scheme held as follows (at PP 9-10) :

It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided

for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. Since the scope of sub-

section (2) is wider than that of sub-section (1) and the sub-section is not confined to cases arising under an award, settlement or under the

provisions of chapter V-A, there is no reason to hold that a benefit provided by a statute or a scheme made thereunder, without there being

anything contrary under such statute or Section 33-C(2), cannot fall within sub-section (2). Consequently, the benefit provided in the bonus

scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948, which remains to be computed must fall under sub-section

(2) and the Labour Court, therefore had jurisdiction to entertain and try such claim, it being a claim in respect of an existing right arising from the

relationship of an industrial workman and his employer. The contention that the Labour Court had no jurisdiction because the claim arose under the

said scheme or because the benefit was monetary or because it involved any substantial question between the company and the workmen must, in

view of the said decisions fail.

The ratio of the above decisions directly applies to the facts of the case and in view of the above discussion of ours, we have no hesitation in

holding on point No. 4 that the petitions filed by the employees of the petitioners u/s 33-C(2) of the Act are maintainable.

Point No. 5. - The next contention of Mr. P. Chidambaram, learned senior counsel for the petitioners, is that the employees of the petitioners are

entitled to pension/retiring allowance under G.O.O. 26 in addition to gratuity under the provisions of the Payment of Gratuity Act, in view of their

earlier conduct. The learned senior counsel submitted that throughout the employees of the petitioners have based their claim on the fact that the

option for retiring allowance was in lieu of gratuity and was available only to the pre-1947 employees. While so, the present claim of the

employees u/s 33-C(2) petitions that they are entitled to retiring allowance in addition to gratuity and that it was a right available to both the pre-

1947 and the post-1947 employees runs contrary to the consistent stand of the employees between 1966 and 1985 and, therefore, this Court

should not countenance such inconsistent plea of the employees. In support of his contention, learned counsel relied on the following decisions :

(1) The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another, ; (2) Abdulla Ahmed Vs. Animendra Kissen Mitter, ; and

(3) Raj Kumar Rajinder Singh Vs. State of Himachal Pradesh and others, .

As already noticed in E. I. D. Parry (I) Limited v. Labour Court (Supra), the

Supreme Court considered the question whether the employees of the Ranipet factory of E.I.D. Parry (I) Limited are entitled to the benefit of pension under G.O.O. 26 in addition to the statutory advantage of gratuity under the Payment of Gratuity Act. The Supreme Court, after taking into consideration G.O.O. 26, the settlement of the year 1956 and the provisions of the Payment of Gratuity Act, held that the workmen are entitled to pension under G.O.O. 26 in addition to gratuity payable as per the provisions of the Payment of Gratuity Act. This is the law laid down by the Apex Court interpreting G.O.O. 26 and the provisions of the Payment of Gratuity Act. We have already held that by reason of the settlements dated April 21, 1978, and May 17, 1985, the employees of the petitioners, have not lost their right to claim retiring allowance under G.O.O. 26 and that the award in I.D. No. 55 of 1968 and the orders in Writ Petition No. 3029 of 1971 and Writ Petition No. 4696 of 1975, will not operate as res judicata. The position of law laid down by the Apex Court while interpreting G.O.O. 26 as stated above, in the Ranipet case, equally applies to the employees of the petitioners. We are unable to accept the contention of the learned senior counsel for the petitioners that in view of the earlier conduct of the employees, they are not entitled to claim retiring allowance in addition to gratuity, because the employees of the petitioners are not precluded from relying on the correct position of law declared by the Supreme Court while interpreting the very same G.O.O. 26 and the provisions of the Payment of Gratuity Act and making claims for computation of the monetary benefits in the proceedings u/s 33-C(2) of the Act. If in law, as declared by the Apex Court, in the Ranipet case, the employees are entitled to claim pension/retiring allowance under G.O.O. 26 and gratuity under the provisions of the Payment of Gratuity Act, we cannot on the simple ground of the earlier conduct of the employees deny those benefits to them in the proceeding u/s 33-C(2) of the Act. In view of the above legal and factual position, the principles laid down in the following decisions in : (1) Godhra Electricity Co. Ltd. v. State of Gujarat (supra); (2) Abdulla Ahmed v. Animendra Kissen Mitter (supra), and (3) Raj Kumar Rajindra Singh v. State of Himachal Pradesh (supra), relied on by the learned senior counsel for the petitioners have no application to the facts of the present case.

