
(2010) 01 GUJ CK 0031
In the Gujarat High Court

Case No : Misc. Civil Application No. 2110 of 2009 in Special Civil Application No. 14632 of 2007

The Ahmedabad Advance Mills Ltd.

APPELLANT

Vs

The Textile Labour Association and Another

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 27A, 30, 32, 33, 42(4)

Citation : (2010) 125 FLR 1066 : (2010) 2 LLJ 159 : (2010) 5 SLR 754

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : S.I. Nanavati, for Nanavat and Nanavati, for the Appellant; D.S. Vasavada for Opponent 1, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Senior Advocate Mr. S.I. Nanavati for Nanavati & Nanavati on behalf of applicant, learned advocate Mr.

D.S. Vasavada for opponent No. 1 and Mr. Danial, learned Union Representative appearing on behalf of opponent No. 2 concerned employee.

2. This Court has passed an order on 21.12.2009, which is quoted as under:

1. Heard learned senior advocate Mr. S.I. Nanavati appearing on behalf of applicant, learned advocate Mr. Vasavada appearing on behalf of

opponent No. 1 and Mr. Danial, learned union representative of opponent No. 2.

2. Considering the submissions made by both learned advocates and averments made in this application and also the affidavit filed by respondent

No. 2, the question raised in this application requires detailed examination. Hence, Rule returnable on 18.1.2010.

3. Meanwhile, interim relief in terms of Para.11(C) till final disposal of this application.

3. Before considering merits of the matter, it is necessary to consider order passed by this Court in SCA No. 14632 of 2007. In SCA, petitioner

has challenged the order passed by Industrial Court, Ahmedabad in Appeal (IC) No. 27 of 2006 against the order of Labour Court in Application

No. 294 of 1996 dated 7.5.2007. The Industrial Court, Ahmedabad has allowed the appeal filed by respondent Union and judgment and order

passed Labour Court on 10.4.2006 in BIR Application No. 294 of 1996 has been set aside. The Industrial Court has declared that there was a

closure of the mills company from 23.5.1996 onwards and permission for closing down was not obtained from the appropriate Government.

Therefore, said closure was declared illegal. The consequential benefits of holding of illegal closure shall be paid by mills company to the concerned

employee with the cost of Rs. 500/-. The Rule issued by this Court on 8.1.2008 and ad-interim relief granted by this Court. Thereafter, matter has

been discussed number of occasions between the parties to find out some solution in respect to question involved in the present petition.

Thereafter, matter has been settled between the parties. It is necessary to note that opponent No. 1 TLA being a union representative under

provisions of BIR Act, 1946. The terms of settlement has been worked out between the parties and produced on record by both parties. The

consent terms has been produced on record and according to consent terms, benefits which were available to concerned employees of tendering

their voluntary resignation, retired employees, expired employees and Badli employees has been worked out on agreement between the parties to

the effect that mills has closed down manufacturing activities completely and it has been agreed to grant following benefits as per the settlement to

the concerned employee. This consent terms dated 11.2.2008 signed by both advocates of respective parties as well as Shri S.D. Vyas, Director

of Ahmedabad Advance Mills Ltd. and Shri Amar Barot, Secretary of TLA.

4. This Court has passed the order on 11.2.2008 recording settlement. The order which has been passed by this Court on 11.2.2008 in aforesaid

SCA, paras.5, 6, 7 and 8 are relevant which are quoted as under:

5. I have perused the consent terms arrived at between the parties. The matter has been rightly settled and both the parties have rightly agreed to

the terms which is in the interest of both the parties. The result of this

settlement is that the order passed by the Industrial Court, Ahmedabad which is under challenge declaring the closure of the mills company is illegal, is now considered to be a closure declared by the mills company is legal and valid, which is accepted by the respondent union and all the concerned employees along with representative of respondent-union who has given writing to this Court dated 28/1/2008.

