

(1998) 02 CAL CK 0018

In the Calcutta High Court

Case No : Writ Petition No's. 19311 to 19318 of 1997

Williamson Magor and Co. Ltd. and Another

APPELLANT

Vs

Naru Gopal Laik and Others

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : (1998) 2 LLJ 950

Hon'ble Judges : D.P. Kundu, J

Bench : Single Bench

Advocate : S.B. Sinha Ray and J. Sengupta, for the Appellant; Hirak and Z. Rahaman, for the Respondent

Judgement

D.P. Kundu, J.—AH these writ petitions being W.P. 19311 (W) of 1997 (M/s. Williamson Magor) have been heard analogously because the questions involved in all these writ petitions are same. In all these writ petitions M/s. Williamson Magor & Co. Ltd. & Anr. (previously known as M/s. Macneill & Magor Ltd.) is the writ petitioner and hereinafter referred to as the employer. In these writ petitions the employer has challenged the Appellate Orders passed by the Regional Labour Commissioner (Central), Asansol-II being appellate authority under the Payment of Gratuity Act, 1992 confirming the orders of the Controlling Authority. As the matters have been heard analogously, common arguments have been made covering all these cases. Under these circumstances a common judgment is being passed covering all the aforesaid writ petitions. For the purpose of convenience the writ petition in W.P.19312 (W) of 1997 is being considered.

2. On January 9, 1998 the Learned Advocate appearing for the respondent workman submitted that he does not want to file any affidavit-in-opposition in connection with the writ application. Therefore, the Court will proceed on the basis of uncontroverted averments made in the writ application.

3. Admittedly Narugopal Laik, the Respondent No. 1 was a workman of the employer. It appears from Annexure "A" of the writ petition that the Respondent

No. 1 due to his personal domestic reason wished to take a voluntary retirement from the company with immediate effect even though he was formally supposed to retire on attaining the age of 59 years in December, 1993. The letter dated May 19, 1992, is Annexure "A" of the writ petition. For the purpose of better understanding, the aforesaid letter dated May 19, 1992 is quoted herein below: :

"The President, Macneill & Magor Limited, Mining Division, : 2, St. George's Gate Road, Hastings, 5th Floor, Calcutta-700022.

May 19,1992

Dear Sir,

This has reference to my discussion with you today. Due to my personal domestic reasons, I would like to take a voluntary retirement from the company with immediate effect even though I am formally supposed to retire on attaining the age of 59 years in December, 1993. As discussed and agreed, the above voluntary retirement is subject to understanding with the following being paid to me in one instalment.

1. Balance 20 months gross salary based on the March 1992 amount i.e. Rs. 5,030/- per month.
2. An adhoc amount of Rs. 10,000/- to cover up medical expenses and other costs.
3. A special lump sum payment of Rs. 1,500/- to cover up my other incidental expenses etc.
4. Leave encashment for the balance leave due to me.

It is clearly agreed and understood that there will be no liability on either side after payment of the above. In addition, my PF and Gratuity may be paid as per rules as early as possible.

Thanking you, Yours faithfully, N.G. Laik Mining Division, Dishergarh."

4. It appears that by letter No. JKD;92:520 dated May 19, 1992 the employer agreed to the voluntary retirement of the Respondent No. 1 with immediate effect. In the aforesaid letter dated May 19, 1992 the employer, inter alia, clearly stated as follows:

"f. You will be released with immediate effect on making this payment to you.

g. It is clearly understood and agreed between yourself and us that this is MI and final settlement of all your dues and you will have no other claim on the organisation.

h. You will be paid PF and Gratuity as per rules of the company after deduction of any advance that may be standing to your account. "

Thus it is evident from the record that the Respondent No. 1 voluntarily retired

from the service of the employer with effect from May 19,1992, on the aforesaid agreed terms.

