

(2008) 04 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9645 of 1998

The Management of APSRTC

APPELLANT

Vs

The Workmen of the APSRTC and Another

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 10(4), 12(3), 18(1), 18(2)

Payment of Bonus Act, 1965 — Section 10, 11, 12, 2(13), 2(4)

Citation : (2008) 4 ALD 422 : (2008) 3 ALT 774 : (2009) 1 LLJ 439 : (2009) 1 SLR 297

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : K. Madhava Reddy, for the Appellant; G. Vidyasagar, for the Respondent

Judgement

Ramesh Ranganathan, J.—The Management of A.P.S.R.T.C has invoked the jurisdiction of this Court under Article 226 of the Constitution of India aggrieved by the award of the Industrial Tribunal, Hyderabad, in I.D. No. 19 of 1997 dated 06.02.1998, wherein it was held that employees of the A.P.S.R.T.C. were entitled to be paid the difference between the ex-gratia payable to them in accordance with the amended Payment of Bonus Act and the actual ex-gratia paid to them under the pre-amended Payment of Bonus Act. On a dispute being raised by the 1st respondent - union, the Government of A.P, vide G.O.Rt. No. 662 dated 17.4.1997, referred the following dispute for adjudication by the Industrial Tribunal:

Whether the APSRTC Employees Union is justified in demanding the Managing of APSRTC for payment of Ex-gratia for the year 1993-94 and to formulate exempted employees pension scheme? If so to what relief the workman are entitled to?

2. The petitioner-corporation started paying ex-gratia to its employees pursuant

to a memorandum of settlement dated 15.6.1966. It kept increasing the wage limit for payment of, the quantum of, and the percentage of minimum ex-gratia as and when the Payment of Bonus Act was amended, and the wage limit as well as the percentage of minimum bonus payable under the said Act was increased. When the statutory minimum bonus, under the Payment of Bonus Act, was raised from 4% to 8.33%, the petitioner increased the ex-gratia by a similar extent from the year 1971-72 onwards. Similarly, when the salary/wages, on the basis of which bonus was paid, was increased from Rs. 1600/- to Rs. 2500/- per month from the years 1985-86 onwards, the petitioner paid ex-gratia to all its employees drawing monthly wages of upto Rs. 2500/-. The Payment of Bonus Act was again amended in the year 1995 with retrospective effect from 1.4.1993. As a result, the wage limit was raised from Rs. 2500/- to Rs. 3500/- and the wage limit for calculation of bonus was also raised from Rs. 1600/- to Rs. 2500/-. While ex-gratia was paid to the employees for the years 1993-94 and 1994-95, before amendment of the Payment of Bonus Act, at the request of the Union a settlement was entered into on 12.1.1996 whereby the petitioner agreed to pay ex-gratia for the years 1994- 95 and 1995-96 as per the amended Payment of Bonus Act. The petitioner also agreed to pay Rs. 2000/- as Transport Minister's Goodwill Amount, for the years 1994-95 and 1995-96, to each employee whose pay plus dearness allowance exceeded Rs. 3500/- per month. Since the petitioner - Corporation did not pay additional ex-gratia for the year 1993-94, the 1st respondent union served a strike notice on 15.3.1997 resulting in the reference being made to the Industrial Tribunal by the Government.

3. The Tribunal framed the following points for consideration:

- 1) Whether 1st respondent union can raise the dispute;
- 2) Whether there exists industrial dispute.
- 3) Whether the employees of APSRTC are entitled to enhanced ex-gratia for the year 1993-94

4. Before the Industrial Tribunal, Exs.W.1 to W.21 were marked as exhibits on behalf of the 1st respondent - union. On behalf of the petitioner, M.Ws.1 and 2 were examined and Exs.M.1 to M.16 were marked as exhibits. On issue No. 1, the Tribunal observed that, the 1st respondent union represented between 7000 to 8000 workers throughout the State and as such could raise a dispute though it was a minority union.

5. On issue No. 2, while noting that Ex.W.21 settlement dated 21.10.1997 was arrived at between the majority union and the petitioner management, u/s 12(3) of the I.D. Act, the Tribunal observed that there was no settlement on the issue of payment of ex-gratia and that both the management, and the majority union, had merely agreed to abide by the award of the Tribunal. The Tribunal, accordingly, held that there was a dispute in existence from the date of the reference. On issue No. 3, the Tribunal noted that the Payment of Bonus Act, 1965 was not applicable to the Corporation and, therefore, the Corporation had

been paying bonus in the form of ex-gratia, from the year 1965- 66 onwards, pursuant to a settlement entered into with the Unions. The Tribunal noted that the Corporation was sustaining accumulated losses but was making annual profits and had, therefore, paid ex-gratia for the years 1993-94 and 1994-95 as per the provisions of the Payment of Bonus Act. The Tribunal noted that the employees were paid ex-gratia as per the amended provisions of the Payment of Bonus Act for the years 1994-95 and 1995-96 and, therefore, I.D. No. 3 of 1996, wherein this question was in issue, was closed on 18.11.1996. The Tribunal traced the history of the claim for additional ex-gratia for the year 1993-94 and noted the evidence of M.W.2 that the net profit and loss could not be decided by taking into account a few items of income and expenditure and that all heads of accounts should be taken into consideration. The Tribunal held that it was an unending procedure for the reason that the demands for taxes etc., of one year would be reviewed in the subsequent year, that the Corporation had been paying ex-gratia to its employees at the same rate as given in the Payment of Bonus Act, that it had been enhancing the bonus, and the upper wage limit, as and when the Payment of Bonus Act was amended, that it had been paying ex-gratia to employees who were not eligible, that they had paid the enhanced rate of bonus to all eligible employees in 1995-96 as per the amendment made to the Payment of Bonus Act in the year 1995 and that this payment had become a service condition by long practice and convention. The Tribunal held that there was no meaning in not paying ex-gratia for the year 1993-94 though the Bonus Act was amended by Parliament with retrospective effect. The Tribunal, accordingly, passed an award directing payment, of the difference in ex-gratia, within three months.