6. The aforesaid consent terms is taken on record and accordingly, the order passed by the Industrial Court, Ahmedabad in Appeal (IC) No. 27

of 2008 dated 7/5/2007 is hereby modified in terms of consent terms and both the parties are directed to abide by consent terms and it is directed to both the parties to implement the consent terms as recorded by this Court.

7. Rule is made absolute in terms of consent terms with no order as to costs.

8. It is necessary to note that long pending dispute is now reached to the happy settlement, where, rupees fifteen crores are to be disbursed in

favour of the concerned employees with the sincere efforts made by Mr. Amar Barot, Secretary of Textile Labour Association and showing

positive approach in all respect getting the result of long pending dispute in good settlement. This Court is really appreciated the sincere efforts of

Mr. Amar Barot, Secretary of TLA being a representative of Union in local area in Textile Industry. It is simultaneously happy to note the positive

approach of the employer leaving a legal battle aside and settled the dispute in a positive manner which is ultimately, beneficial to the concerned

employees. Therefore, this Court also appreciated the sincere efforts of learned senior advocate Mr. S.I. Nanavati, learned advocate Ms. Anuja

Nanavati learned advocate and Mr. D.G. Shukla who have helped through out in the proceedings. This Court also appreciated the sincere effort of

learned advocate Mr. D.S. Vasavada.

5. The aforesaid paragraphs are quoted by this Court for deciding controversy arise between the present applicant and opponent No. 2. This

Court has observed that net result of this settlement is that the order passed by Industrial Tribunal, Ahmedabad which is under challenge declaring

closure of the mills company is illegal, is now considered to be a closure declared by the mills company is legal and valid which is accepted by the

respondent Union and all the concerned employees along with representative of respondent Union, who has given writing to this Court dated

28.1.2008. This Court while taking consent terms on record, modified order passed by Industrial Court, Ahmedabad in Appeal (IC) No. 27 of

2008 dated 7.5.2007. In terms of consent terms, both parties are directed to abide by consent terms and it is directed to both the parties to

implement the consent terms as recorded by this Court and Rule is made absolute in aforesaid SCA in terms of consent terms with no order as to costs.

6. Therefore, whatever benefits accrued in favour of concerned employees as per consent terms are to be calculated on the basis of legal closure

of petitioner mills. The opponent No. 2 herein has filed application before the controlling authority which is at Page-27 (Form-I) dated 31.7.2008.

The date of appointment is 1.7.1954 and date of termination means voluntary resignation dated 15.4.2008, total period of service is 54 years and

daily wage is considered at Rs. 143.41 ps. The difference of gratuity has been calculated which comes to Rs. 35,220.10 ps which is at Page-27 of

compilation. Thereafter, on 5.3.2009, mills company has filed reply against claim of opponent No. 2. The application is registered by competent

authority being Application No. 63 of 2009 on 16.4.2009.

7. The present applicant mills company has filed present application with a prayer to issue necessary direction to the controlling authority,

Ahmedabad modifying/clarifying the earlier order dated 11.2.2008 passed by this Court in SCA No. 14632 of 2007 and to quash the proceedings

of Application No. 63 of 2009 filed by opponent No. 2 before the controlling authority.

8. The affidavit-in-reply filed by opponent No. 2 against present application with authority of union representative Mr. P.K. Danial, General

Secretary of mighty Labour Association.