5. It appears that a settlement was arrived at by agreement between Williamson Magor & Co., Limited, George Williamson (Assam) Limited, Bishnauth Tea Co. Limited, Worthington Pump India Limited (hereinafter called the Companies) and Members of the Clerical and Non-Clerical Staff of the aforesaid Companies located at the Company's Establishments at 4, Mangoe Lane, 2 Fairlie Place/18 Strand Road, Showroom at 7 Red Cross Place, Offices at 8 A.J.C. Bose Road, 2, St. George's Gate Road, Dissergarh, Burdwan and Tea Warehouses represented by Macneill & Magor Employees' Union (Regd.No.921) and Macneill & Magor Workmen's Union (Regd. No. 885) (hereinafter called the Unions), which was signed by the parties to the settlement on March 10, 1993. It appears from the said settlement that following expiry of long term settlement dated June 17, 1988 the Coordination Committee of Macneill & Magor Employees' Union and Macneill & Magor Workmen's Union submitted their Charter of Demands vide their letter dated December 16, 1991. It further appears from the said settlement that a Voluntary Retirement Scheme was evolved; vide Circular dated July 27, 1992. Thus it is evident from the record that the Respondent No.1 voluntarily retired from the service with effect from May 19, 1992, much before the introduction of voluntary Retirement Scheme vide Circular dated July 27, 1992.

6. The aforesaid settlement dated March 10, 1993 contains the following clause.

"Duration of the settlement.

This Settlement will be in force from January 1, 1992 to December 31, 1996 during which period no dispute or demand on the issues settled under this Settlement or any other issue involving additional financial burden on the Company will be raised or entertained."

The aforesaid Settlement also contains, inter alia, the following Clause.

"Additional Grade increments/Fitment:

Keeping in view the positive response to re-organisation and shifting of "Jeevan Tara", Diamond Harbour Road Office to 2, Fairlie Place, other locations, two grade increments will be given with effect from January 1, 1992. However, this will not be a precedent in any way in respect of settling future Charter of Demands. In addition, one additional increment will also be given with effect from January 1, 1993. These above increments will be applicable to all categories of permanent staff on active permanent rolls of the Company as on January 1, 1992. Where an employee cannot be fitted fully into the appropriate scale by this method, the excess will be treated as "Personal Pay" which for this purpose will attract consequential benefits applicable."

7. The case of the Respondent No. 1 is that since the aforesaid settlement was brought into force from January 1, 1992 and since he voluntarily retired from the

service with effect from May 19, 1992 he is covered by the aforesaid settlement and should get the benefits of the said settlement. The claim of the Respondent No. 1 is that his gratuity should be paid in terms of the aforesaid Settlement which was arrived at and signed by the parties on March 10, 1993.

8. The Respondent No. 1 made an application before the Controlling Authority under the Payment of Gratuity Act, 1972. In the said application the Respondent No. 1 stated that he submitted an application under Rule 7 of the Payment of Gratuity Rules, 1973 on December 20, 1993 but the employer refused to entertain it. In the said application the Respondent No. 1 stated that there is a dispute on the matter of less payment of gratuity as per agreement dated March 10, 1993. The Respondent No. 1 prayed that the controlling Authority may be pleased to determine the amount of gratuity payable to the Respondent No. 1 and direct the employer to pay the same to the Respondent No. 1. From the annexure to the said application for payment of gratuity it appears that the Respondent No. 1 stated that he retired from the service on May 19, 1992 but he stated that it was a forced superannuation. From annexure "A" of the writ petition which has been quoted in the earlier part of this judgment it appears that the Respondent No. 1 voluntarily retired from the service due to his personal domestic reason. There was no mention of forced superannuation. It appears that the Controlling Authority and Assistant Labour Commissioner (Central) Asansol-II by his order dated August 6, 1996 passed the following order:

"Whereas Shri Naru Gopal Laik, Ex. Employee of M/s. Williamson Magor Ltd. (Formerly known as Macneill & Magor Ltd.) Mining Division, P.O. Dishergarh, Dist: Burdwan filed an application u/s 7 of Payment of Gratuity Act, 1972.

Whereas the said application was heard in presence of your counsel as well as counsel of applicant and after the hearing I have come to the finding that the employee/applicant Shri Naru Gopal Laik is entitled to payment of Rs. 1,00,000/- (Rupees one lakh only) as gratuity under the Payment of Gratuity Act, 1972.