Point No. 6. - Here the question we have to examine is whether the employees who have completed 20 years of service but not completed 30

years of service and who retired under the voluntary retirement scheme are eligible for retiring allowance under clause 4 of G.O.O. 26. As per

clause 4 of G.O.O. 26. As per clause 4 of G.O.O. 26, the employees who have completed 20 years of service but not 30 years of service will be

eligible for proportionate pension only if they retired on account of reasons beyond their control or retired on reaching the age of superannuation.

As rightly contended by Mr. P. Chindambaram, learned senior counsel for the petitioners, even assuming the voluntary retirement is retirement, it

cannot be said that it would amount to retirement on account of "reasons beyond their control". Further, paragraphs V(2) to V(4) of the voluntary

retirement scheme marked as exhibit R-21 before the Labour Court read thus :

2. Employees are required to note that the scheme is completely devoid of any element of compulsion and the employee is completely free of his

own will and desire to opt for this voluntary retirement scheme.

3. Any employee choosing of his own accord to opt for the voluntary retirement scheme should submit a letter accordingly to the management duly

signed by him.

4. If he wishes, the employee may withdraw his application during the above period, without assigning any reason.

The above terms in the voluntary retirement scheme also go to show that the voluntary retirement of employees would not amount to retirement on

account of reason beyond their control for invoking clause 4 of G.O.O. 26. Further, we are also inclined to hold that the employees who had

retired under the voluntary retirement schemes or early retirement schemes are not entitled to receive retiring allowance under G.O.O. 26. We

propose to deal with the question whether the employees who had retired under the voluntary schemes are entitled to receive retiring allowance in

detail under point No. 9. In these circumstances, we have no hesitation in holding that the employees who retired under the voluntary retirement

scheme with less than 30 years of service but more than 20 years of service cannot be said to have retired on account of reasons beyond their

control as contemplated in clause 4 of G.O.O. 26 and, therefore, such employees who have not put in 30 years of service and retired under the

voluntary retirement scheme are not entitled to the proportionate retiring allowance under G.O.O. 26.

In view of the above discussion of ours, the conclusion of the Labour Court that voluntary retirement of an employee would come under the

phraseology "retirement due to unavoidable reasons" or "reasons beyond the control of the employee" and, therefore, the employee who has not

completed 30 years of service and who retired under the voluntary retirement scheme is entitled to receive retiring allowance under G.O.O. 26 is

clearly erroneous and, therefore, the common order of the Labour Court Dated October 12, 1992, is liable to be set aside so far as it relates to

the claim petitions filed by such employees who have not put in 30 years of service and who retired under voluntary retirement scheme. Point No. 6

is answered accordingly.

Point No. 7. - According to clause 4 of G.O.O. 26, the Board of management may grant proportionate retiring allowance to those retired on

reaching the age of superannuation and who have completed more than 20 years of service. Clause 4 of G.O.O. 26 also gives an example as how

to calculate retiring allowance in the case of employees retiring on reaching the age of superannuation after completing more than 20 years of

service and the example runs as follows :

An employee retiring after 25 years of service would be granted a retiring allowance calculated at 25th/30th of the amount arrived at as per para.

2 supra.

Mr. P. Chidambaram, learned senior counsel for the petitioners, contended that clause 4 of G.O.O. 26 does not confer any right to employees

who have not completed 30 years of service as a matter of course, that it gives a discretion to the Board to grant proportionate retiring allowance

to employees who have not completed 30 years of service and who retired on reaching the age of superannuation, that clause 4 does not compel

the management to grant retiring allowance to employees who have completed 20 years of service but not completed 30 years of service and that

as a matter of right such employees cannot get retiring allowance. In support of the above contention, the learned senior counsel relied on the

judgment of a Division Bench of this Court in E.I.D. Parry (India) Ltd. Vs. Labour Court and Others, The Division Bench of this Court in W.A.

No. 332 of 1994, countenancing a similar contention of the management held that the payment of retiring allowance to employees who have not completed 30 years of service at the time of retirement is left to the discretion of the Board and it is not a matter of right of the employees.