9. Mr. S.I. Nanavati, learned Senior Advocate, submitted that in pursuance to aforesaid consent terms and order passed by this Court on

11.2.2008, opponent No. 2 has tendered his voluntary resignation on 15.4.2008 and that resignation was accepted by mills company as per

settlement recorded by this Court and to be paid amount on or before 31.5.2008. This letter where voluntary resignation was accepted, has been

communicated immediately to opponent No. 2 which bears signature of opponent which is at page-23. Page-24 is a letter of opponent No. 2

where it is mentioned that on the basis of settlement arrived at between representative union TLA and mills company as well as order passed by

this Court on 11.2.2008, whatever terms and conditions decided between the parties has been accepted by opponent No. 2 - workman and

requested mills company to pay whatever dues available as per consent terms to him. In the said letter, it is also made clear by opponent No. 2

that he has not filed any case or proceedings against mills company and even in case if any such case is filed, he has given undertaking to mills

company to withdraw it voluntarily. He is not having any other premises or quarters with him or any property of company with him. Even if any

property is remained with him, he is prepared to give vacant possession to mills company. This letter at page-24 is signed by opponent No. 2

workman in presence of witness, who has also signed in the said letter. Thereafter, a receipt has been given by opponent No. 2 (page-25) as per

settlement recorded by this Court as referred above, total amount comes to Rs. 78,478/- and after deducting various deduction, Rs. 24,151/- as

agreed between both parties, remaining amount of Rs. 54,327/- has been paid to opponent No. 1 by Cheque No. 717731 dated 10.6.2008

drawn on SBI Commercial Branch, Ashram Road, Ahmedabad. This receipt is also signed by opponent No. 2 on 14.6.2008 in presence of union

representative. Thereafter, Rs. 80,942/- amount of gratuity is also paid as per consent terms (page-26) which has also been accepted by opponent

No. 2. Thereafter, Form-I has been preferred which was sent to mills company by opponent No. 2 on 31.7.2008 claiming difference of amount

calculating the interim period of closure upto 15.4.2008. Thereafter, mills company has filed reply on 5.3.2009 (page-28) to controlling authority

under Payment of Gratuity Act, 1972. After reply of mills company, opponent No. 2 has filed application No. 63 of 2009 before the controlling

authority on 16.4.2009 claiming difference of gratuity amount which comes to Rs. 35,220.10 ps. These are the facts which are on record.

10. In light of these facts which are almost undisputed between parties based on documents which referred by this Court as above.

11. Mr. S.I. Nanavati, learned Senior Advocate relying upon the decision of Apex Court in case of Shivanand Gaurishankar Baswanti v. Laxmi

Vishnu Textile Mills and Ors. reported in 2008 AIR SCW 8122, submitted that once the representative union arrived at an agreement or consent

terms with mills company, then concerned employee opponent No. 2 has no right to challenge the consent terms. He also raised contention that

consent terms has been accepted by opponent No. 2 and accordingly, voluntary resignation was tendered by him which was accepted by mills

company and according to consent terms which was recorded by this Court on 11.2.2008, necessary due payment was already made which was

accepted by opponent No. 2. Therefore, now to file application before controlling authority claiming difference of amount of gratuity is not

maintainable in law and the controlling authority has no jurisdiction to decide such application when amount of gratuity has been determined on the

basis of consent terms with representative union. He relied upon certain terms of settlement which is quoted as under:

5. It is agreed by and between the parties that as per the present settlement the Petitioner Mills will be completely closed for all purposes and the

Respondent Union or its members/employees who are the beneficiaries under the present settlement will not raise any dispute about the closure of

the petitioner Mills.

12. He emphasized vehemently that after accepting consent terms and tendering voluntary resignation and accepting amounts by opponent No. 2,

filing of an application No. 63 of 2009 under provisions of Payment of Gratuity Act is contrary to order passed by this Court dated 11.2.2008 and

it is nothing but an abuse of process of law which may result into multiplicity of proceedings. The controlling authority ought not to have proceed

with such application after the reply filed by applicant mills co. whereby attention of controlling authority was drawn about the order passed by this

Court on 11.2.2008. The undertaking given by opponent No. 2 accepting the order passed in terms of settlement/consent terms dated 11.2.2008.