And whereas an amount of Rs. 75,000/- (Rupees seventy five thousand only) has already been received by the above employee/applicant from your company on account of gratuity. Now, therefore, I hereby direct to pay the remaining sum of Rs. 25,000/- (Rupees twenty five thousand only) alongwith 11 % interest per annum with effect from April 1, 1993 to July 2, 1996 towards payment of gratuity to the applicant within 30 (thirty) days from the receipt of this notice with an intimation to me.

GIVEN UNDER MY SEAL AND SIGNATURE ON 6th August, 1996."

Admittedly the Respondent No. 1 after his voluntary retirement from the service of the employer received Rs. 75,000/- (Rupees seventy five thousand only) as gratuity. It appears from the findings of the Controlling Authority under the Payment of Gratuity Act, 1972 that after considering the issue whether the applicant is entitled to receive gratuity at a better term as per aforesaid Memorandum of Settlement dated March 10, 1993, the authority recorded his

findings as follows:

"I heard both the parties on this issue keeping in view the claim of the applicant as per M.O.S. dated March 10, 1993 and objections filed by the Opposite Party on the ground the applicant was paid his gratuity and other dues as per settlement/agreement arrived at between the applicant and Company on the basis of a package deal offered by the employer and accepted by the employee on May 19, 1992 on account of voluntary retirement of the employee.

On going through the documents produced by both the parties and the evidence of the applicant as well as Shri S. Chatterjee, (Management's witness) who were examined and cross examined on oath before the Controlling Authority, following observations have been made:

1) It is a fact that although the Memorandum of Settlement dated March 10, 1993 was signed on March 10, 1993 but it was made effective from January 1, 1992 i.e. its application was retrospective and not from the date of signing of the settlement. On page 3 of the M.O.S. dated March 10, 1993, under the head "Additional Grade increments /fitment" it has been clearly mentioned that:

"These above increments will be applicable to all categories of permanent staff on active permanent rolls of the company as on January 1, 1992."

Accordingly, since the applicant was very much on the active permanent rolls of the company as on January 1, 1992, he is entitled to get 2 grade increments w.e.f. January 1, 1992 but since he retired from service w.e.f. May 19, 1992 he is not entitled to get one additional increment which was to be (sic) granted w.e.f. January 1, 1993 since he was not on the rolls of company as on January 1, 1993.

"2) The M.O.S. dated March 10, 1993 on its page 15 under the head "Payment of dues" also clearly spelt but that the amount payable in accordance with the M.O.S. will be due in April, 1993. Arrears from January 1, 1992 to March 31, 1993 will be disbursed in two equal instalments in April, 1993 and the second and final instalment will be paid not later than August 31, 1993, which clearly indicates that the employees who were on active permanent rolls of the company as on January 1, 1992 to March 31, 1993 will get their dues paid as per M.O.S. in two instalments in April 1993 whereas the employees who were on Company's roll as on April 1, 1993 will get their dues paid which will be 2nd and final instalments.

Since, the applicant Shri Naru Gopal Laik was on the active permanent rolls of the Company, as on January 1, 1992 and he retired voluntarily from service w.e.f. May 19, 1992, he is rightly entitled to get the benefit of the M.O.S. dated March 10, 1993.

Accordingly I hold that the applicant is entitled to receive gratuity at better terms as per M.O.S. arrived at between Macneill & Magor Ltd. & its functioning union dated March 10, 1993 on the basis of new grade structure and D.A. Scheme of M.O.S. dated March 10, 1993."

It appears that being aggrieved by and dissatisfied with the aforesaid finding and order passed by the Controlling Authority under Payment of Gratuity Act, 1972 the employer preferred an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Asansol-II. The appeal was preferred under Sub-section 7 of Section 7 of the Payment of Gratuity, Act, 1972.