6. Oral arguments were advanced and written submissions were filed before this Court both on behalf of the petitioner-corporation and the respondent Union. It is contended on behalf of the petitioner corporation, by Sri K. Madhava Reddy the Learned Standing Counsel, that the respondent Union, which was the majority Union upto 15.10.1996, had lost its majority in the verification held on 21.09.1996 wherein the APSRTC National Mazdoor Union had secured the majority, that consequently, vide circular dated 15.10.1996, the National Mazdoor Union was acknowledged to be the recognized Union for a period of two years from 15.10.1996, that the Code of Discipline, which regulates conduct of trade unions and the management in respect of industrial relations, is applicable to the A.P.S.R.T.C and that its object is to regulate activities of the Unions including their conduct in raising industrial disputes. According to the petitioner, since the question of entitlement to enhanced ex-gratia affects all employees of the corporation, it is only the recognized Union, which has the support of a majority of the employees, that is entitled to raise an industrial dispute regarding entitlement of a section of the workmen of the corporation to be paid enhanced ex-gratia. Reliance is placed on *Workmen v. Rohtak General Co.* 1962(!) LLJ 634 to contend that it is only if the dispute is supported and sponsored by a majority of the workmen in the establishment, and such support is in existence prior to

the reference, would it become an "industrial dispute". It is contended that the Tribunal had erroneously held that the respondent Corporation represented 7,000 to 8,000 workmen throughout the State and could raise a dispute though it was a minority Union. It is further contended that neither was a plea raised, nor was evidence adduced, to show either that the Secretary General of the respondent Union, who signed the strike notice dated 15.03.1997, or the State Committee of the Union, elected at the meeting of all the workmen, were authorised to represent the workmen with regards the dispute in question. Reliance is placed by Sri K. Madhava Reddy, Learned Standing Counsel for the Corporation, on the memorandum of settlement dated 27.03.1997 entered into between the management of the APSRTC and the recognised Union pursuant to the strike notice dated 06.03.1997. The strike notice was issued for the petitioner's failure to implement their charter of 22 demands including the demand for payment of the difference of ex-gratia for the year 1993-94 consequent to the Payment of Bonus Act being amended. Learned Counsel would contend that, after bilateral discussions on numerous occasions, the matter was admitted to conciliation and, eventually, a memorandum of settlement was entered into on 27.03.1997 and all employees of the corporation, including members of the respondent Union, had accepted the benefits conferred under the said settlement. Reference is made to Clause 2, of the terms of the said settlement whereunder it was mutually agreed to discuss and settle the demand of payment of difference of ex-gratia for the year 1993-94, consequent to the amendment made to the Payment of Bonus Act, in due course of time. Reliance is placed on National Engineering Industries Ltd. Vs. State of Rajasthan and Others, to contend that a settlement, entered into u/s 12(3) of the Industrial Disputes Act, was binding on all workmen of the establishment and, therefore, the respondent Union was not justified in seeking a reference with regards their entitlement for payment of the difference between the ex-gratia, as per the pre-amended and the amended Payment of Bonus Act. It is also contended that the strike notice issued by the respondent Union on 15.03.1997 was without justification as the recognized Union had already issued a strike notice for the said cause which ultimately culminated in the memorandum of settlement dated 27.03.1997 and, since there was no pending dispute, the State Government had no jurisdiction to make the reference on 18.03.1997. Learned Counsel would contend that, less than a month after the settlement was entered into on 27.03.1997, the present dispute was referred, that since the employees Union did not raise any fresh dispute thereafter, the State Government had no jurisdiction to make the reference on 18.04.1997 and that the reference itself was illegal and invalid. Learned Counsel would contend that Clause 13.2 of the settlement dated 21.10.1997 did not mean that the impugned reference was valid or that there was a dispute necessitating adjudication by the date of the reference or that the Tribunal had jurisdiction to entertain the reference. According to the Learned Counsel the dispute, in the order of reference, was not an "industrial dispute" as even if the reference was answered in the affirmative, the employees would not get anything thereby, for the reference was not whether ex-gratia was payable to them for the year

1993-94 as per the amended Payment of Bonus Act. Learned Counsel would contend that the respondent Union was not entitled to raise the dispute with regards payment of differential ex-gratia, that there was no industrial dispute in existence at the time of making the reference on 17.04.1997, that the reference made was not genuine and that the State Government had no authority to make the reference. It is also contended that the Tribunal had gone beyond the scope of the reference in holding that employees of the petitioner corporation were entitled to be paid the difference between the ex-gratia payable to them as per the amended Payment of Bonus Act, and the actual ex-gratia paid as per the pre-amended Act, when there was no reference made in that regard. According to the Learned Counsel, the question whether employees of the APSRTC were entitled to ex-gratia for the year 1993-94, and whether they were entitled to the difference between the ex-gratia payable to them as per the amended Act and the ex-gratia paid to them under the pre-amended Act, were two distinct and different subjects, each independent of the other, that the latter was not incidental to the former and, even if the reference was answered affirmatively, it did not follow that employees of the APSRTC would be entitled to the difference. It is contended that grant of enhanced ex-gratia for the year 1993-94, based on the amended Payment of Bonus Act, depended on several factors, that the Payment of Bonus Act had no application to the APSRTC, that the employees of the Corporation had no statutory right to claim ex-gratia as per the rate fixed under the Payment of Bonus Act, that the right of employees of the corporation to claim ex-gratia for any particular period could only be in accordance with the agreement/settlement entered into between the petitioner and the recognized Union u/s 12(3) of the I.D. Act, that otherwise employees of the Corporation had no legal right to claim ex-gratia at a particular rate for a particular year unless that right was conferred on them by settlements/agreements entered into between the recognized Union and the Management and that, in the instant case, there was no agreement/settlement between the parties as to the grant of ex-gratia at 8.33%. It is contended that, from the various G.Os issued by the State Government, it was evident that the corporation was not entitled to pay ex-gratia to its employees unless profits accrued, and, even if there were profits, only with the prior approval of the State Government. Reference is made to the memo dated 26.05.1994 whereunder the State Government had clarified that ex-gratia could be paid to eligible employees of public enterprises only when there were accumulated profits, that too on receipt of prior approval of the State Government. Reliance is placed on *Workman of British India Corporation Limited v. British India Corporation Limited 1965 (II) LLJ 433* ; *Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another*, and *Management of Divisional Engineer, Telecommunications v. Venkataiah 2006(5) ALT 606*.