Therefore, any proceedings initiated by controlling authority in response to application No. 63 of 2009 filed by opponent No. 2 is without

jurisdiction and contrary to order passed by this Court. He submitted that order passed by this Court dated 11.2.2008 recording consent terms is

not challenged by opponent No. 2 to any higher forum. He further submitted that once consent terms arrived by mills co. with representative union,

then opponent No. 2 is having no locus standi to challenge the order passed by this Court dated 11.2.2008. He also submitted that consent terms

arrived between mills co. and representative union under provisions of Bombay Industrial Relations Act, 1946. Therefore, controlling authority has

no jurisdiction to entertain such application filed by opponent No. 2. Therefore, entertaining such application by controlling authority itself is against

the order passed by this Court dated 11.2.2008 and also it is contrary to the provisions of Bombay Industrial Relations Act, 1946. Therefore, that

proceedings is required to be quashed. He relied upon Para.31, 32, 39, 43, 44, 45 and 46 of aforesaid decision of Apex Court which is quoted as

under:

Status And Position Of Representative Union

31. The learned Counsel for the appellant contended that respondent No. 8 could not have agreed to accept a meager amount of Rs. 22 crores

when the outstanding dues were more than Rs. 130 crores. It was also stated that majority of workers are with the appellant and they are opposed

to the settlement. Thousands of workers have so stated in writing and informed the appellant that the grievance raised by the appellant is well-

founded and they are entitled to much more amount than what had been paid under the settlement.

32. Even this contention has no force. The learned Counsel for the Union, in our opinion, is right in submitting that under the Bombay Industrial

Relations Act, 1946, it is the 'Representative Union' which has all powers to enter into a settlement on behalf of workers in the industry and it is

only that Union which can take a decision under 1946 Act. The said decision would bind not only the members of the Union, but also to those

workers who are not members of such Union.

39. This Court considered the relevant provisions of the 1946 Act, the object underlying conferment of power on Representative Union and the

action taken by it and held that when a Representative Union appears in any proceeding under the Act, none else can be allowed to appear not

even the employee at whose instance proceedings might have been started u/s 42(4) of the Act. The Court held that if the Representative Union

appears, the decision taken by that Union would be final and binding.

43. The Court, therefore, concluded;

The result therefore of taking Sections 27A, 32 and 33 together is that Section 27A first places a complete ban on the appearance of an employee

in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in Sections 32 and 33. Section 32 is concerned with all proceedings before the authorities and gives power to the authorities under the Act to permit an employee himself to appear even though a representative of employees may have appeared but his permission cannot be granted where the representative Union has appeared as a representative of employees. Section 33 which is the other exception allows an employee to appear through any person in certain proceedings only even though a representative of employees might have appeared; but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a Representative Union has put in appearance as the representative of employees. It is quite clear therefore that the scheme of the Act is that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instance the proceedings might have begun u/s 42(4). But where the appearance is by any representative of employees other than a Representative Union authorities u/s 32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in Section 33. But whenever the Representative Union has made an appearance, even the employee cannot appear in any proceeding under the act and the representation must be confined only to the representative Union. The complete ban therefore laid by Section 27A on representation otherwise than through a representative of employees remains complete where the representative of employees is the Representative Union that has appeared; but if the representative of employees that has appeared is other than the Representative Union then Sections 32 and 33 provide for exceptions with which we have already dealt. There can therefore be no escape from the conclusion that the Act plainly intends that where the Representative Union appears in any proceeding under the Act even though that proceeding might have commenced by an employee u/s 42(4) of the Act, the Representative Union alone can represent the employee and the employee cannot appear or act in such proceeding.

44. Again, in *Textile Labour Association, Bhadra Ahmedabad Vs. Ahmedabad Mill Owners Association, Ahmedabad*, this Court held that once

Representative Union of Textile Industry in the local area of Ahmedabad entered into a compromise, such compromise would bind all the

employees and those employees who are not members of the Representative Union cannot contend that they are against such compromise and are not bound by it.