However, we are unable to agree with the above contentions of the senior counsel for the petitioners and also the conclusion of the Division Bench in Writ Appeal No. 332 of 1994 that the payment of retiring allowance contemplated in clause 4 to persons who have not completed 30 years of service at the time of retirement is left to the discretion of the Board and the employees cannot claim such a right as a matter of course for the following reasons. According to clause 4 of G.O.O. 26, those employees who retired on reaching the age of superannuation and have completed more than 20 years of service are eligible to receive proportionate retiring allowance. An employee must satisfy the following two conditions to become eligible for retiring allowance under clause 4.

(a) The employee must have retired on reaching the age of superannuation.

(b) He must have completed more than 20 years of service.

Once when an employee satisfies both the conditions prescribed in clause 4, the management is bound to grant proportionate retiring allowance to

such an employee and the management has no discretion in the matter, particularly when clause 4 does not say under what circumstances the

management can refuse to grant the proportionate retiring allowance to an employee even if he satisfies both the conditions prescribed in clause 4.

Further, as already pointed out, clause 4 also gives an example as to how to calculate proportionate retiring allowance to the employees who have

not completed 30 years of service and who are eligible to such proportionate retiring allowance under clause 4.

No doubt, clause 4 of G.O.O. 26 contains the expression ""may"" ordinarily the word ""may"" is not a word of compulsion. It is an enabling word and

it confers capacity, power or authority and implies a discretion. The word ""may"" is used in a statute to indicate that something may be done which

prior to it, or, normally, could not be done. The enabling word ""may"" is construed by Courts as compulsory whenever the object of the power is to

effectuate a legal right. The Apex Court in *The Official Liquidator Vs. Dharti Dhan (P) Ltd.*, , while considering the meaning of the word ""may

observes thus :

Thus, the question to be determined in such cases always is whether the power conferred by the use of the word "may" has, annexed to it, an

obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the

statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal

context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the Court rejects an application to

exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and

a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word

"may" indicates that annexes any obligation to its exercise but the legal and factual context of it. This, as we understand it, was the principle laid

down in the case cited before us : *Frederic Guilder Julius v. Bishop of Oxford*, 1880 5 AC 214 (HL).

Dr. Julius, In the case mentioned above, had made an application to the Bishop of Oxford against the Rector of a parish, asking the Bishop to issue

a commission under the Church Discipline Act to enquire against certain against certain unauthorised deviations from the ritual in a Church by the

Rector. The relevant Statue merely conferred a power by laying down that "it shall be lawful" to issue a commission. The Courts of Queens Bench

and Appeal in England had differed on the question whether a mandamus from the Court could go to the Bishop commanding him to issue a

commission for the purpose of making the enquiry. The House of Lords held that the power to issue the commission was not coupled with a duty

to exercise it in every case although there may be cases where duties towards members of the public to exercise a power may also be coupled

with a duty to exercise it in a particular way on fulfilment of certain specified conditions. The Statute considered there, had not specified those

conditions. Hence, it was a bare power to issue or not to issue the commission. Lord Blackburn said (at Page 241) :

"I do not think the words ""it shall be lawful"" are in themselves ambiguous at all. They are apt words to express that a power is given; and as,

prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying

that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the

donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. It by no means follows that because

there is duty cast on the donee of a power to exercise it, that mandamus lies to enforce it : that depends on the nature of the duty and the position

of the donee."

The principle laid down above has been followed consistently by this Court whenever it has been contended that the word "may" carries with it the

obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the power which has to be examined

in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in

particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with a duty to

exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us : *Bhaiya Punjalal Bhagwanddin Vs. Dave*

Bhagwatprasad Prabhuprasad, , State of Uttar Pradesh Vs. Jogendra Singh, ; Sardar Govindrao and Others Vs. State of Madhya Pradesh, A. C.

Aggarwal v. Smt. Ram Kali : [1969]1SCR32 and Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd., .

19. In *L. Hirday Narain Vs. Income Tax Officer, Bareilly, , 36*, the Supreme Court while dealing with Section 35 of the Indian Income Tax Act,

1992, which provided that the authorities "may" rectify any mistake on the face of the record, held that the authorities were bound to exercise the

power if conditions for its exercise were shown to exist by a person interested. In holding so the Apex Court observed as follows :

Even if the words used in the Statute are prima facie enabling the Courts will readily infer a duty to exercise power which is invested in aid of

enforcement of a right - public or private-of a citizen.