7. On merits, Learned Counsel would submit that the Corporation had earned profits of Rs. 6.00 crores for the year 1993-94 and had paid ex-gratia at the then existing rate of 8.33% to the employees drawing Rs. 2,500/- per month, subject

to a maximum of Rs. 1,600/-, that if the demand of the first respondent Union is to be met, it has to pay Rs. 14 crores, that the Corporation would incur loss of Rs. 8 crores thereby, that the Tribunal, having observed that the accumulated losses had come to Rs. 19.22 crores for the year 1993-94, should not have passed an Award directing payment of ex-gratia for the year 1993-94 as per the amended Payment of Bonus Act.

8. Sri G. Vidyasagar, Learned Counsel for the first respondent Union, would rely on J.H. Jadhav Vs. Forbes Gokak Ltd., to contend that, for espousal of a dispute, the Union need not be a majority Union and the mere fact that the respondent Union was not the recognized Union had no bearing on its raising an industrial dispute or seeking adjudication thereof. Learned Counsel would submit that employees, drawing salary of Rs. 2,500/- and above, were also entitled for payment of bonus restricting their claim upto Rs. 2,500/-, and, hence, the demand raised by the Union was justified. It is contended that employees working in the Corporation are not exempt and that they do not come within the purview of Section 32 of the Payment of Bonus Act. Reliance is placed on Tamil Nadu Water Supply and Drainage Board Vs. Tamil Nadu Water Supply and Drainage Board Engineers Association and Others, to contend that, since the petitioner corporation has been paying bonus in the form of ex-gratia, it was governed by the provisions of the Payment of Bonus Act. It is contended that the dispute raised by the respondent Union, for payment of ex-gratia for the year 1993-94, was a demand which was raised in the strike notice dated 15.03.2007. Learned Counsel would contend that, in the strike notice, it was clearly mentioned that the issue of payment of additional ex-gratia to all the employees had not been resolved, that it was also stated therein that, while payment of additional ex-gratia for all employees for the year 1994-95 and 1995-96 had been settled, the dispute in respect of additional ex-gratia for the year 1993-94 had not been settled. According to the Learned Counsel, the issue raised before the Tribunal was, therefore, with regards payment of ex-gratia for the year 1993-94 in terms of the amended provisions of the Payment of Bonus Act and that the statutory right which accrued to employees could not be denied by the management on technical pleas. Learned Counsel would contend that there is no settlement between the APSRTC and the employees union with regards payment of additional ex-gratia for the year 1993-94 as per the amended Payment of Bonus Act and, in the absence of any settlement, the dispute raised by the Union was justified. Learned Counsel would also contend that the management had submitted its views before the Joint Commissioner of Labour in the meeting held on 30.04.1997 wherein, against the issue regarding payment of additional ex-gratia to all employees for the year 1993-94, it was stated that the issue was referred to Industrial Tribunal -I Hyderabad. It is contended that the APSRTC was also aware of the industrial dispute and it was, therefore, not open for them to contend that the dispute was not maintainable. Reference is made to the finding of the Tribunal that the petitioner has been paying ex-gratia inspite of having accumulated losses whereas, for the year 1993-94, it had earned profits. It is

contended that, even otherwise, profit or loss cannot be taken into consideration in view of Section 10 of the Payment of Bonus Act, that all employees have to be paid ex-gratia irrespective of whether or not the Corporation made profits and, therefore, the conclusions arrived at by the Industrial Tribunal was legal and valid.

9. It is useful to note, to the extent necessary, the amendment made to the Payment of Bonus Act, 1965, by amendment Act 34 of 1995, with retrospective effect from 01.04.1993. Section 2(13) of the Payment of Bonus Act which defines "employee" was amended by Act 34 of 1995 and, for the words "Rs. 2,500/-" therein, the words "Rs. 3,500/-" was inserted and, as a result, persons whose salary or wage did not exceed Rs. 3,500/- per month also came within the definition of "employee" under the Act. Similarly, Section 12 of the Payment of Bonus Act, which relates to calculation of bonus with respect to certain employees, was amended and, instead of the words "Rs. 1600/-", the words "Rs. 2,500/" was inserted therein. As a result, even in cases where the salary or wage of an employee exceeded Rs. 2,500/- per month, the bonus payable to such an employee, u/s 10 or 11, was required to be calculated as if his salary or wage was Rs. 2,500/- per month. Section 10 of the Payment of Bonus Act, 1965 relates to payment of minimum bonus and, thereunder, minimum bonus of 8.33%, of the salary or wage earned by an employee during the year, is required to be paid in an accounting year whether or not the employer had any available surplus or allocable surplus. Thus, even in cases where an industrial establishment is running in losses, and has no available/allocable surplus for payment of bonus, Section 10 of the Payment of Bonus Act, 1965 mandates payment of statutory minimum bonus of 8.33% each year.

CODE OF DISCIPLINE IS NOT REFERABLE TO ANY STATUTORY PROVISION:

10. The contention of Sri K. Madhava Reddy, learned Standing Counsel for the petitioner corporation, that, since the respondent union was neither the majority union nor the Union recognized under the Code of discipline, it could not raise a dispute on matters which affect all the employees of the Corporation, is only to be noted to be rejected. The Code of Discipline, which was ratified by the Central Employees and "Workers" Organization at the 16th Session of the Indian Labour Conference held at Nainital in May, 1958, came into force from 01.06.1958. Part V of the Code of Discipline relates to Implementation and Evaluation Machinery and its functions and procedures, wherein the rights arising out of recognition of unions are found. Under Para 13 thereof, it was agreed that the Unions, granted recognition under the Code of discipline, would enjoy the right to raise issues and enter into collective agreements with the employers on general questions concerning the terms of employment and conditions of service of workers in an establishment. Appendix-I to the Code of discipline requires the management to recognise the Union in accordance with the criteria provided in Annexure-I to that Appendix, which was evolved at the 16th session of the Indian Labour Conference held in May, 1958. Under Clause 4 of Annexure-1 when a union has

been recognised, there should be no change in its position for a period of two years. Under Clause 5 of the said Annexure, when there are several unions in an industry or establishment, the one with the largest membership should be recognised. Under Clause 8, only unions which observe the Code of Discipline would be entitled to recognition. (I.T.C. Employees Association v. State of Karnataka 1981(!) LLJ 431 (Karnataka High Court)). The Code of discipline which provides for recognition of the Union, which represents a majority of the workmen in the establishment, as the recognized union with whom the management would negotiate, does not have statutory force. The Code of discipline is neither referable to any specific statute nor does the Industrial Disputes Act, which prescribes the procedure for resolution of Industrial Disputes either amicably by means of conciliation, settlements etc or by adjudication by the Labour Courts/Industrial Tribunals, place any restriction requiring an industrial dispute to be raised only by a Union recognized by the employer under the Code of discipline.

