

(2016) 04 GUJ CK 0105

In the Gujarat High Court

Case No : Special Civil Application No. 1991 of 2005

Rajya General Kamdar Mandal

APPELLANT

Vs

Zandu Chemicals Ltd.

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2016) 3 CLR 86

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Mr. M.S. Mansuri, Advocate, for the Appellant; Mr. P.H. Pathak, Advocate, Nanavati Associates, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. K.M. Thaker, J.—The petitioner union has taken out present petition against award dated 30.12.2004 passed by the respondent No.2 - learned Industrial Tribunal in Reference (IT) No. 118 of 2002 whereby the learned tribunal partly allowed the reference by directing the respondent company to pay salary to the concerned workman for the period from 26.5.2002 to 31.5.2002. By the said award, the learned tribunal rejected the demand No.2 and demand No.3 raised by the petitioner union and referred for adjudication of the appropriate Government.

1.1 The petitioner union has challenged the award on diverse grounds and it is claimed that the learned tribunal ought to have declared that the company had declared lock-out from 26.5.2002 and the learned tribunal should have held that the workmen are entitled for wages for the period of lock-out which commenced from 26.5.2002.

2. So as to consider and appreciate the challenge raised by the petitioner union against the award impugned in present petition, it is relevant and necessary to consider the facts involved in present petition which gave rise to the dispute

leading to present petition.

2.1 The petitioner union had espoused and supported the dispute concerning about 94 workmen. In view of subsequent developments, now concerned workmen are 84. The petition is also filed for and on behalf of 84 workmen.

2.2 It has emerged from the record and from the submissions by learned advocate for the petitioner and learned senior counsel for the respondent company that the concerned workmen had raised demands by submitting charter of demands. The company and the workmen/union failed to arrive at any settlement.

2.3 The company has alleged and claimed that with a view to pursuing the charter of demands/the workmen/union commenced strike w.e.f. 26.5.2002. The concerned workmen allegedly commenced and actively participated in the said strike. The company has further alleged that after the workmen commenced the strike from 26.5.2002, the company immediately displayed a notice asking the workmen to resume their duties. The company has further claimed that the said notice dated 26.5.2002 was followed by another notice which was notified on 27.5.2002 whereby the company asked the concerned workmen to submit "undertaking" (to the effect that they will regularly attend their duties and they will not harm production activity of the company) and to resume duty after submitting the said undertaking. On the next day i.e. 28.5.2002 the company again asked for the undertaking and asked the workmen to report for duty.

2.4 According to the company, until 28.5.2002 the workmen did not submit their undertaking in same terms as the company had asked for, and that therefore, the company displayed another notice dated 31.5.2002 whereby modified undertaking was notified and the workmen were asked to submit simple undertaking as notified by the company. The company claimed that again vide notice dated 1.6.2002, it had asked the workmen to submit modified simple undertaking and also asked the workmen to resume their duties. According to the company, despite such repeated intimations, the workmen did not report for duties.

2.5 The company also claimed that it had issued individual notices to the concerned workmen and demanded simple undertaking with instruction to report for duties. The company further claimed that since none of the notices yield any result, the Office of Labour Commissioner commenced and conducted the conciliation proceedings. The conciliation proceedings were conducted during the period from 5.6.2002 to 28.6.2002. During that span, the company, allegedly addressed letters dated 15.6.2002 and 18.6.2002 to the Labour Commissioner seeking order prohibiting illegal strike.

2.6 The company also alleged that the workmen continued the strike. According to the company, the strike was continued despite the fact that conciliation process had commenced and was in progress. Subsequently, the appropriate Government passed order dated 19.7.2002 and declared the strike illegal and

also referred the dispute for adjudication to the learned Labour Court, Vadodara. The order of reference dated 19.7.2002 culminated into Reference (IT) No. 118 of 2002. By the said order of reference below quoted terms/issues were referred:-

(i) Whether the workmen are entitled to wages for the period of lock-out w.e.f. 26.5.2002.

(ii) Whether the workmen are entitled to wages for the strike period w.e.f. 25.6.2002.

(iii) Whether the suspension order issued against 8 employees should be declared illegal.

2.7 According to the company, since the concerned workmen continued the strike for long period and also in view of the fact that the workmen continued to be on strike, the company was compelled to treat that act of the workmen as voluntary abandonment of service w.e.f. 1.6.2002.

The company has also claimed that it had issued a notice dated 23.7.2002 and informed the concerned workmen that the appropriate Government has prohibited the strike and that therefore, they should resume duties. The said notice was published in daily news paper "Sandesh" on 24.7.2002. By the said public notice, the company asked the workmen to report for and resume duties immediately.

2.8 At this stage, it is necessary to mention and note that on one hand, the petitioner company resorted to "the presumption" that the workmen had voluntarily abandoned the service w.e.f. 1.6.2002.

2.9 It appears that on or around 26.7.2002, the appropriate Government issued notice to the concerned workmen and called for explanation from the workmen with regard to their action for continuing the strike despite even after order prohibiting the strike.