45. In *Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others*, a similar question arose. The Court reiterated the law laid

down in *Girja Shankar* and held that once the Representative Union appears on behalf of the employees in a proceeding before a Labour Court

under 1946 Act, individual workman has no locus standi. According to the Court, combined reading of Sections 27A, 30, 32, 33 and 80 of the

Act make it clear that consistent with the avowed policy and prevention of exploitation of workmen and augmentation of their bargaining power,

the Legislature has clothed the Representative Union with plenary power to appear or act on behalf of employees in any proceeding under the Act.

Keeping in view the said object, it has deprived individual employees or workmen of the right to appear or act in any proceeding under the Act

where the Representative Union enters appearance or acts as representative of the employees.

46. Following *Girja Shankar*, the Court observed that mala fides or bona fides of the Representative Union has no relevance in construing the

relevant provisions of the Act. In case the employees find that the Representative Union is acting in a manner which is prejudicial to their interests,

their remedy lies in invoking the aid of the Registrar under Chapter III of the Act requesting him to cancel the registration of the union.

13. As against that, Mr. Danial, Union Representative, who has filed reply in affidavit against present application, raising contention that applicant

has paid the gratuity to opponent No. 2 - workman in different two rates which is as per the settlement arrived between the applicant Mills Co.

and TLA which is contrary to mandatory provisions of Gratuity Act and two different rates have been taken into account while calculating amount

of gratuity; one is Rs. 121.12 ps. and second is Rs. 143.41 ps. which quite against the Gratuity Act. He submitted that such type of different

calculation is not permissible under the provisions of Gratuity Act and settlement or order cannot change mandatory right of eligible person.

Therefore, even if it is done then it is nothing but a breach of law. The consent terms cannot consider as a right thing and union representative is not

empowered to decide the fate of the workman through settlement especially when settlement is against the prevailing laws and its mandatory

provisions. He relied upon decision of Bombay High Court reported in 2002 2 CLR 395 . Therefore, according to his submission, such settlement

or consent terms is not proper and contrary to the provisions of Gratuity Act and merely accepting amount by opponent No. 2, he cannot consider

to be helpless for challenging or claiming difference of amount of gratuity. The resignation cannot consider to be voluntary and for that, he

submitted that resignation has become very sensitive and element of suspicion arises when the resignation is genuine. He relied upon one decision

of Apex Court in case of Secretary, Multi-purpose Co-operative Society Vs. Presiding Officer, Labour Court and Others, However, he has

accepted in affidavit-in-reply that resignation which was tendered by opponent No. 2 was voluntary because he has no other option with him. But

he was not agreed with the illegal deduction made by Mills Co. The opponent No. 2 has lost Rs. 35,220.10 ps. because of illegal settlement with

representative union. Therefore, according to his submission, such application filed by applicant Mills Co. may be dismissed and direction be

issued to pay Rs. 35,220.10 ps. to opponent No. 2.

It is necessary to note that affidavit-in-reply is not filed by opponent No. 2 but, it has been filed by Union Representative Mr. Danial, who is not

the party of present proceedings. Except that, Mr. Danial, Union Representative has not raised any other contention before this Court.

14. I have considered submissions made by both learned advocates and documents which are annexed to present application as well as affidavit-

in-reply filed by Mr. Danial, Union Representative.

15. The calculation which has been made by opponent No. 2 considering his total service of 54 years from 1.7.1954 to 15.4.2008. The applicant

Mills Co. as per consent terms considered amount of gratuity for 41 years" service from date of joining upto 31.3.1995. On 31.5.1995, monthly

salary of opponent No. 2 was Rs. 3149.31 ps. Accordingly, daily wage comes to

Rs. 121.12 ps. Total amount comes to Rs. 74,489/-.