In view of the above rule of construction as laid down by their Lordships of the Supreme Court, it has to be held that clause 4 of G.O.O. 26

confers powers on the Board to grant proportionate retiring allowance even to

employees who have not completed 30 years of service, who are normally not entitled to retiring allowance under clause I, on the fulfilment of the conditions prescribed in clause 4 and that the Board is bound to exercise the power under clause 4 and grant proportionate retiring allowance to the employees once when both the conditions prescribed therein for the exercise of such power are satisfied by the employees. In these circumstances, proportionate retiring allowance cannot be denied to the employees who are eligible to receive the same under clause 4 on the ground that clause 4 does not compel the management to grant retiring allowance to eligible employees and that is left to the discretion of the Board.

Further, we must also bear in mind the settled position of law that pension is not a bounty payable to the employees at the discretion of the employer and that the right to pension is a valuable right available to the employees. The Apex Court in *Deokinandan Prasad Vs. The State of Bihar and Others*, , has held that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant. The Supreme Court in the above judgment further observes thus (at page 568) :

We are not inclined to accept the contention of learned counsel for the respondents. By a reference to the material provisions in the pension rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purpose of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an Officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

20. In *Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others*, an employee of the Tata Iron and Steel Company Ltd. filed a suit claiming gratuity. Suit was decreed by the trial Court and the employee was held entitled to claim gratuity and recover the gratuity with interest.

Appeal filed by the employer was allowed by the High Court and the judgment and decree were set aside, inter alia, holding that under the rules payment of gratuity is in the nature of an inchoate claim and not enforceable in

civil Court and the employer has the absolute discretion to grant or not to grant gratuity. While allowing the appeal of the employee and directing the payment of gratuity with interest at the modified rate of interest at 15 per cent. the Supreme Court held as follows (at page 229) :

One more difficulty the High Court experienced in the way of the plaintiff maintaining the suit and recovering the amount of gratuity was that under Rule 10 gratuity was payable at the absolute discretion of the company and cannot be claimed as a matter of right. Undoubtedly, Rule 10 confers discretion on the company to pay the gratuity even if the same is earned by satisfying the conditions subject to which gratuity becomes payable.

Rule 10 provides that "all retiring gratuities granted under the rules shall be at the absolute discretion of the company irrespective of whether an employee has or has not performed all or any of the conditions set out in the rules and no employee, howsoever otherwise eligible, shall be deemed to be entitled as of right to any payment under the rules". Such absolute discretion is wholly destructive of the character of gratuity as a retirement benefit. It is satisfactorily established and the High Court has so ruled that payment of gratuity was a condition of service, albeit and implied condition of service, which part does not stand scrutiny. The 1946 Act was amended specifically in 1956 by Amending Act 36 of 1956 by which power was conferred upon the certifying officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders. It is not clear whether Rule 10 which appears to have been framed in the heyday of laissez faire has been recast, modified or amended to bring the same in conformity with the modern notions of social justice and Part IV of the Constitution. Assuming it is not done, the Court while interpreting and enforcing the relevant rules will have to bear in mind the concept of gratuity. The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity".

In paragraphs 15 and 16 of the above judgment, the Apex Court further observes as follows (at page 230) :

Can such social security measures be denuded of its efficacy and enforcement by so interpreting the relevant rules that the workman could be

denied the same at the absolute discretion of the employer notwithstanding the fact that he or she has earned the same by long continuous service ?

If Rule 10 is interpreted as has been done by the High Court, such would be the stark albeit unpalatable outcome. It is, therefore, necessary to

take a leaf out of history bearing on the question of retiral benefits like pension to which gratuity is equated : *Burhanpur Tapti Mills Ltd. v.*

Burhanpur Tapti Mills Mazdoor Sangh, 1965 1 LLJ 453 , wherein this Court observed that : "A scheme of gratuity and a scheme of pension have

much in common. Gratuity is a lump sum payment while pension is a periodic payment of a stated sum." Undoubtedly both have to be earned by

long and continuous service.

For centuries the Courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending

upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court. This view

held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of

pension underwent a radical change and it is now well settled that pension is a right and payment of it does not depend upon the discretion of the

employer : *Deokinandan Prasad v. State of Bihar*, *Supra* *State of Punjab v. Iqbal Singh*, 1976 II LLJ 344 and *D.S. Nakara and Others Vs. Union*

of India (UOI), "".