2.10 It appears that on the ground that despite its efforts and the notices, the concerned workmen did not report for and did not resume their duties, the company allegedly engaged new set of workmen and continued manufacturing activities.

2.11 It appears that on or around 11.9.2002, the company addressed a letter to the Assistant Commissioner of Labour informing that the company was ready and willing to take about 25 to 30 workmen on duty provided the workmen were ready to report for and resume their work. The company also claimed that it had clarified that when production picks up it will absorb more number of workmen. During the conciliation proceedings conducted on 3.10.2002, the company agreed to allow few workmen to report for duty, however, nothing materialized.

2.12 After about 2 months, more particularly on 11.1.2003, the union, for the first time, submitted, on behalf of 84 workmen, a simple undertaking which was

demanded by the company vide intimations dated 28.5.2002 and 31.5.2002.

2.13 Sometime thereafter i.e. on or around 20.1.2003, the union filed application seeking interim relief in above referred Reference (IT) No. 118 of 2002. By the said application, the union prayed for direction that the company should permit the concerned 84 workmen to resume duties. At the time of submitting the undertaking on 11.1.2003, the said 84 workmen had, for the first time, expressed their desire to resume duties. On 4.1.2003, the learned tribunal passed order and rejected above mentioned application for interim relief. The workmen/union challenged the said order dated 4.3.2003 by filing a petition i.e. Special Civil Application No. 3149 of 2003.

2.14 During the proceedings of said reference, deposition of one witness on behalf of the company was recorded on 2.8.2004. The learned tribunal heard the submissions by the contesting parties and also considered the evidence on record and thereafter, passed the award dated 30.11.2004 directing the company to pay wages to the concerned workmen for the period from 26.5.2002 to 31.5.2002. Feeling aggrieved by the said award and direction, the union filed captioned petition and challenged the said award.

2.15 Sometime after the union filed the captioned petition, earlier mentioned petition, i.e. Special Civil Application No. 3149 of 2003 came to be disposed of by the Court vide order dated 30.3.2005 with observation that the petition has become infructuous since the reference was finally decided and disposed by award dated 30.11.2004.

2.16 After about 7 years, somewhere in April 2012, the company filed an application before the learned Labour Court with a request that the complaint filed by the workmen under Section 33(A) of the Act may be dismissed in view of the fact that the reference (wherein the union filed the complaint) is finally disposed of by award dated 30.11.2004. The learned tribunal rejected the said application vide order dated 16.4.2012.

2.17 It appears that somewhere in September 2012, the concerned workmen filed an application in the pending complaint No. 100 of 2003 and prayed that the company should be directed to permit the workmen to resume duties until the complaints are decided finally. The learned tribunal rejected the said application holding that the application is premature. It is claimed by the union and the company that the said complaint i.e. complaint No. 100 of 2003 is pending.

2.18 While the said complaint No. 100 of 2003 is pending before the learned tribunal, the concerned workmen have filed individual cases under Section 2(A) of the Act. The said cases are pending before the learned Labour Court. It has also emerged from the submissions that the said orders of reference have been challenged by the company by filing writ petition i.e. Special Civil Application No. 12586 of 2014. The said petition is pending for further hearing. According to the company, the operation of the orders of reference passed by the appropriate Government is stayed by the Court vide order dated 10.9.2014.

3. In the said factual backdrop, the petitioner union has raised four contentions. Mr. Mansuri, learned advocate for the petitioner union, submitted that, (a) the learned tribunal has travelled beyond the terms of reference and that therefore, the award is without jurisdiction; (b) the factum of lock-out and strike is not in dispute (inasmuch as the company never challenged the order of reference dated 19.7.2002, whereas the union's challenge against the said order of reference is failed) and that therefore, the substantive issue before the learned tribunal for adjudication was about the concerned workmen's entitlement for wages for the period from 26.5.2002 onwards, however, the learned tribunal failed to decide the said issue in right perspective; (c) the learned tribunal was obliged to examine and decide the justifiability of the lock-out as well as the strike; and (d) the findings by the learned tribunal are perverse and contrary to the evidence on record and that the findings recorded by the learned tribunal contradict inter-se. According to learned advocate for the petitioner union, the learned tribunal could not have travelled beyond the terms of reference. According to learned advocate for the petitioner union, the issue related to suspension of 8 workmen is rendered infructuous since during pendency of the reference, the company dismissed the said workmen. However, the learned tribunal failed to decide the issue related to the workmen's entitlement for wages for the period after 26.5.2002 and the period after 25.6.2002 and in holding that the workmen are not in service from 1.6.2002. He also submitted that even otherwise, the learned tribunal committed error on this count, inasmuch as the learned tribunal failed to appreciate that the respondent had never issued any notice/order and never informed the workmen about alleged termination of the concerned workmen.