Thereafter, Mills Co. has considered after three years gratuity w.e.f. 1.4.1997 to 31.12.1999 where total monthly salary comes to Rs. 3728.74

ps. where per day wages comes to Rs. 143.41 ps. which amount comes to Rs. 6453/-. Therefore, as per terms of settlement, amount of gratuity is

required to be calculated as per A + B as agreed by Union Representative with Mills Co. in consent terms. The consent terms provides a clause

for amount of gratuity to permanent retired employees which will be paid as per award dated 12.2.1997 upto 1.3.1995 and from 1.4.1997 till the

date of retirement for the period from 1.4.1995 to 31.3.1997, lumpsum payment as per clause-9 of the award dated 12.2.1997. The permanent

employees will be paid gratuity as per award dated 12.2.1997 upto 31.3.1997 and from 1.4.1997 to 31.3.2007, index base is to be taken from

31.3.1997. So question of last drawn salary is not required to be taken into account while calculating amount of gratuity on daily wage of

concerned employee. Therefore, amount of gratuity which has been calculated by Mills Co. on the basis of consent terms as arrived at between the

parties and in case if any dispute arises or difference may arise in respect of calculation of any amount as per present consent terms, then matter

will be referred to Mr. S.I. Nanavati, learned Senior Advocate and Mr. D.S. Vasavada, Union Representative, who will decide it and their joint

decision will be binding to both the parties as well as to the concerned employee and they will not raise any objection or dispute about such

calculation. Relevant Item No. 7 of the consent terms is quoted as under:

7. It is further agreed by and between the parties that if any dispute or difference may arise in respect of calculation of any amount as per present

consent terms, then it will be referred to Shri S.I. Nanavati, Senior Advocate and Shri D.S. Vasavada, Advocate, who will decide it and their joint

decision will be binding to both the parties as well as to the concerned employee and they will not raise any objection or dispute about such

calculation.

16. The submission made by Mr. Danial, Trade Union Representative that amount of gratuity has been calculated in two spells - (A) and (B). Spell

(A) provides that amount of gratuity from date of joining till 31.3.1995 and Spell (B) provides that amount of gratuity paid from 1.4.1997 to

31.12.1999. In both kind of gratuity, Spell (A) last drawn wages taken into account on 31.3.1995 and in Spell (B), last drawn wages taken into account from March, 1997 because living index is taken into account. Therefore, according to him, amount of gratuity is available to employee under the provisions of Payment of Gratuity Act, 1972 on the basis of last drawn wages which has not been calculated. Therefore, provisions of Gratuity Act is violated.

16.1 It is necessary to note that one proceedings initiated by both parties i.e. TLA Union representative and the Ahmedabad Advance Mills Ltd.

giving submission in Case (IC) No. 1/1997 under provisions of the Bombay Industrial Relations Act, 1946 wherein u/s 66 settlement between both

parties arrived on 12.2.1997 and accordingly, that settlement has been recorded by Industrial Court on 12.2.1997. Therefore, as per terms 6(C),

the gratuity is required to be calculated from date of joining of concerned employee upto 31.3.1995 on basis of receiving salary by concerned

employee on 31.3.1995. This settlement has been arrived because of discontinuation of certain departments and to accept voluntary resignation

from concerned employees and whatever posts are found to be vacant, that posts are required to be abolished. For that, specific settlement has

been arrived with representative union by applicant mills co. Therefore, part (A) calculation made upto 31.3.1995 as per settlement dated

12.2.1997 which was produced before controlling authority. Thereafter, subsequent period, Part (B) was taken into account from 1.4.1997 to

31.12.1999. Both kind of gratuity has been calculated on basis of two separate agreement arrived by representative union with applicant Mills Co.