INDUSTRIAL DISPUTE: FOR A DISPUTE TO BE REFERRED FOR ADJUDICATION TO THE INDUSTRIAL TRIBUNAL IT IS NOT NECESSARY THAT IT SHOULD HAVE BEEN RAISED ONLY BY A RECOGNIZED OR MAJORITY UNION:

11. It is not mandatory for an employer to negotiate only with a particular Union nor would it disentitle a registered Trade Union from raising a dispute concerning the workmen of the establishment. The code of discipline is non- statutory, is a voluntary agreement between the management and the workers and cannot be enforced by a writ of mandamus. (HMT Employees Union v. HMT Judgment of O. Chinnappa Reddy.J in W.P. No. 3174 of 1967 dated 07.08.1968; All India Reserve Bank Employees Federation v. Governor, Reserve Bank of India Order in W.P.M.P. No. 11838 of 1982 and W.P.M.P. No. 14971 of 1984 in W.P. No. 8082 of 1982 dated 25.07.1984). No reliance can, therefore, be placed on the Code of Discipline to contend that it is only the Union, recognized by the management, thereunder, which is entitled to raise a dispute in relation to the employees of the petitioner Corporation and not the minority Union, even if it be representative of a substantial number of workmen employed in the establishment. A dispute, for the purposes of Section 2(k) of the Industrial Disputes Act, must be connected with the employment or non-employment of a workman and, even if it be a dispute between a single workman and his employer, it must be sponsored or espoused by a Union of workmen or by a number of workmen. To fall within the ambit of "industrial dispute" u/s 2(k) of the Act, the Union to which the employee belongs may also be a Union of a minority of the workmen. Even in cases where the establishment has no Union of its own, and some of the employees join the Union of another establishment belonging to the same industry, it would be open to that Union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such Union was a minority union or was not exclusively of the workmen working in the establishment concerned. (Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), and J.H. Jadhav Vs. Forbes Gokak Ltd.,).

In Rohtak General Transport Company 1962(!) LLJ 634 the Government of Punjab had referred two items of dispute, between Rohtak General Transport Company and its employees, for industrial adjudication by the Labour Court. The items of disputes, as referred, related to the retrenchment of one driver and not permitting another employee to join duty. A preliminary objection was raised by the Company before the Labour Court that the reference was incompetent in as much as the dispute referred for adjudication was an individual dispute and not an industrial dispute. This contention was raised on the premise that the dispute in question had not been sponsored by a majority of the workmen concerned. The Labour Court came to the conclusion that the case of the two workmen had been espoused only by five out of a total of 25 members and that the dispute raised, on behalf of the said two workmen, could not be said to be an industrial dispute. The Labour Court held that, unless the dispute referred for adjudication was sponsored by a substantial section of the workmen it could not be said to be an industrial dispute under the I.D. Act. When the matter came up in appeal, the Supreme Court noted that, before the reference was made, the case of the two workmen had been taken up by the Hissar District transport workers' Union and a demand notice had, in fact, been served on the company by the Union. The Supreme Court observed that if the employer had raised the argument that, even a minority of workmen had not espoused the cause before the date of reference, it would have been open to the workmen to lead evidence to show that the Union which served the demand notice was, under the Act, entitled to act on behalf of the workmen. The Supreme Court held that the Labour Court was in error in coming to the conclusion that the reference was bad, and that the dispute was not an industrial dispute, only because a minority of workmen had espoused the dispute in question. The appeal was allowed, the findings set aside and the matter was sent back to the Labour Court for disposal in accordance with law. This judgment not only does not support the contention urged on behalf of the petitioner corporation but, in fact, goes against it. In National Engineering Industries Ltd. Vs. State of Rajasthan and Others, the Rajasthan Industrial Disputes Amendment Act, 1958, as amended in 1970, specifically provided, u/s 9- E thereof, for registration of Unions. Section 9-E of the Rajasthan Act read thus:

9-E Registration of Union - (1) On receipt of an application from a Union for registration u/s 9-D, and on payment of the fee prescribed, the Registrar shall, if, after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied, and that the Union is not otherwise disqualified for registration, enter the name of the union in the appropriate register in such form as Section 9-C and issue a certificate of registration in such form as may be prescribed:

Provided that -

i. where two or more Unions fulfilling the conditions necessary for registration under this Act apply for registration in respect of the same unit of an industry,

the Union having the largest membership of employees employed in the unit of the industry shall be registered; and

ii. the Registrar shall not register any Union if he is satisfied that application for its registration is made bona fide in the interest of the workmen but is made in the interest of the employers to the prejudice of the interest of the workmen.

2. Once a union has been registered as a representative union under this Act the registration of the union shall be held valid for a period of two years from the date of its registration and shall continue to hold valid unless the registration is cancelled u/s 9-F of this Act or another union is registered in its place according to Section 9G of this Act.

12. It is thus evident that, while the Rajasthan Act specifically provided for registration of the Union and, under Clause (1) for registration of the union having the largest number of employees, neither the Industrial Disputes Act, 1947 nor the A.P. state amendments made thereto, from time to time, provide for any such requirement of registration or for recognition of Unions in the State of Andhra Pradesh. The judgment in National Engineering Industries Limited AIR 2000 SC 469, on a construction of the Rajasthan State amendment to the Industrial Disputes Act, which has no application in the State of Andhra Pradesh, does not justify the submission that it is only the Union, representing the majority of the workmen, which can raise a dispute which effects all the employees of the Corporation. As noted above, both in J.H. Jadhav Vs. Forbes Gokak Ltd., and Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), a similar question arose for consideration and the Supreme Court has categorically held that, as long as the dispute relates to or is connected with the employment or non-employment of workmen, and is sponsored by an Union of workmen to which the workman belongs, even if it not be an Union representing a majority of the workmen, it would still fall within the definition of Section 2(13) of the Industrial Disputes Act.