3.1 Mr. Mansuri, learned advocate for the petitioner union, further submitted that the learned tribunal failed to appreciate that on 11.1.2003 the concerned 84 workmen furnished the bond/undertaking demanded by the company and that therefore, the wages for the period from 11.1.2003 onwards could not have been denied. At this stage, it is relevant and necessary to mention that during his submissions, Mr. Mansuri, learned advocate for the petitioner union, categorically and repeatedly declared and stipulated that the union and the workmen conceded to the fact that since the simple undertaking demanded by the company was not submitted by the concerned workmen until 11.1.2003, the concerned workmen would not be entitled for wages upto 11.1.2003 but the learned tribunal could not have denied wages to the workmen for the period from 11.1.2003. Mr. Mansuri, learned advocate for the petitioner union, submitted that the findings recorded by the learned tribunal are perverse, contradictory and in total disregard to and omission of oral and documentary evidence. According to learned advocate for the petitioner union, the learned tribunal also failed to appreciate the scope and effect of the provision under Sections 22 and 24 of the Act. Mr. Mansuri, learned advocate for the petitioner union, relied on the decision in case of Express Newspaper Limited [1963 (3) SCR 405] and the decision in case of G.T. Lad v. Chemical and Fibers of India to support and justify the submission that if the workmen resorted to strike for better service condition,

then, such action cannot be termed as or will not amount to abandonment of service.

4. Mr. Nanavati, learned senior counsel for the company, submitted that the claim of the union can be broadly divided into three slots/period namely (a) from 26.5.2002 to 31.5.2002, (b) from 1.6.2002 to 10.1.2003 and 11.1.2003 onwards. He further submitted that since the learned advocate for the petitioner union has declared and stipulated that the union/workmen do not claim wages for the period prior to 11.1.2003, there is no need for the company to deal with the position with regard to the period from 26.5.2002 to 10.1.2003 i.e. for the first two slots. He further submitted that the learned tribunal has recorded findings of fact that despite the notices dated 26.5.2002, 27.5.2002, 31.5.2002, 1.6.2002, 4.6.2002, 23.7.2002 and 24.7.2002, the workmen did not report for duty or did not offer to join the duty and it was only on 11.1.2003 that they offered to submit the undertaking and showed willingness to join duty. According to learned senior counsel for the company, the learned tribunal has held and recorded findings that the company removed the names of the concerned workmen from the records w.e.f. 1.6.2002 on the ground that the workmen had abandoned the service. Mr. Nanavati, learned senior counsel for the company, elaborated the said contention and submitted that the petitioner union itself claims that the learned tribunal could not have travelled beyond the terms of the reference and that therefore, the legality or otherwise of the company's action of treating the workmen's absence from duty from 1.6.2002 as action of abandonment of service, could not have been examined by the learned tribunal. In furtherance of the said submission, Mr. Nanavati, learned senior counsel for the company, further claimed and alleged that the dispute with regard to termination of service (by considering the workmen's conduct i.e. absence from duty, as abandonment of service w.e.f. 1.6.2002) is not the subject matter of the dispute by virtue of order of reference dated 19.7.2002 and that therefore, the legality and propriety of the said action could not have been decided by the learned tribunal. According to Mr. Nanavati, learned senior counsel for the company, the decision of the learned tribunal of restricting the claim of the union/workmen for wages for the period before 1.6.2002 is not incorrect. He would further submit that the findings and conclusions by the learned tribunal that prior to 11.1.2003, the service of the workmen had been terminated cannot be said to be perverse since the said conclusion is based on material on record.

5. I have considered the said submissions and contentions by learned advocate for the petitioner union and by learned senior counsel for the respondent company and I have also examined the impugned award in light of the said contentions and in light of the material on record.

6. According to the respondents, the petitioner's claim is divided into three stages viz. (a) from 26.5.2002 to 31.5.2002; (b) from 1.6.2002 to 10.1.2003; and (c) from 11.1.2003 onwards.

6.1 It is further claimed that even according to the petitioner, the claim for the

period prior to 11.1.2003 is not pressed in service and the petition against the award is prosecuted only for the claim for third period i.e. a period beginning from 11.1.2003 when the 84 workmen submitted the modified undertaking demanded by the respondent.

7. In this background, it is relevant to recall that the learned tribunal has proceeded on the assumption that the company has terminated the workmen and treated the concerned workmen "not in service" on the presumption that they abandoned the service w.e.f. 1.6.2002.

7.1 Entire discussion in the award and even the conclusion recorded by the learned Labour Court and so also the final direction by the learned tribunal are based on learned tribunal's assumption that the service of the workmen had come to an end from 1.6.2002 and on the assumption that the company treated them out of employment on account of (presumed) abandonment of service. The learned Tribunal, mechanically and without due appreciation of evidence in its totality, accepted the company's claim that the service of the workmen stand terminated w.e.f. 1.6.2002.

8. This approach of learned Tribunal viz. mechanically accepting and believing company's above mentioned claim that the service of the workmen come to an end w.e.f. 1.6.2002 and the workmen are treated out of employment on the ground of (presumed) abandonment and that their names are struck-off, is erroneous and it is not supported by or based on any evidence except bald allegation and unsubstantiated claim of the company and it ignores or overlooks apparent contradictions between company's said claim and its other claims or assertions or allegations and its own documents.