That agreements are binding to concerned opponent No. 2 and accordingly, benefit of gratuity has been calculated for total years of service which

comes to 41 years. The opponent No. 2 in its form-I considered his service to be continued upto 15.4.2008 which is not correct because by

second agreement which was recorded by this Court on 11.2.2008 where specific agreement arrived between both parties that closure of the mills

co. is held to be legal and valid which is accepted by the respondent Union and all the concerned employees along with representative of

respondent Union, who has given writing to this Court dated 28.1.2008. Therefore, a moment closure is considered to be legal, then thereafter

there is no further period is available to concerned employee to claim gratuity. Therefore, considering both agreements dated 12.2.1997 and order

passed by this Court on 11.2.2008, the amount of gratuity in respect to opponent No. 2 has been properly calculated by applicant Mills Co. If

there is an error in calculation, the remedy is available to opponent No. 2 to approach Advocate of Representative Union and learned Senior

Advocate Mr. S.I. Nanavati as per order passed by this Court on 11.2.2008 but, there is no remedy is available as per binding agreement to

concerned opponent No. 2 to approach directly to controlling authority under the provisions of Payment of Gratuity Act.

16.2 Mr. Danial, learned Union Representative has referred and relied upon recent decision of Apex Court in case of Allahabad Bank and Anr. v.

All India Allahabad Bank Retired Employees" Association reported in 2010 I CLR 1 : 2009 AIR SCW 7667 and 2009 (4) Scale 577. He relied

upon recent decision of Apex Court in respect to gratuity where question was considered by Apex Court whether the retired employees having

exercised their option to avail the benefits under the pension scheme are estopped from claiming the benefit (i.e. gratuity) under the provisions of

the Payment of Gratuity Act. Answering this question by Apex Court in the negative, the Apex Court has held that right to receive gratuity under

the provisions of the Act cannot be defeated by any instrument or contract. The pension and gratuity are separate retiral benefits and right to

gratuity is a statutory right. No comparison between a pension scheme, not providing for payment of gratuity and right of employee to receive

gratuity under the provisions of the Act. Therefore, appeal preferred by Allahabad Bank has been dismissed. So aforesaid decision of Apex Court

is not applicable to facts of this case because here amount of gratuity has been paid to opponent No. 2 by applicant Mills Co. which has been

accepted by him on basis of two agreements dated 12.2.1997 and 11.2.2008. Both agreements with representative union under provisions of BIR

Act, 1946. When both agreements arrived with representative union by applicant Mills Co. the concerned employees expressly or impliedly

waived their statutory right to claim payment of gratuity under the provisions of the Act. But their claim of gratuity is decided in terms of two

settlement dated 12.2.1997 and 11.2.2008. Therefore, observations made by Apex Court in Para.22 and 23 of aforesaid decision is relevant

which are quoted as under:

22. This Court in Hindustan Lever and Anr. v. State of Maharashtra and Anr. relying upon the decision of this Court in Purshottam H. Judge v.

V.B. Poddar held that the word 'instrument' would include award made by the Industrial Tribunal. It is thus clear that notwithstanding the Desai

and Shastri Awards and the subsequent settlements the members of the employees association are entitled to avail the benefit conferred upon

them for payment of gratuity under the provisions of the Act. The employees cannot be deprived of their valuable statutory right conferred upon

them to receive payment of gratuity.

23. There is no material placed before us that the employees while opting for the pension scheme at the time of their superannuation/retirement

either expressly or impliedly waived their statutory right to claim payment of gratuity under the provisions of the Act. In the circumstances we find

no merit in the submission made by the learned Counsel for the appellant in this regard. For the aforesaid reasons we find no merit in the appeal.

16.3 In view of above observations made by Apex Court in aforesaid recent decision, reliance which has been placed by the Mr. Danial, Trade

Union Representative is not helpful to him in support of his submission. The aforesaid recent decision of Apex Court makes it clear that in case if

employee while opting for the pension scheme at the time of his superannuation or retirement, either expressly or implied waived their statutory

right, then concerned employees are not entitled to claim amount of gratuity as per provisions made in the Payment of Gratuity Act. In this case, by

two agreements with representative union under provisions of BIR Act, 1946 which is binding to members of representative union and even also it

is binding to non-members means concerned other employees working with applicant Mills Co. In this case, having accepted both settlements

arrived with representative union and receiving payments, thereafter to file proceedings under provisions of Payment of Gratuity Act, 1972 is not

maintainable. Otherwise there is no sanctity of both settlements arrived with representative union by applicant Mills Co. When applicant Mills. Co.