13. This question has been dealt with by the Tribunal and it was found, as a fact, that the first respondent Union represented between 7,000 and 8,000 workers throughout the State, that it was the majority union in one zone and two regions and, though it was a minority Union, it could still raise a dispute. Since this finding of the Industrial Tribunal has not been shown to be perverse, or as based on no evidence, this Court in certiorari proceedings would not sit in appeal over such findings. This contention, regarding maintainability of an Industrial Dispute raised by a minority Union, must, therefore, fail.

TERMS OF REFERENCE SHOULD NOT BE CONSTRUED TOO TECHNICALLY OR IN A PEDANTIC MANNER BUT FAIRLY AND REASONABLY:

14. The next contention which necessitates examination is whether the Tribunal, in directing the petitioner corporation to pay its employees the difference between the amount payable under the amended Payment of Bonus Act, and the actual ex- gratia paid as per the pre-amended Act, had exceeded the terms of

the reference. Sri K. Madhava Reddy, learned Standing Counsel for the petitioner corporation, would fairly state that this contention was not raised before the Tribunal earlier. He would, however, contend that, since it is a pure question of law, it can be raised for the first time even before the High Court.

15. The Industrial Tribunal is a creature of a statute and it gets jurisdiction on the basis of the reference. It cannot go into the question regarding the validity of the reference. (National Engineering Industries Ltd.,²). Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by the order of reference. (Rai Sahib Ramdayal Ghasiram Oil Mills Vs. The Labour Appellate Tribunal and Another, ; West Bengal Press Workers and Employees Union Vs. Eighth Industrial Tribunal and Others, ; Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another, . The Tribunal would have no right to travel outside the reference, and proceed to adjudicate matters not referred to it. (Gouri Sankar Chatterjee v. Texmaco Limited and Ors. 2000 (8) Supreme 519 Workmen of British India Corporation Limited 1965 (II) LLJ 433 Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, Jaipur Udyog Limited v. The Cement Work Karmachari Sangh, Sahu Nagar [1972] (!)LLJ 437 Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees' Union, and Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another, . Where in an order, referring an industrial dispute to a Tribunal u/s 10 of the Act, the "appropriate Government" has specified the points of dispute for adjudication, the Tribunal should confine the adjudication to those points and matters incidental thereto. The Tribunal is not free to enlarge the scope of the dispute referred to it. (Jhagrakhand Collieries (P) Limited v. Central Government Industrial Tribunal [1960] (II) LLJ Senior Regional Manager, Hindustan Petroleum Corporation Limited v. Presiding Officer, Industrial Tribunal-I⁴).

16. Where a Tribunal lacks jurisdiction to entertain any particular matter, neither acquiescence nor consent of the parties can confer jurisdiction on it. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of its conclusive effect. There is a distinction between the jurisdiction to decide the matter, and the ambit of the matters to be heard by a Tribunal having jurisdiction to deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. Where, however, the question is of the jurisdiction of the Tribunal to make the award no question of acquiescence or consent can affect the decision. The mere fact that an objection was not taken before the Tribunal would not give it jurisdiction if it inherently had no jurisdiction. (United Commercial Bank Ltd v. Their Workmen 1951 (!) LLJ 621; Parry and Co. Ltd. Vs. P.C. Pal and Others, ; Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another, . A Tribunal cannot grant a relief not claimed by the

workman. Likewise, it will have no jurisdiction to award relief in excess of the demand of the workman, nor can it grant relief with respect to disputes not referred to it. (Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, ; Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another, . A demand which was not raised at the time of raising the dispute cannot be gone into by the Labour court/Industrial Tribunal if it is not the subject-matter of the reference. (Mahendra L. Jain v. Indore Development authority AIR 2005 SC 1252 Pottery Mazdoor Panchayat v. Perfect Pottery Co. 1979 LAB. I. C. 827 Venkataiah 2006(5) ALT 606.

17. The word "incidental" in Section 10 of the Act is not defined in the Industrial Disputes Act and, therefore, has to be understood on the basis of how it is understood in ordinary parlance. Something incidental to a dispute, means something happening as a result of, or in connection with, the dispute or associated with the dispute. The dispute is fundamental while something incidental thereto is an adjunct to it. Matters which require independent consideration or treatment, and have their own importance, cannot be considered as "incidental". The words "matters incidental thereto" occurring in Sub-section (4) of Section 10 of the Act should not be interpreted so as to give vague and indeterminate jurisdiction to the Labour Court and the Tribunal, especially over independent matters. (Express Beedi Factory v. Its Workmen [1960] 1 LLJ (Mad) Hukumchand Jute Mills Limited v. Labour Appellate Tribunal [1959] (II) LLJ 595; Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another, ; Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another, ; British India Corporation Limited 1965 (II) LLJ 433DCM Chemical Works v. Its Workmen [1962] (!) LLJ 338 United Commercial Bank Limited 1951(II) LLJ 621 Workmen of Bengal Electric Lamp Works Limited v. Bengal Electric Lamp Works Limited [1958] (I) LLJ 571 Management of Divisional Engineer, Venkataiah 2006(5) ALT 606).

18. In construing the terms of the reference, and in determining the scope and nature of the points referred to the Industrial Tribunal, Courts must look at the order of reference itself. (The Calcutta Electric Supply Corporation Ltd. v. The Calcutta Electric Supply workers" Union [1958] I LLJ 571 Venkataiah 2006(5) ALT 606 . Courts must attempt to construe the reference not too technically, or in a pedantic manner, but fairly and reasonably.(The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, Venkataiah 2006(5) ALT 606). The Tribunal has to confine itself to the pleadings and the issues arising therefrom and it is, therefore, not open to it to fly off at a tangent disregarding the pleadings and reach any conclusion that it thinks fit.