8.1 Except the bald and unsubstantiated claim and assertion by the respondent company, there was no material on record before the learned tribunal (and there is none on record of the petitioner though company has filed reply) to assume, rather jump to the conclusion, that the service of the concerned workmen had come to an end w.e.f. 1.6.2002 because the respondent company had (allegedly or supposedly) treated them out of employment or because the company claimed that it had removed the names of the concerned workmen from its registers (muster roll/pay roll).

8.2 In the first instance, any material to establish the fact that the names of the concerned workmen were struck-off from the muster roll/pay roll was not placed before the learned tribunal. Only on bald assertion of the company, the learned tribunal accepted the said claim of the company.

8.3 Second important aspect is that, undisputedly, the respondent company has not passed and it did not place on record any order(s), either individual termination orders (in respect of each of the concerned employees) or even a common order (in respect of the concerned employees), informing them that his service is/stands terminated or that he is/they are treated out of employment (w.e.f. 1.6.2002) on the ground of misconduct or for remaining absent without

leave or on the ground of misconduct of resorting to strike or even on the ground of alleged or presumed abandonment of service or on any ground and his/their names are deleted and struck off from the muster roll/pay roll w.e.f. 1.6.2002.

8.4 In absence of termination order(s) terminating the service of the workmen, there was neither any basis nor any justification for the learned tribunal to mechanically accept company's said claim and to assume that the service of the concerned workmen had come to an end w.e.f. 1.6.2002 and/or that the company had treated them out of employment w.e.f. 1.6.2002 on the ground of abandonment of service w.e.f. 1.6.2002 and/or that names of all concerned workmen were struck off from the muster roll/pay roll w.e.f. 1.6.2002, more so when company's witness had accepted and admitted in his deposition that termination orders are not passed and/or that employees have not been informed about termination of services and the terminal dues have not been paid.

8.5 The respondent company came out, probably with a view to taking advantage of the order of reference which would not permit the learned tribunal to decide the issue about legality of alleged termination of service with such bald claim without support of any evidence and the learned Tribunal mechanically and without due and proper analysis and assessment of entire material in totality? accepted said unsubstantiated claim of the company and in the process, it overlooked above mentioned two lacuna and various other contrary or contradicting material/documents.

9. In such circumstances [i.e. when termination orders or other cogent evidence which would prove that service of all concerned workmen were actually terminated w.e.f. 1.6.2002 and their services stood terminated w.e.f. 1.6.2002 was not available on record, there was no justification to rely on and to accept company's bald claim, more so when several other contrary documents/material (which militate against said claim of the company) were available on record] the learned tribunal ought not have readily and mechanically accepted the claim of the company that the service of all concerned workmen were terminated and had come to an end w.e.f. 1.6.2002.

9.1 It is pertinent that the company had not placed on record any material to demonstrate that the terminal/retiral dues (benefits) payable to the workmen on cessation of service were paid/forwarded to them. Therefore also, there was no justification for learned tribunal to proceed in the matter on such assumption and pass the award and final direction on the premise and presumption or understanding that service of the workmen had come to an end w.e.f. 1.6.2002 and the issue related to legality of termination cannot be examined in subject reference proceedings.

9.2 In this context, it is relevant to note that on 26.5.2002, the respondent company had, according to its claim, displayed notice asking the workmen to resume duties and on 27.5.2002, it had displayed a notice asking the workmen to submit the undertaking as per the draft displayed by it. Subsequently, on

28.5.2002, the company again asked for the undertaking from the concerned workmen.

9.3 Thereafter, on 31.5.2002, the company modified the undertaking and demanded the undertaking which, according to its case, was "simple undertaking".

9.4 On 1.6.2002, the respondent company displayed a notice and asked all workmen to submit the "simple undertaking" dated 1.6.2002 and also asked the workmen to resume their duties after submitting the said undertaking. The company has claimed that despite such notice, the workmen did not submit the "simple undertaking" and did not report for duty.

9.5 It is necessary to recall and emphasise the fact that it is the said date, i.e. 1.6.2002, which is accepted by the learned tribunal as the date on which the service of the workmen was allegedly/supposedly terminated. Actually, the company had displayed the notice on 1.6.2002 and invited the workmen to submit the undertaking and resume their duties. Therefore in absence of and for want of cogent evidence, there was no justification to assume that the service of the concerned workmen stood terminated on and from same day i.e. 1.6.2002 and in absence of cogent evidence such assumption was unwarranted and unjustified more particularly in light of material on record which did not and does not support, rather contradict, such stand-claim of the company.

10. It is pertinent that the respondent company had, according to its own claim, issued individual notices to the workmen on 4.6.2002 (i.e. 3 days after the said crucial date of 1.6.2002) and again demanded simple undertaking and asked them to resume their duties. Thus, by virtue of the notice dated 4.6.2002 the time frame, if at all mentioned in the notice dated 1.6.2002, was automatically extended by company itself vide its notice dated 4.6.2002. Hence, in this view of the matter, there was no basis or justification to claim that the service of the workmen stood terminated w.e.f. 1.6.2002. Thus, the very fact that on 4.6.2002 i.e. almost 3 days after the date in question (1.6.2002) the company asked the workmen to report for and resume their duties militates against and falsifies the company's said claim inasmuch as if that was the fact, then, the company would not call the workmen to resume duties if the service of workmen were in fact/actually terminated.