Dealing with the question whether the Court can ignore Rule 10, referred to in para. 13 of the judgment, extract above, held as follows (at page

231) :

It, therefore, follows that the part of Rule 10 which confers absolute discretion on the employer to pay gratuity even if it is earned, as its absolute

discretion is ineffective and unenforceable.

In para 17 of the judgment, the Supreme Court has further held as follows (at page 231) :

The claim to absolute discretion not to pay gratuity even when it is earned is a hangover of the laissez-faire days and utterly inconsistent with the

modern notions of fair industrial relations and, therefore, it must be rejected as ineffective and hence unenforceable.

As the pension is a right earned by the employee on rendering required number

of years of service, he would be entitled to it as of right on fulfilling the conditions prescribed for pension. That being so, there will be no option left with the employer to grant pension once the employee fulfills the conditions. The power of employer to grant pension is coupled with a duty towards the employee who is entitled to pension on fulfilment of conditions prescribed for pension. Therefore, it follows that in the context in which the word "may" is used in clause 4 of G.O.O. 26, it has to be interpreted as "shall" as otherwise the very object of the pension scheme embodied in G.O.O. 26 will be defeated. In view of the above legal and factual position, we are inclined to hold that the employees who served for 20 years and more but below 30 years and who retired on reaching the age of superannuation are entitled to receive retiring allowance under clause 4 of G.O.O. 26. Therefore, it is not at all possible for us to share the view expressed by the Division Bench in *E.I.D. Parry (India) Ltd. Vs. Labour Court and Others*, that the payment of retiring allowance to persons who have not completed 30 years of service at the time of retirement is left to the discretion of the Board and it is not a matter of right of the employees. As we are unable to agree with the view expressed by the coordinate Bench of this Court in the judgment in Writ Appeal No. 332 of 1994, dated June 25, on the interpretation of clause 4 of G.O.O. 26, we are of the view that the question raised in point No. 7, namely, whether the employees who have served for 20 years and above but below 30 years, and who retired on reaching the age of superannuation are entitled to receive retiring allowance under clause 4 of G.O.O. 26 has to be referred to a Full Bench for an authoritative pronouncement on that question. The registry may place the papers before My Lord the Chief Justice on the administrative side for passing appropriate decision on point No. 7.

Point No. 8. - the contention of the learned senior counsel for the petitioners is that retrenchment of employees cannot be equated to retirement on account of reasons beyond their control and, therefore, employees retrenched from the services of the petitioners are not eligible to claim proportionate retiring allowance under clause 4 of G.O.O. 26, even if they have completed more than 20 years service. There is merit in the above contention of the learned senior counsel for the petitioners. Retrenchment involves the termination of service of an employee by the employer.

Ordinarily, "Retrenchment" means the discharge of surplus labour or staff by the employer by terminating their services. On, the other hand, in the case of retirement, the employee gives up his work, career etc., because of advanced age and in the case of retirement of the employees the services of the employees are not terminated by the employer in order to discharge surplus labour. Therefore, we are of the view that the employees retrenched from services cannot be treated as retired employees for the purpose of clause 4 of G.O.O. 26. General Office Order 26 confers certain retirement benefits on the employees. Under clause 4, the management may grant the proportionate retiring allowance to those who retired on account of reasons beyond their control. As rightly contended by the senior counsel for the petitioners, retrenchment cannot be equated to retirement and, therefore, we have no hesitation in holding that the employees whose services were terminated by way of retrenchment are not eligible to receive retiring allowance under G.O.O. 26. Point No. 8 is answered accordingly.

Point No. 9. - Clause 1 of G.O.O. 26 provides that normally only employees with 30 years of services or more are eligible to receive retiring allowance. According to clause 4, the Board may also grant the proportionate retiring allowance to those who retired on reaching the age of superannuation or those who have to retire on account of reasons beyond their control and who have completed more than 20 years of service.

The management introduced the voluntary retirement scheme in the year 1975. It is stated in the voluntary retirement scheme framed in the year

1975 that the enormous growth in the wage bill of the group and the apparent need to effective utilisation of manpower and the growing constraint

of the company for various reasons beyond its control, a necessity arose to reorganise the company's operations with a view to economize in all

sectors. With that object, the 1975 scheme was introduced. The said scheme covered the employees in four groups with reference to their age :

(i) 50 to 52 years, (ii) 53 to 56 years, (iii) 56 to 57 years, and (iv) above 57 years.