It appears from the order dated June 10, 1997 passed by the Appellate Authority held that the aforesaid Memorandum of Settlement dated March 10, 1993 is applicable to the Respondent No. 1 and, therefore, the payable wages to the retired workmen as per Memorandum of Settlement dated March 10, 1993 are the wages to be paid under the Payment of Gratuity Act, 1972. The relevant portions of the order of the Appellate Authority are quoted hereinbelow :

"I am of the opinion that the said Memorandum of settlement is applicable to the workmen on the following grounds:

1. The workmen were the parties to the agreement at the state of submission of the demands and until they took voluntary retirement during the year 1992.
2. All these workmen have taken voluntary retirement under normal Rules of the Company only, in other words this-voluntary retirement is not special scheme and no additional benefits were provided to the workmen because of their voluntary retirement. There is no provision in the settlement excluding these workmen from the benefits of the settlement. Moreover, provisions were made to pay the backwages to the workmen.
3. The law is well settled that equal wages should be paid to the equal work done by the same set of persons. In the instant case the colleagues of the retired workmen who performed the same duties like them received higher wages. Then these workmen also have to be paid enhanced wages as per Memorandum of Settlement. Definition of the wages under Payment of Gratuity Act, 1972 "including the wages "payable" also".

Therefore, I hold that the payable wages to the retired workmen as per Memorandum of Settlement dated March 10, 1992 are the wages to be paid under the Payment of Gratuity Act, 1972. The Pendency as per Memorandum of Settlement dated March 10, 1993 of the matter before the Hon'ble Industrial Tribunal regarding interpretation of the Memorandum of Settlement should not come in the way of the Controlling Authority."

The claim for gratuity can be made only on the date of retirement and if it is already paid on that footing then the transaction is completed and closed. It cannot then be re-opened as a result of the enhancement made at a later date. This concept of gratuity is different from pension. Supreme Court in State Government Pensioners" Association and Others Vs. State of Andhra Pradesh, observed as follows:

"We fully concur with the view of the High Court. The upward revision of gratuity

takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this Court in Nakara's case An illustration will make it clear. Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of the upward revision. Those who were in employment say in 1950, 1960 or 1970, lived, spent, and saved, on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by them on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even). It would be futile to contend that no upward revision on gratuity amount can be made in harmony with Article 14 unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950 and the date of upward revision. There is therefore no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf."

The above quoted view was quoted with approval in *Union of India v. All India Services Pensioners Association & Anr*, reported in (1988-II-LLJ-196). In *Union of India v. All India Services Pensioners Association*, Supreme Court in Paragraph 8 of the Reported decision observed as follow:

"From the foregoing it is clear that this Court had made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. No other decision of this Court which has taken a view contrary to the decision of Thakkar and Ray, JJ. in *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, and to the decision in *N.L. Abhyankar and Others Vs. Union of India and Others*, has been brought to our notice. The observations made in these two cases are binding on us insofar as the applicability of the rule in *D.S. Nakara's case* (1983-I-LLJ-104) (supra) to the liability of the Government to pay gratuity on retirement. We respectfully agree with the views expressed in those decisions. It is also not shown that the Government notification in question either expressly or by necessary implication directs that those who had retired prior to January 1, 1973 would be entitled to any additional amount by way of gratuity. The Tribunal was, therefore, in error in upholding that gratuity was payable in accordance with

the Government Notification No. 33/12/73-AIS (ii) dated January 24, 1975 to all those members of the All India Services who had retired prior to January 1, 1973."

The same view has been expressed by Supreme Court in *Indian Ex- Services League v. Union of India*, reported in (1992-I-LLJ-765). In paragraph 21 of the Reported decision Supreme Court observed as follows:

"One of the prayers made in these writ petitions is for grant of same Death-cum-Retirement gratuity to the pre April 1, 1979 retirees as to the post April 1, 1979 retirees. A similar claim was rejected by this Court in *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, on the ground that the claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid on that footing the transaction was completed and closed. It could then not be reopened as a result of the enhancement made at a later date for persons retiring subsequently. This concept of gratuity being different from pension has also been reiterated by the Constitution Bench in *Krishna Kumar's case* (1991-I-LLJ-191). With respect, we are in full agreement with this view. This claim of the petitioners also, therefore, fails."

From the above decisions of Supreme Court it is clear that gratuity is ordinarily paid only once on retirement. The amount gets crystallised on the date of retirement on the basis of salary drawn by the employee on the date of retirement and if the amount is already paid to the employee on that footing then the transaction is completed and closed. It cannot then be reopened as a result of enhancement made at a later date for persons retiring subsequently unless the provision in this behalf expressly so provides retrospectively. True, the above referred decisions of Supreme Court related to State Employees, but the principles laid down in those cases regarding gratuity are also applicable, subject to the provisions of Payment of Gratuity Act, 1972, to the cases under the said Act.