10.1 Further, in view of its notice dated 4.6.2002 asking the workmen to submit the undertaking and to resume duties, there was negation of its claim with regard to 1.6.2002. Moreover, after having invited the workmen to submit undertaking and resume duties, there was no justification for the company to treat the workmen out of employment w.e.f. 1.6.2002 and to delete names of the concerned workmen from muster roll/pay rolls. The assumption by the Court rendered the notice dated 4.6.2002 as well as subsequent notices redundant and useless.

11. Another important event is the event in the month of June 2012 when

conciliation proceedings were conducted between the company and the workmen during the period from 5.6.2002 to 28.6.2002 (i.e. after 1.6.2002) when the company did not mention or did not claim that it had struck off the names of the workmen from muster roll/pay roll and that the workmen are treated out of employment on the ground of abandonment of service.

11.1 About 1-1/2 months after 1.6.2002, i.e. on 19.7.2002, the appropriate Government passed order of reference and declared the strike illegal. Thus, even appropriate Government treated and considered the workmen on strike at least until 19.7.2002 and considering and/or holding the workmen on strike presupposes them in service - continuation of their employment. Therefore, there was no justification for the Court to assume that the workmen had abandoned the service.

12. Now, another relevant and pertinent aspect is the notice dated 23.7.2002 issued by the respondent company. It is pertinent that by the said notice dated 23.7.2002, the respondent company, according to its own claim, had informed the workmen that the strike is declared illegal and the strike is prohibited and had asked them to resume their duties immediately.

12.1 The fact that the company issued notice about 57 days after 1.6.2002 and asked the workmen to resume duties demolishes its own claim that it had terminated the service of workmen w.e.f. 1.6.2002. If the workmen were not in service on 23.7.2002 and were terminated on 1.6.2002 then the company would not have issued such notice and there would not be any base or cause or justification to issue such notice almost 57 days after 1.6.2002. The said notice presupposes continuation of employment. Only if employment continues, the employer would issue such notice and call-upon/ask the employees to resume their duty and if the services of the workmen are terminated, then, the employer would not call all workmen to resume duty.

12.2 The respondent company has claimed that besides the said notice dated 23.7.2002, it had also issued/forwarded individual letters to all workmen informing them to resume their duties. This fact fortifies above mentioned aspect otherwise company would not have any base or any premise to ask the workmen to resume their duties.

12.3 The very fact that about 7 weeks after 1.6.2002, the company on 23.7.2002 asked the workmen to resume duties belies its claim that the workmen were treated out of employment w.e.f. 1.6.2002 and/or their names were struck off from the muster roll/pay roll w.e.f. 1.6.2002. Had it been the fact then on 4.6.2002 and/or during the conciliation proceedings from 5.6.2002 to 28.6.2002 and/or on 23.7.2002, the respondent company would not have issued such notices.

12.4 The fact that any termination orders were not passed/issued on 1.6.2002 and were not served to the workmen and were not placed on record before the learned tribunal and the fact that the workmen have not been formally conveyed

that their services are terminated and terminal benefits are not paid to the concerned workmen cannot be overlooked and ignored when the company's unsubstantiated claim (that the service of the workmen were terminated w.e.f. 1.6.2002) is being considered. The said aspects also bring out that the said claim of the company was without any base or substance and ought not have been mechanically accepted and learned Tribunal ought to have examined available material in its totality and/or ought to have called for relevant evidence, more so when other contrary material was on record.

12.5 After issuing notice dated 23.7.2002 and after forwarding, according to its claim, individual letters to all workmen on 23.7.2002, the respondent company, on the next date, i.e. 24.7.2002, issued and published a public notice in Gujarati daily newspaper informing the workmen to resume duties immediately.

12.6 Like the notice and the individual letters dated 23.7.2002, the said notice dated 24.7.2002 also belies the company's claim that the workmen were treated out of employment on the ground of abandonment of service w.e.f. 1.6.2002 and their names were struck off from the muster roll/pay roll. If the company had terminated the service of the concerned workmen from 1.6.2002, then, the company had no base or premise to ask the workmen to report for and resume duty and there was no justification to issue notice dated 4.6.2002 and/or 23.7.2002 and/or 24.7.2002.

12.7 The learned Tribunal also ought to have considered that the Government had issued show cause notice to the workmen on 26.7.2002 asking from the workmen their explanation for continuing the strike after it was prohibited and declared illegal. Meaning thereby, even before the State Government, the company had not mentioned or clarified that the workmen have been treated out of employment w.e.f. 1.6.2002 and that their service have been terminated since 1.6.2002.

12.8 The learned Tribunal ought to have also considered that the notices dated 23.7.2002 and 24.7.2002 were issued after the order of reference dated 19.7.2002.

13. The fact that the petitioner company has not passed any order(s) terminating service of the workmen or treating the workmen out of service is established from the deposition of company's witness Dr. A.R. Modi who, during his cross-examination, admitted that the company has not informed the concerned workmen that their names have been struck off from the rolls of the company w.e.f. 1.6.2002 and/or that they are not in service of the company w.e.f. 1.6.2002.