Clause V of the scheme provided for payment of one month's wages in lieu of notice, ex gratia payment and souvenirs on service eligibility as per

the rules applicable to retirement on normal superannuation and gratuity as per rules to those who opt for voluntary retirement. Clause VI provided

for an additional retirement compensation at the rates specified in the scheme. Another scheme called early retirement scheme was brought into

force on August 20, 1980. The grouping of age in that scheme was as follows :

(a) 40 to 50 years, (b) 51 to 52 years, (c) 53 to 54 years, and (d) 55 to 56 years.

The 1980 scheme provided for payment of monthly allowance by way of additional compensation instead of lump sum payment. There was a

similar scheme introduced in the year 1983.

The contention of Mr. P. Chidambaram, the learned senior counsel for the petitioners, is that a combined reading of clauses 1, 2 and 4 of G.O.O.

26 goes to show that the employees with 30 years of service or more are eligible to receive retiring allowance only if they retired on reaching the

age of superannuation and not when they retired under the various voluntary retirement schemes of the management. In other words, the contention

of the learned senior counsel is that G.O.O. 26 is applicable only to the employees who retired on superannuation and not to those who retired

under the voluntary retirement schemes. Learned counsel further submitted that it is not possible to calculate retiring allowance under clause 2 even

if it is held that the employees retiring from service after completing 30 years of service or more under the voluntary retirement scheme are also

entitled to receive retiring allowance. In support of the above contention, the learned senior counsel relied on the judgment of a Division Bench of

this Court in E.I.D. Parry (India) Ltd. Vs. Labour Court and Others, dated June 25, 1994. The Division Bench of this Court in E.I.D. Parry (India)

Ltd. Vs. Labour Court and Others, while countenancing an identical contention of the management that employees who retired voluntarily under

the voluntary retirement scheme or early retirement scheme are not entitled to receive retiring allowance under G.O.O. 26 held as follows :

A perusal of all the above schemes leaves no doubt that the employees choosing to retire under those schemes cannot be treated on par with

employees retiring on superannuation. Such employees are entitled to claim only the benefits mentioned in the scheme. They cannot of their own,

add to the terms of the schemes. The option was entirely with them and if they had found that the terms thereof were not beneficial, they would not

have opted for voluntary retirement or early retirement. Having chosen to retire under the schemes, it is not open to them to make a claim for the

benefits given to those who retired on superannuation.

It should not be forgotten that though the expression "retirement" is used in the scheme, it is as good as resignation. If an employee resigns his job,

he would not be entitled to the benefits mentioned therein. It is only to distinguish the persons who resign their jobs, the expression "retirement" has

been used. It should also be noted that besides getting a lump sum payment or monthly allowance by way of additional compensation, such

employees were not prevented from getting employed elsewhere. Hence, there is no substance in the contention of the respondents that what they

got under the retirement schemes was much less than what they would have got under G.O.O. 26. Hence, we hold that persons who retired

voluntarily of their own free will and accord under the voluntary retirement schemes or early retirement schemes are not entitled to get the benefits

under G.O.O. 26.

The Division Bench in Writ Appeal No. 332 of 1994, 1997 1 LLJ 170, further pointed out that clauses 5 and 6 of the voluntary retirement scheme

framed in 1975 enumerated all the benefits that will ensure to the employees opting for voluntary retirement under the scheme, that there was no

reference whatever to the employees being entitled to any other payment and that if it was the intention of the parties to pay the retirement

allowance to such employees also, it would have been mentioned expressly in the voluntary retirement schemes. Again, it must be pointed out that

while reference is made in the voluntary retirement scheme to ex gratia payment and souveneirs on service eligibility as per rules applicable to

retirement on normal superannuation, there was no reference to retiring allowance at all in the voluntary retirement scheme. In these circumstances,

we agree with the above view expressed by the Division Bench of this Court in Writ Appeal No. 332 of 1994, dated June 25, 1994, that persons

who retired voluntarily under the voluntary retirement schemes or early retirement schemes are not entitled to get the retiring allowance under

G.O.O. 26.