It appears from the aforesaid Memorandum of Settlement dated March 10, 1992 that no conciliation proceeding was held for settlement of the dispute under the provisions of Industrial Disputes Act. It appears that after several bipartite discussions the said Memorandum of Settlement was arrived at. The relevant lines from the said Memorandum of Settlement are quoted hereinbelow:

"However after several bi-partite discussions and with active co-operation of the Co-ordination Committee it has been agreed by and between the parties for maintenance of better industrial relations, a full and final settlement had been arrived at on the following terms and conditions."

Therefore, there is no dispute that the aforesaid Memorandum of Settlement was nothing but a bipartite settlement and the scope and effect of its operation is prescribed by Section 18(1) of the Industrial Disputes Act, 1947.

The admitted facts are (1) the Respondent No. 1 retired from the service with effect from May 19, 1992. (2) at the time of settlement dated March 10, 1993 the Respondent No. 1 was not the workman of the employer. (3) the scope and operation of the aforesaid Settlement is prescribed by Section 18(1) of the Industrial Disputes Act, 1947. (4) the aforesaid settlement came into force from January 1, 1992. The question to be determined is whether the Respondent No. 1 who retired voluntarily with effect from May 19, 1992 can take the benefit of the aforesaid settlement, which was though arrived at on March 10, 1993 but brought into force from January 1, 1992.

Admittedly on March 10, 1993 the Respondent No. 1 was not the workman of the employer. Voluntary retirement of a workman does not amount to retrenchment as defined in Section 2(oo) of Industrial Disputes Act, 1947. Since the Respondent No. 1 voluntarily retired from the service his case is not covered by Section 2(oo) of the Industrial Disputes Act, 1947. The Respondent No. 1 was neither dismissed nor discharged from the service of the employer. Section 2(s) of the Industrial Disputes Act, 1947 defined the word "workman" as follows:

""Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1947); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature."

Supreme Court in Tota Chemicals Ltd. v. Workmen reported in (1978-II-LLJ-22), in paragraphs 13 & 14 of the Reported decisions observed as follows:

"A bare perusal of the above quoted section would show that whereas a settlement arrived at by agreement between the employer and the -workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the act is binding not only on the parties to the industrial dispute but also on other persons specified in Clauses (a), (b), (c) and (d) of Sub-

section (3) of Section 18 of the Act. We are fortified in this conclusion by a decision of this Court in *Ramnagar Cane & Sugar Co. Ltd. v. Jatin Chakravorthy* where it was held as follows (SCRpp.772-73):

When an industrial dispute is thus raised and is decided either by settlement or by an award the scope and effect of its operation is prescribed by Section 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in Clauses (a), (b), (c) and (d) of Sub-section (3). Section 18(3)(d) makes it clear that, where a party referred to a Clause (a) or Clause (B) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement..... In order to bind the workmen it is not necessary to show that the said workmen belong to the Union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in Section 18, Sub-section (3).

"Similar view seems to have been held by another Division Bench of this Court in *The Jhagrakhan Collieries (P) Ltd. v. Shri G.C. Agarwal*, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabbalpur."

Supreme Court in *Barauni Refinery Pragatisheel Shramik Parisad v. Indian Oil Corporation Ltd.* reported in (1991-I-LLJ-46), in paragraph 9 of the reported decision *inter alia*, observed as follows:

"It may be seen on a plain reading of Subsections (1) and (3) of Section 18 that settlements are divided into two categories, namely (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings.

A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all 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. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised 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. To

that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated August 4, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union."