14. The same witness i.e. Dr. A.R. Modi also accepted and admitted during his evidence that the concerned workmen were in service until 11.8.2002 and the company had decided that even if the workmen submitted undertaking after 12.8.2002 then from/after 12.8.2012, they shall not be allowed to report for and resume their duties.

14.1 Another pertinent aspect is that the company's unsubstantiated claim ought no have been mechanically accepted in light of the fact that the company has not paid the dues, including the amount payable on cessation of employment to the workmen. This fact also does not support, or runs counter to, company's said claim. It is pertinent that Dr. Modi, company's witness, accepted and admitted during his deposition that the amount payable to the concerned workmen have not been paid and/or they have not been informed to collect the dues from the company.

14.2 The learned Tribunal ought to have also considered that (a) even in its communication dated 11.9.2002 which was addressed to the Additional Commissioner of Labour, the company had mentioned that it had displayed notice upto 12.8.2002 and asked the workmen to report for duty and resume their duties and that (b) even from the said communication, it emerges that until 12.8.2002, neither the company had considered the workmen out of employment and/or it had not terminated their service w.e.f. 1.6.2002.

14.3 The above facts bring out that before proceeding on the assumption and before mechanically accepting the company's claim that the workmen were terminated from service w.e.f. 1.6.2002, learned Tribunal ought to consider the said facts and relevant evidence and entire material.

14.4 Above mentioned aspects do not support the claim of the company and that therefore, it was necessary for the learned Tribunal to examine the claim of company in light of entire evidence and/or to call for relevant evidence, instead of mechanically relying on such claim.

15. These aspects also establish that the findings of fact and conclusions recorded by the learned Tribunal are recorded without having regard to or without considering the said facts/details and documents.

15.1 The learned Labour Court ought to have considered above mentioned factual aspects and ought to have also considered that the actions of the respondent company do not support or justify its claim that the workmen were treated out of employment on the ground of abandonment w.e.f. 1.6.2002 and their names have been struck-off from the registers on 1.6.2002 and ought not have mechanically accepted the claim of the company and instead, it ought to have called upon the company to clarify its notice and actions after 1.6.2002 which run contrary to its claim about cessation of the service of the workmen w.e.f. 1.6.2002.

15.2 If the learned tribunal had not mechanically accepted the said claim of the company and if the learned tribunal had not treated the subject or chapter about workmen's employment as closed from the said date i.e. 1.6.2002 and if the learned tribunal had kept its sight, vision and mind open for examining the veracity of the company's aforesaid claim then, the learned tribunal would have noticed other aspects emerging from aforesaid facts and other material on record and the learned tribunal would have also noticed that it was necessary to call

upon the respondent company to prove its claim and establish the fact that it had actually and in reality treated the concerned workmen out of employment w.e.f. 1.6.2002 and that it had treated the concerned workmen out of employment from 1.6.2002 on account of abandonment of service and to also prove and establish that the names of the workmen were actually struck off from the muster roll/pay roll on 1.6.2002 and to prove that the service of the workmen were terminated by virtue of termination order(s) and then, the learned Tribunal would have taken further step of examining the issue connected to the terms of reference in the order of reference dated 19.7.2002.

15.3 Unfortunately, the learned tribunal allowed itself to be influenced, at the outset or at the threshold, by said claim of the company and it mechanically accepted the case of the respondent company and assumed that the service of the workmen had come to an end w.e.f. 1.6.2002 and that therefore, there was no need or justification to examine the workmen's claim.

15.4 These aspects also establish that the matter requires re-consideration by the learned Tribunal and appropriate final conclusion is required to be recorded after taking into account aforesaid details and other relevant aspects, which may be obtaining on record.

16. The learned Tribunal also ought to have considered the effect of two self-contradicting or inter-se contradicting claims viz. (a) that workmen are) on illegal strike; and (b) workman abandoned the service. The workmen can resort to strike and/or they can be said to be on strike if they continue in employment and if employer-employee relationship exist. Despite this position, the company adopted and pleaded such contradicting stand and claim in its notices which were issued after 1.6.2002 particularly from 4.6.2002 to 12.8.2002 wherein the company continuously asserted that workmen are on illegal strike and they should report for duty whereas before the Court it claimed that their service came to an end w.e.f. 1.6.2002 and it had considered them out of employment w.e.f. 1.6.2002.

17. It is true that in light of the text and language of the order of reference, the learned tribunal could not have examined the legality of the termination of service of the concerned workmen (if at all, it was even demonstrated that the service of the workmen were terminated w.e.f. 1.6.2002), however, with a view to examining the issue No.1 and No.2 mentioned in the order of reference dated 19.7.2002, it was open and permissible for the learned tribunal to satisfy itself as to whether the workmen were actually in service or not and whether employer and employee relationship continued after 26.5.2002 and after 25.6.2002 and whether said relationship subsists and continues after 1.6.2002 or not and whether there is actual and real cessation of employment/service or not. The question about legality of alleged termination of service is altogether a different issue from the issue whether the workmen were in service after 26.5.2002, 25.6.2002 and 1.6.2002 and the employer/employee relationship existed or it was actually terminated and it had actually come to an end. In light of the facts

of the case, the learned Tribunal could have and ought to have-so as to reach to right and just conclusion with regard to terms of reference dated 19.7.2002-examined and decided the said limited issue/factual aspect instead of mechanically accepting said claim of the company and instead of proceeding in the matter on assumption, more so when other contrary material/documents stared in face of company's unsubstantiated claim. It is always open and permissible for the learned Tribunal to decide incidental issues.