As against the judgment of the Division Bench of this Court in Writ Appeal No. 332 of 1994, the employees filed SLP Civil No. 10964 of 1994,

before the Supreme Court. On July 29, 1994, the Apex Court passed the order in SLP Civil No. 10964 of 1994, rejecting the claim of employees

who have retired under the voluntary retirement schemes for pension/retiring allowance in the following terms.

We do not admit the claim for pension/retiring allowance of those employees who have taken benefits of the voluntary retirement scheme/early retirement scheme. Their claim stands rejected.

The order in SLP Civil No. 10964 of 1994 was circulated to us by learned counsel for the petitioners through the registry on August 12, 1994. In

these circumstances, we have no hesitation in holding, on point No. 9, that the employees with 30 years of service and more and who retired under

the voluntary retirement schemes are not entitled to receive retiring allowance under G.O.O. 26.

The only other question we have to examine is whether the employees who retired on reaching the age of superannuation with 30 years of service

and more are entitled to claim retiring allowance under G.O.O. 26. In view of our findings on points Nos. 1 to 5, it has to be held that the

employees of the petitioners are entitled to receive retiring allowance under G.O.O. 26 provided they are qualified to receive the same under

G.O.O. 26. In the present case, it is not in dispute that the employees of the petitioners with 30 years of service or more and who retired on

reaching the age of super-annuation are qualified under clause 1 of G.O.O. 26 to receive retiring allowance. Therefore, we are of the view that

such employee with 30 years of service or more and who retired on reaching the age of super-annuation are entitled to receive retiring allowance

under G.O.O. 26 and, therefore, the common order of the Labour Court dated October 12, 1992, so far as it grants retiring allowance to the

above category of employees is just and legal and to that extent the said order has to be confirmed.

21. On the basis of the above discussion of ours, we record our conclusions as follows :

(a) The writ petitions as filed by the management are maintainable.

(b) The employees of the petitioners are entitled to receive retiring allowance under G.O.O. 26 provided they satisfy the requirements of the said G.O.O. 26.

(c) The order in Writ Petition No. 3029 of 1971, and the award of the Industrial Tribunal in I.D. No. 55 of 1968, as confirmed in Writ Petition

No. 4696 of 1975, will not operate as res judicata and the employees of the petitioners can claim retiring allowance in proceedings u/s 33-C(2) of the Act.

(d) The employees of the petitioners by entering into the settlements dated April 21, 1978, and May 17, 1985, have not given up their rights to claim retiring allowance/pension under G.O.O. 26.

(e) The employees who retired under the voluntary retirement schemes or early retirement schemes are not entitled to receive retiring allowance under G.O.O. 26.

(f) The employees whose services were terminated by way of retrenchment are not entitled to receive retiring allowance under clause 4 of G.O.O. 26.

(g) The employees who completed 30 years of service or more and who retired on reaching the age of superannuation are entitled to receive retiring allowance under G.O.O. 26.

(h) The question, whether the employees who retired on reaching the age of superannuation and who completed 20 years of service and more but not completed 30 years of service are entitled to receive retiring allowance under G.O.O. 26 will depend upon the ultimate decision of the Full

Bench on point No. 7, which is referred to the Full Bench for authoritative pronouncement.

22. As a result of our findings on Points Nos. 1 to 9 and our discussions which have preceded, we pass the following order in these writ petitions :

(a) We confirm the common order of the Labour Court, dated October 12, 1992, in so far as they relate to the claim petitions listed in annexure

I"" to this order. granting retiring allowance to employees with 30 years of service or more and who retired on reaching the age of superannuation and the writ petitions mentioned in annexure ""I"".

(b) The writ petitions so far as they relate to the claim petitions mentioned in annexure ""II"", filed by the employees who retired under the voluntary retirement schemes and those whose services were terminated by way of retrenchment are allowed and the common order of the Labour Court dated October 12, 1992, in respect of those claim petitions mentioned in annexure ""II"" are dismissed.

(c) However, the writ petitions, in so far as they relate to the claim petitions filed by the employees who retired on reaching the age of

superannuation, completing 20 years of service, but not completing 30 years of service, mentioned in annexure ""III"" to this order, are kept pending

and the same be posted for bearing no sooner the Full Bench answers the aforesaid question under Point No. 7.

The Registrar shall place the records before the Hon''ble Chief Justice for constitution of the Full Bench. Annexures ""I"", ""II"" and ""III"" will form part of this order. There will be no order as to costs.