19. It must, however, be borne in mind that the question, referred by the appropriate Government to the Tribunal for its adjudication, has to be read in the

context of the industrial dispute raised, and cannot be read in isolation or in such a manner as to render the very order of reference redundant for the order of reference cannot be construed too technically but in a fair and reasonable manner. Accepting the contention of Sri K. Madhava Reddy, learned Standing Counsel for the Petitioner Corporation, would mean that though the respondent Union had raised the dispute for payment of ex-gratia, representing the difference between the amended and pre-amended Payment of Bonus Act, since the reference should be technically construed as relating only to payment of ex-gratia for the year 1993-94 and, as the Corporation had paid ex-gratia for the year 1993-94, albeit on the basis of the pre-amended Payment of Bonus Act, the reference did not necessitate adjudication at all. Having chosen not to challenge the Order of the government, in making the reference, the petitioner cannot be permitted to make a collateral challenge thereto nor can the question referred be read in isolation or in a manner so as to render it meaningless or the adjudication of the dispute itself an exercise in futility. The petitioner-Corporation has itself understood the question, referred to the Tribunal for its adjudication, as relating to the dispute raised by the respondent union for payment of ex-gratia representing the difference between the pre-amended and the amended Payment of Bonus Act. Even after the dispute was referred to the Tribunal, vide G.O.Rt. No. 662 dated 17.04.1997, the petitioner corporation and the majority union had entered into Exs.W-21 settlement dated 21.10.1997. Clause 13.2 of the said settlement notes, with regards payment of the differential ex-gratia for the year 1993-94, that the State Government had already referred the issue for adjudication to the Industrial Tribunal. The very fact that the petitioner had itself understood the question referred to the Tribunal, in the context of the dispute raised earlier by the respondent union, would establish that the contention now raised that the Tribunal had exceeded the terms of reference is merely an afterthought and has been made only for the purpose of this writ petition. This contention also necessitates rejection.

20. Before examining the award of the Tribunal on merits, the submissions of Sri G. Vidyasagar, learned Counsel for the respondent union, must also be dealt with. Learned Counsel would contend that the petitioner corporation is not exempted from the provisions of the Payment of Bonus Act under Sections 32 and 36 of the Act and, as such, is liable to pay ex-gratia of an amount equal to the bonus payable under the Payment of Bonus Act. Section 32 of the Payment of Bonus Act, 1965 makes the Act inapplicable to certain classes of employees including, under Clause (4) thereof, employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority and, under Clause (v)(c), employees employed by institutions established not for the purpose of profit. Section 36 is the power of exemption and, thereunder, if the appropriate Government, having regard to the financial position, and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of

the Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein, and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of the Act.

21. In *Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others*, , the question which fell for consideration was whether the Haryana Housing Board was a "local authority" within the meaning of Section 32(iv) of the Payment of Bonus Act. In *State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another*, , the question which fell for consideration was whether the Payment of Bonus Act was applicable to employees of the Housing Board during the relevant accounting years from 1978-79 onwards. Both the State Government and the Tamilnadu Housing Board had contended that employees of the Board were not entitled to statutory bonus under the Payment of Bonus Act on two grounds. Firstly, in view of the statutory exclusion of the Housing Board from the applicability of the Act, as per Section 32(v)(c) of the Act, and secondly on the ground that the State of Tamilnadu, for the relevant years, had exercised its power of exempting the Housing Board u/s 36 of the Act from the provisions of the Act. On writ petitions being filed, by employees of the Housing Board, the Madras High Court had held that the Housing Board was not entitled, on the facts of the case, to a statutory exemption u/s 32(v)(c) of the Act and that the orders of exemption issued by the State of Tamilnadu, in exercise of the powers u/s 36 of the Act in favour of the Housing Board for the relevant years, were not legally sustainable. The Madras High Court had also held that the State of Tamilnadu had no authority to retrospectively grant exemption u/s 36 of the Act for the earlier accounting years and, as a result, the Housing Board was directed to make payment of statutory bonus to its employees from the accounting year 1978-79 onwards. On the matter being carried in appeal, the Supreme Court in *State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another*, , dismissed the appeals.

22. In *Tamil Nadu Water Supply and Drainage Board Vs. Tamil Nadu Water Supply and Drainage Board Engineers Association and Others*, , the question which arose for consideration was whether the Tamilnadu Water Supply and Drainage Board was an institution established not for the purpose of profit and consequently excluded from the purview of Section 32(v)(c) of the Payment of Bonus Act, 1965. The Division Bench of the Madras High Court, following its earlier judgment in *Tamilnadu State Housing Board v. K. Sabanayagam* 1989(1) MLJ 419, (which was affirmed by the Supreme Court in *State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another*,), held that the Board, in its commercial activities, had got a capital structure of profit, liabilities and labour force to care for and that it was an institution designed for profit in the limited sense that, when the Government departments found it difficult to run such projects departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the

community at large on the one hand and, on the other, there was no pressure on the meagre revenue and other resources of the State. The Division Bench of the Madras High Court had held that the Tamilnadu Water Supply and Drainage Board⁷ was an institution established for the purpose of profit, that the employees of the Board qualified for bonus under the Payment of Bonus Act and were entitled to minimum bonus. While holding that, on the facts placed before the Division Bench of the Madras High Court, the conclusions reached thereon could not be faulted, the Supreme Court observed:

...It is not in dispute that the appellant has been paying, though not in the name of bonus every year either in the name of ex gratia payment or under some other name. No doubt Mr Krishnamurthy, learned Counsel appearing for the appellant-Board, argued at length to persuade us to hold that the appellant-Board will come under the exempted category u/s 32(v)(c) of the Act. However, we are unable to persuade ourselves to take a different view from the one taken by the High Court on the facts as found by it. We are satisfied that the judgment of the High Court does not call for any interference. The appeals fail and are accordingly dismissed with no order as to costs....

23. The question, whether Sections 32 and 36 of the Payment of Bonus Act applied to the petitioner corporation, did not arise either from the dispute raised or the order of reference. Since this contention has been raised for the first time before this Court, that too in a writ petition filed not by the respondent union, but by the petitioner corporation, I see no reason to examine these questions, which have not even been examined by the Industrial Tribunal, in certiorari proceedings under Article 226 of the Constitution of India.