18. This Court would hasten to clarify one important aspect namely, that by making reference of above mentioned dates and events, this Court has not expressed any final view and/or has not recorded any conclusion on the issue that the service of the workmen were terminated or not terminated on and from 1.6.2002. This Court has not examined the facts of such claim and for want of material on record of this petition, this Court could have, otherwise also, not examined the said issue on merits and this Court has not pronounced any view, not even prima facie view or decision, on that count. All that this Court has done is to emphasise the fact that in view of the dates and events which are mentioned by the respondent company itself, there was no justification for the learned tribunal to mechanically accept the company's claim that the service of the workmen had come an end on 1.6.2002 and that therefore, there was no need to examine the claim for wages for period from 1.6.2002 onwards.

19. Apparently and undisputedly, the learned Tribunal has based its conclusion and final directions on three assumptions viz. (a) it has jurisdiction to decide the dispute as circumscribed by the terms of the reference and it was not permissible to travel beyond the terms of reference; and (b) therefore, the legality or otherwise of the alleged termination of service of the concerned workmen was not to be examined, adjudicated and decided; and (c) the service of the concerned workmen was terminated w.e.f. 1.6.2002.

19.1 In view of the fact that it is common case of both sides, and it is also settled legal position that the learned Tribunal cannot travel beyond the terms of reference, so far as above mentioned two premise at serial No.(a) and (b) are concerned, any fault cannot be found with the learned Tribunal in not entering into the dispute with regard to legality of termination and/or for not pronouncing its decision with regard to the legality or otherwise of the termination. However, so far as the third premise i.e. at serial No.(c) above is concerned, the learned Tribunal committed error in mechanically accepting the company's claim that the workmen were treated out of employment w.e.f. 1.6.2002 (a) without calling upon the company to place cogent evidence on record to substantiate and prove the fact that the workmen have been terminated from service w.e.f. 1.6.2002 and their names have been struck off from the muster roll w.e.f. 1.6.2002; (b) without taking into account the contradictions in the submissions by the company and/or contradictions emerging from the material placed on record before the learned Tribunal.

20. As mentioned earlier, after 1.6.2002, the company had issued notices dated

4.6.2002, 23.7.2002 and 24.7.2002 calling the workmen to resume duties. In view of the fact that by the said notices the company had asked the workmen to resume duties, the said notices established that until then, the company had not treated the workmen out of employment and it had until then, not struck off the names of the workmen from the register (otherwise it would not be repeatedly asking the workmen to resume duties).

20.1 Another important aspect which brings out the contradiction with regard to 1.6.2002 is the stand of the petitioner company that new recruits were engaged by the company on/from 3.8.2002. The said fact also runs counter to the company's claim that the workmen were treated out of employment w.e.f. 1.6.2002 (otherwise there would not have been wide gap/hiatus of 2 months).

20.2 Another equally relevant and important fact is that according to the claim of the company, it had displayed similar notices from 25.7.2002 to 12.8.2002 (page Nos. 153 to 226 of present petition where copies of the said notices are placed on record). A glance at the said notices give out that in each of the notices, the company has expressly mentioned that the workmen should submit the undertaking and resume their duties.

20.3 The said notices and the intimation issued to the workmen run counter to the company's claim that the service of the workmen were terminated w.e.f. 1.6.2002. When above mentioned aspects are taken into consideration, it gradually becomes clear and it emerges that there was no base or justification for the learned Tribunal to mechanically accept the company's said claim.

21. During the hearing of the petition, this Court had inquired from the learned Senior Counsel for the company as to whether the workmen were informed about the company's alleged and so-called decision or action viz. termination of service w.e.f. 1.6.2002. In reply the Court was informed that the workmen were never informed either by individual orders or individual communications/letters or by common order or by common notice that they are terminated from company's employment or that their services are terminated or treated as terminated w.e.f. 1.6.2002. Despite this fact and despite such material on record before it, the learned Tribunal mechanically accepted company's said claim and proceeded on the assumption.

22. Having mechanically accepted the said submission and claim by the company or after having mechanically allowed itself to assume that the service of the workmen came to an end on 1.6.2002. The learned Tribunal has rejected the claim only on the premise, or only on the basis of its assumption, that the workmen are (allegedly) terminated w.e.f. 1.6.2002. The learned Tribunal ought to have appreciated that the claim of the company is unsubstantiated-since any evidence is not placed on record and other contrary material is available on record - said view and conclusion of the learned Tribunal is erroneous.