negotiated entire matter where question of closure of Mills Co. was discussed where number of workers are affected and on principle of collective

bargaining when entire matter has been settled, so employees concerned may

get immediately amount of their legal dues without being legal fight against applicant "Mills. Co." The opponent No. 2 has not made any allegation against representative union or there is no mala fide has been alleged by opponent No. 2 against representative union. At the time of recording settlement by this Court, this Court has also found that settlement produced before this Court being settling in respect to all amounts of legal dues of employee which was in interest of concerned employees. Therefore, this Court has recorded it and accordingly, applicant "Mills Co." has acted on it. Thereafter, if such separate application filed before controlling authority if it is to be entertained, then unnecessary multiplicity of proceedings will be arisen which is not in interest of either parties because it amounts to violating legal and binding terms of both settlements. The representative union under provisions of BIR Act, 1946 having sole collective bargaining agent recognized by statutory provisions become nugatory. The Apex Court in number of decisions has considered this question reported in AIR 2008 SCW 8122. Therefore, according to my opinion, even recent decision of Apex Court in case of Allahabad Bank and Anr. is also not helpful to opponent No. 2. On the contrary, in case of waiving expressly or impliedly statutory right under provisions of Payment of Gratuity Act by virtue of two settlements arrived with representative union under provisions of BIR Act, 1946, the opponent No. 2 is not entitled to claim any amount of difference under provisions of Payment of Gratuity Act, 1972. Now to challenge such calculation is contrary to both settlements as referred above. Therefore, contentions raised by Mr. Danial, Trade Union Representative cannot be accepted and hence, rejected.

17. In view of aforesaid consent terms arrived between representative union and Mills Co. and in case of dispute of difference in calculation, the remedy is also available to opponent No. 2, but opponent No. 2 is not entitled to approach directly to controlling authority by filing necessary application under provisions of Payment of Gratuity Act, 1972. Unless and until the order passed by this Court on 11.2.2008 recording consent terms arrived between both parties is challenged to higher forum by either of parties. The opponent No. 2 after accepting consent terms and tendering resignation and accepting amount without any objection, has no right

to straightway approach to controlling authority claiming difference of amount under provisions of Payment of Gratuity Act, 1972 because this consent terms is binding to him and he has no right to even challenge such settlement which has been accepted by him arrived by representative union under provisions of BIR Act, 1946. This consent terms is having binding effect not only the members of union but, also to those workers even who are not members of such union. The decision taken by representative union would be final and binding and individual employee has no locus standi to file any proceedings before the Court or any authority contrary to consent terms which arrived between Mills Co. and representative union. That aspect has been made clear by Apex Court in case of Shivanand Gaurishankar Baswanti (supra). Therefore, controlling authority has no jurisdiction to initiate any proceedings against present applicant in response to application No. 63 of 2009 filed by opponent No. 2. Therefore, considering relevant provisions of BIR Act and also the observations made by Apex Court in above referred cases, the proceedings filed by opponent No. 2 before the controlling authority under Payment of Gratuity Act, 1972 in Application No. 63 of 2009 is also required to be quashed because it is contrary to consent terms as recorded by this Court on 11.2.2008 and it is also contrary to law laid down by Apex Court as referred above.

18. Therefore, Application No. 63 of 2009 filed by opponent No. 2 before controlling authority at Ahmedabad under the Payment of Gratuity Act, 1972 is hereby quashed and set aside. It is directed to controlling authority at Ahmedabad under Payment of Gratuity Act, 1972 not to initiate any further proceedings in respect to Application No. 63 of 2009 filed by opponent No. 2 against present applicant Mills Co. Accordingly, Rule is made absolute to aforesaid extent with no order as to costs.