A SETTLEMENT, UNLESS TERMINATED IN ACCORDANCE WITH SECTION 9-A OR 19(2) OF THE I.D. ACT, CONTINUES TO OPERATE AS AN INVIOABLE CONDITION OF SERVICE:

24. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at outside conciliation proceedings, and (2) those arrived at in the course of conciliation proceedings. A settlement, which belongs to the first category, merely binds the parties to the agreement but a settlement belonging to the second category has an extended application since it is binding on all the parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. (National Engineering Industries Ltd. Vs. State of Rajasthan and Others,). A settlement, as understood in the Industrial Disputes Act, is in essence a contract between the employer and the workmen prescribing new terms and conditions of service. These constitute a variation of the existing

terms and conditions. As soon as the settlement is concluded, and becomes operative, the contract embodied in it takes effect and the existing terms and conditions of service of the workmen are modified accordingly. Unless there is something to the contrary in a particular term or condition of the settlement, the embodied contract endures indefinitely, continuing to govern the relation between the parties in the future, subject of course to subsequent alteration through a fresh settlement, award or valid legislation. (Life Insurance Corporation of India Vs. D.J. Bahadur and Others,).

25. Settlements between employers and workmen, if not duly terminated, will operate as inviolable conditions of service of workmen. (Shukla Manseta Industries Private Ltd. Vs. The Workmen Employed under it,). Section 19(2) of the Industrial Disputes Act, 1947 provides that a settlement shall be binding on the persons on whom it is binding for such period as is agreed upon by the parties and, if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. (General Manager, Security Paper Mill, Hoshangabad v. R.S. Sharma AIR 1986 SC 95). Notice u/s 19(2) is only for intimation of an intention to terminate a settlement. (Shukla Manseta Industries Private Ltd. Vs. The Workmen Employed under it,). On the expiry of the period prescribed in Section 19(2), the conceptual quality of the transaction as a "settlement" comes to an end. The ban lifts. The parties are no longer bound to maintain the industrial status quo in respect of matters covered by the settlement. They are at liberty to seek an alteration of the contract. But until altered, the contract continues to govern the relations between the parties in respect of the terms and conditions of service. (Life Insurance Corporation of India Vs. D.J. Bahadur and Others, ; Monthly Rated Workmen At The Wadala Factory of the Indian Hume Pipe Co. Ltd v. Indian Hume Pipe Co. Ltd., Bombay 1986 Supp SCC 79).

26. Clause 2 of the Memorandum of Settlement dated 15.06.1966, as entered into between the petitioner corporation and the APSRTC Employees Union, provided that the petitioner Corporation would pay ex-gratia to all the employees, other than casual employees, at four per centum of the Pay and dearness allowance for the year 1965-1966 and that this ex-gratia payment would be continued in future years. This settlement has not been terminated and, therefore, continues to remain in force. It is binding on the petitioner corporation. The terms and conditions of the said settlement continue to operate as an inviolable condition of service.

27. Clause 2 of the subsequent settlement entered into between the petitioner corporation and the majority union, u/s 12(3) of the I.D. Act, on 27.03.1997 also provided that in respect of the demand for payment of difference of ex-gratia for

the year 1993-94, consequent to the amendment to the Payment of Bonus Act, it was agreed to discuss and settle this issue in due course of time. The mere fact that, in the settlement dated 27.03.1997, it was agreed to discuss and settle the issue of payment of the difference of ex-gratia for the year 1993-94 in due course of time cannot be construed as meaning that the earlier settlement dated 15.06.1966, whereunder payment of ex-gratia was to be continued in future years, was given a go-by.

28. In the settlement, entered into u/s 12(3) of the I.D. Act, on 21.10.1997 (Ex.W-21), with regard to the demand for payment of difference of the ex-gratia for the year 1993-94, it is noted that the State Government had already referred the issue for adjudication by the Industrial Tribunal. This also shows that the earlier settlement dated 15.06.1966 continued to remain in force, that it had not been given a go-by, and that it became an inviolable condition of service. When a settlement is in force no dispute can be raised contrary thereto. None of the settlements dated 12.01.1996, 27.03.1997 and 21.10.1997 have terminated the earlier settlement dated 15.06.1966 nor do they prohibit continuance of the concession or privilege of payment of ex-gratia in accordance with the provisions of the Payment Bonus Act, 1965 as amended from time to time which, as found by the Tribunal, has by long practice become a condition of service of the employees of the petitioner corporation. The contention that, in view of the settlement entered into on 27.03.1997, neither could a dispute have been raised nor a reference made, or an award passed, does not merit acceptance.

29. The Settlement entered into by the petitioner corporation with the Union on 15.06.1966, which settlement continues to remain in force, required ex-gratia to be paid to the employees and did not specify that the ex-gratia to be paid should be in accordance with the provisions of the Payment of Bonus Act. The statutory minimum bonus, as prescribed under the Payment of Bonus Act, which was being paid by the petitioner corporation as ex-gratia to its employees, is as a matter of concession or privilege. The Tribunal could not have gone into the question regarding the financial position of the petitioner corporation as that would be an enquiry regarding the allocable/available surplus of the petitioner corporation, for payment of bonus, more than the statutory minimum bonus, as prescribed under the Payment of Bonus Act, 1965 and would be beyond the scope of the reference. It is wholly unnecessary, therefore, for this Court to go into the question as to whether the Government orders, including the Government memo dated 26.05.1984, prohibited the petitioner corporation from paying ex-gratia when it was suffering losses. Since the dispute raised is only with regards payment of ex-gratia, representing the differential amount payable under the pre-amended and the amended Payment of Bonus Act, 1965, and not as to whether the profitability/financial position of the petitioner corporation was such as to provide for available surplus/allocable surplus u/s 5 read with Section 2(4) of the Payment of Bonus Act, the Tribunal was not justified in examining the profitability of the petitioner-corporation to determine whether it had enough surplus available to pay ex-gratia since such adjudication is beyond the scope of the

reference. Even otherwise, the manner in which the Tribunal has perfunctorily examined these aspects is wholly unsatisfactory.

NON-COMPLIANCE WITH SECTION 9-A OF THE I.D.ACT RENDERS THE CHANGE IN CONDITIONS OF SERVICE VOID AB-INITIO:

30. The pleadings on record, and the findings of the Tribunal, establish that, ever since the settlement was entered into on 15.06.1966, employees of the petitioner Corporation are being paid ex-gratia on par with the statutory minimum bonus payable under the Payment of Bonus Act, as amended from time to time. The respondent union had specifically pleaded before the Tribunal that payment of ex-gratia in accordance with the Payment of Bonus Act 1965, and the amendments made thereto from time to time, was a condition of service by virtue of the memorandum of settlement dated 15.06.1966 and by long practice and convention, that the petitioner corporation could not resile from such obligation and that they were liable to pay the difference between the ex-gratia actually payable in view of the amendment to the Payment of Bonus Act and the amount actually paid for the year 1993-94. The Tribunal, in its award, has also recorded a finding that the Corporation had been paying ex-gratia to its employees at the same rate as given in the Payment of Bonus Act, that it had been enhancing the bonus, and the upper wage limit, as and when the Payment of Bonus Act was amended, that they had paid the enhanced rate of bonus to all eligible employees in 1995-96 as per the amendment to the Payment of Bonus Act, 1965 and that this payment had become a service condition by long practice and convention.