23. The facts discussed above and the material referred to herein above have, prima facie, brought out that the notices dated 4.6.2002, 23.7.2002, 24.7.2002

and the notices displayed by the company from 25.7.2002 to 12.8.2002, prima facie, puncture the company's claim (based on the alleged event of 1.6.2002).

24. It is relevant to also mention that the company has attempted to suggest that the services of workmen were terminated w.e.f. 1.6.2002 and that was accepted or acknowledged even by the workmen. So as to support and justify such contention, the company placed reliance on the complaint filed by the workmen. When copy of the said complaint are considered, it comes out that it was on the basis of the notice displayed by the company on 24.7.2002 that the workmen mentioned in their complaint that the company terminated their service 48 hours after 24.7.2002. The said complaints do not acknowledge or admit that the service were terminated w.e.f. 1.6.2002.

24.1 During the hearing of the petition, the company tried to rely upon fresh complaint filed by the workmen under Section 2(A) of the Act and claimed that in the said complaint, the workmen have mentioned that their services have been terminated w.e.f. 26.5.2002. However, that date is not the date which the learned Tribunal has accepted as date of termination of concerned workmen. On the contrary, learned Tribunal has awarded wages for the period upto 31.5.2002. It appears that in absence of termination orders or an account of specific, clear and individual information to the workmen as regards alleged termination and about the date of termination of their service, they are mentioning different dates in different proceedings. In this view of the matter, the company is not justified in relying on what workmen have alleged to prove its own claim or allegation.

25. The learned Tribunal has observed in the award, in paragraph No.37, that in the reference before it, the issue related to termination of service is not to be examined. In view of the terms of reference, there cannot be any dispute or doubt on this count. However, the learned Tribunal was required to decide as to whether the workmen are entitled for wages from 26.5.2002 and from 25.6.2002, or not. If the learned Tribunal had not proceeded on the assumption that the service of the workmen were terminated on 1.6.2002, it would have found that it was necessary to examine the issue about workmen's entitlement for wages on and from 26.5.2002 and from 25.6.2002 and that the said issue shall be decided without being influenced by its assumption and mechanical acceptance of company's unsubstantiated claim. However, the assumption did not allow the learned Tribunal to address the said issue from proper perspective.

25.1 Further, the learned Tribunal also failed to appreciate that the order of reference mentioned that the workmen had resorted to strike (and employer had resorted to lock-out) and that therefore, when the workmen had resorted to strike, then, presumption that they abandoned the service would not be justified.

26. If the learned Tribunal had not proceeded on the presumption and premise mentioned above, then, the learned Tribunal would have considered the issues related to or arising from the allegations about strike and/or lock-out and the

issues related to claim and entitlement for wages in the event strike is not found unjustified and/or illegal and the issues related to lock-out and the extent of employer's objection to pay wages if lock-out is found to be justified and/or the issue about legality of the company's refusal to allow the workmen to resume duty after they submitted the undertaking on 11.1.2003.

27. It is also relevant to take into account that in the impugned award, the learned Tribunal has recorded finding and conclusion that if the workmen do not report for duty for long time, it is open and permissible for the company to engage fresh employees and in present case the action of the company of engaging fresh set of employees cannot be considered illegal.

27.1 The said observation and finding and conclusion by the learned Tribunal in the impugned award will adversely influence other proceedings e.g. the complaints which are pending in the Court/Tribunal and therefore, such observation vitiates the award.

27.2 Whether the company's action of engaging fresh set of employees was justified and legal or not, was not the issue before the learned Tribunal. Secondly, in absence of any evidence and without considering the said aspect in light of the relevant legal provisions and cogent evidence, the learned Tribunal could not have recorded such observations and conclusion, more particularly when other complaint and approval/permission applications are pending. The learned Tribunal committed error in recording such observations, conclusion and finding in the award in absence of any evidence and without considering the relevant and applicable legal provisions.

28. The foregoing discussion and details have brought out that the learned Tribunal's assumption that the workmen have been terminated w.e.f. 1.6.2002 is made without taking into account above discussed aspects. Therefore, this issue and the aforesaid aspects deserve reconsideration by learned Tribunal in light of entire material on record.

28.1 In view of foregoing discussion and in light of the facts mentioned above and for the reasons recorded herein above, the matter deserves to be remanded to the learned Tribunal. For the said purpose, the award impugned in present petition is required to be set aside and it is hereby set aside. The case is remanded to the learned Tribunal for fresh decision on merits after hearing the parties. It will be open to both sides to request learned Tribunal for permission to place on record additional evidence. The learned Tribunal shall decide such request in accordance with law. While considering the matter afresh in light of above discussion, the learned Tribunal may also consider the request/issue as to whether it would be appropriate to finally decide the Reference (IT) No. 118 of 2002 or to decide the said reference along with pending complaint. The learned Tribunal shall also consider all issues related to strike and lock-out and the effect/consequences of legal/justifiable strike and lock-out. The learned Tribunal shall decide the reference afresh and independently on its own merits and in light of

evidence on record as expeditiously as possible and preferably within 6 months and without being influenced by its previous order or by this order.

29. With aforesaid observations, the petition stands disposed of. Rule is made absolute to the said extent.