31. In the light of a specific plea by the respondent union, and the finding recorded by the Tribunal, that payment of ex-gratia in accordance with the Payment of Bonus Act, as amended from time to time, is a condition of service, the questions which ought to have been examined by the Tribunal was (1) whether the petitioner corporation had, in not paying the differential ex-gratia, altered the conditions of service in violation of service 9-A of the I.D. Act, and (2) the consequences thereof.

32. u/s 9-A of the Industrial Disputes Act, no employer who proposes to effect any change in the conditions of service applicable to any workman, in respect of any matters specified in the Fourth Schedule, shall effect such change, without giving to the workman likely to be affected by such change, a notice in the prescribed manner of the nature of the change proposed to be effected, or within forty two days of giving such notice. (A.P. Amendment Act 32 of 1987). Under Proviso (a) thereunder, no notice shall be required for effecting any such change where the change is effected in pursuance of any settlement or award. In making this provision in Section 9-A for notice, the legislature contemplated three stages. The first stage is the proposal by the employer to effect a change; the next stage is when he gives a notice and the last stage is when he effects the change in the conditions of service on the expiry of 21 days, (42 days under the A.P. Amendment Act 32 of 1987), from the date of the notice. The conditions of

service do not stand changed, either when the proposal is made or the notice is given but only when the change is actually effected. That actual change takes place when the new conditions of service are actually introduced. (North Brook Jute Co. Ltd. and Another Vs. Their Workmen,).

33. u/s 9-A no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change without notice as prescribed in that Section. The Fourth Schedule sets out the conditions of service for change of which notice is required to be given u/s 9-A. The conditions of service prescribed in the Fourth Schedule include, inter alia, under condition 8 "Withdrawal of any customary concession or privilege or change in usage". These customary concessions or privileges relate to conditions of service or work. (General Manager (Operations), State Bank of India and Others Vs. State Bank of India Staff Union and Another,).

34. Whether any particular practice, allowance or concession has become a condition of service would always depend upon the facts and circumstances of each case and no rule of universal application can be laid down. (Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, , Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union, Section 9-A of the Industrial Disputes Act comes into operation the moment the employer proposes to change any conditions of service applicable to any workman, and twenty-one days" notice has to be given to the workman. (The Management of Indian Oil Corporation Ltd. Vs. Its Workmen,). The object and purpose of enacting Section 9-A is to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. To effectively achieve the object underlying Section 9-A, it would be more appropriate to place on the Fourth Schedule read with Section 9-A a liberal construction. (Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others,).

35. Notice u/s 9-A must precede the introduction of change in the conditions of service. It cannot follow the introduction. (M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, . Before effecting a change, which has a tendency to change the conditions of service of the workmen, notice u/s 9-A as a condition precedent becomes a must. (M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, . Effect of non-compliance of Section 9-A of the I.D Act renders the change in conditions of service void ab initio. (Workmen of The Food Corporation of India Vs. Food Corporation of India, ; M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, .

36. The right which a workman has to have the conditions of his service continued, and not be subjected to change except in accordance with Section 9A or 19(2) of the Industrial Disputes Act, is a statutory right and, any unilateral change in the conditions of service, is abinitio void. While the petitioner corporation had only agreed to pay ex-gratia, in the settlement dated 15.06.1966, it had, as found by the Tribunal, been paying ex-gratia in

accordance with the statutory minimum bonus as stipulated u/s 10 of the Payment of Bonus Act, 1965, and had been periodically extending the benefit of ex-gratia to its employees, in accordance with the amendments made to the Payment of Bonus Act, 1965, from time to time. It is only for the first time, in the year 1993-94, that the petitioner corporation had unilaterally repudiated such a practice and had failed to give effect to the amendment made to the Payment of Bonus Act, 1965, by Act 34 of 1995. Since the petitioner corporation has, by long practice and convention, been paying its employees ex-gratia in accordance with the amendments made to the Payment of Bonus Act, 1965, from time to time, the Tribunal has rightly held that this practice has become a condition of service and the fact that the settlement does not specifically provide for payment of ex-gratia at 8.33% is of no consequence. As the petitioner corporation had been paying ex-gratia in accordance with the statutory minimum bonus, prescribed in Section 10 of the Payment of Bonus Act, 1965, for the past several decades, it has become a part of the terms and conditions of service of its employees, necessitating its being continued, and not being subjected to variance except on compliance with Section 9-A of the I.D. Act or termination of the earlier settlement in accordance with Section 19(2) of the I.D. Act. Since the petitioner's act of giving a go-by to such a condition of service may amount to contravention of Section 9-A, the Tribunal ought to have examined whether the petitioner Corporation had, in not paying the differential ex-gratia, altered the conditions of service of its employees in violation of Section 9-A of the Industrial Disputes Act and, if so, the consequences thereof. It is only if the Tribunal records a finding on this aspect in the affirmative could it have answered the reference in favour of the 1st respondent union or have granted the relief which it did in the Award impugned in this writ petition. This contention cannot, however, be examined by this Court in certiorari proceedings, since the jurisdiction of this Court is supervisory and not appellate. While setting aside the award to the limited extent that the Tribunal had examined the profitability of the petitioner corporation to hold that their employees were entitled for payment of bonus consequent to the amendment by Act 34 of 1995, and consequently the relief granted, I consider it appropriate to remand the matter back to the Tribunal for its examination on the aspects referred to hereinabove.

37. As the dispute relates to the year 1997, and more than eleven years have elapsed since then, it is but appropriate that the Tribunal hears both parties and passes an award in accordance with law within a period of four months from the date of receipt of a copy of this order. The writ petition stands disposed of accordingly. However, in the circumstances, without costs.