Section 2(p) of the Industrial Disputes Act, 1947 reads as follows:

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

Therefore, a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding is also a settlement and in view of Section 18(1) of the Industrial Disputes Act, 1947 this agreement has limited application in that it merely binds the parties to the agreement. The settlement referred to hereinabove dated March 10, 1993 was arrived at between the employer and the workmen who were working on March 10, 1993. The Respondent No. 1 having voluntarily retired from the service with effect from May 19, 1992 was not a workman of the employer on March 10, 1993 and therefore was not a party to the settlement. In view of the principles laid down by Supreme Court in the above referred cases the said settlement dated March 10, 1993 does not bind the Respondent No. 1. I am of the view that the said settlement dated March 10, 1993 has no manner of application so far the Respondent No. 1, is concerned and for that reason the Respondent No. 1, is not entitled to get any benefit of the aforesaid settlement dated March 10, 1993 though the said settlement was brought into force with effect from January 1, 1992. I am of the view that the aforesaid settlement dated March 10, 1993 will bind the workmen who were in the employment of the employer on March 10, 1993 and only those workmen will get the benefit of retrospective operation of the settlement. I am of the view that having voluntarily retired from the service with effect from May 19, 1992 the Respondent No. 1 was not a workman of the employer on March 10, 1993 and, therefore, he is not a party to the said settlement.

The Learned Advocate for the Respondent No. 1 referred to Dutt on Contract, Eighth Edition page 42 and referred to and relied upon the following lines:

"The rule of equity conferring a right on the third party to sue has been thus stated: "Now of course, as a general rule, a contract be enforced except by a party to the contract and either of two persons contracting together can sue the other, if the other is guilty of a breach of, or does not perform the obligations of, that contract. But a third person, a person who is not a party to the contract, cannot do so. That rule, however, is subject to this exception. If the contract although in form it is with A, is intended to secure a benefit to B, so that B is entitled to say that he has a beneficial right as a cestui que trust under that contract, then B would in a Court of Equity be allowed to insist upon and enforce the contract."

The exception mentioned in the above quoted lines is not applicable in respect of a settlement covered by Section 18(1) of the Industrial Disputes Act, 1947. The exception stated in the above quoted lines from Dutt on Contract, 8th Edn. can be traced out in a settlement covered by Section 18(3) of the Industrial Disputes Act, 1947. In the instant case the Court is concerned with a settlement covered by Section 18(1) of the Industrial Disputes Act, 1947, therefore, the aforesaid exception has no manner of application in the instant case.

The Learned Advocate for the Respondent No. 1 referred to Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, The Learned Advocate referred to paragraph 14 of the Reported decision which reads as follows:

"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

The learned Advocate for the Respondent No. 1 argued that even if it is held that the settlement under consideration is covered by Section 18(1) of the Industrial Disputes Act, 1947 and that the Respondent No. 1 is not covered by the settlement then also this Court will not exercise its jurisdiction because by benefit of the said settlement to the Respondent No. 1 both the Controlling Authority and the Appellate Authority committed error of law without causing substantial injustice. I am unable to accept this contention of the learned Advocate for the Respondent No. 1. This is not a mere error of law, this amounts to rewriting the provisions of Section 18(1) of the Industrial Disputes Act, 1947 which the Tribunal has no jurisdiction to do. It is a case where both the

Controlling Authority and the Appellate Authority under the Payment of Gratuity Act passed decisions in utter violation of the principles of law laid down by the Supreme Court as mentioned herein above. The Controlling Authority and the Appellate Authority had no jurisdiction to pass such decisions which are contrary to the decisions of the Supreme Court referred to hereinabove. Both the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act exceeded their jurisdiction. I am of the view that this is a fit case, where this Court should exercise its discretion under Article 226 of the Constitution.

The learned Advocate for the Respondent No. 1 argued that on May 19, 1992 when the Respondent No. 1 voluntarily retired from the service of the employer he had no knowledge about the settlement arrived at between the employer and the workmen on March 10, 1993 and, therefore, the receipt of Rs.75,000/- by the Respondent No. 1 as gratuity does not amount to waiver of his right under the aforesaid settlement dated March 10, 1993. In respect of his contention he referred to *Payman v. Lanjani* and Ors. reported in 1984 3 All Eng Law Reports 703. I am of the view that in the facts and circumstances of the present case as discussed hereinabove the aforesaid decision has no manner of application, because it is not a question of waiver of any right. The Respondent No. 1, in view of Section 2(p) and Section 18 of the Industrial Disputes Act, 1947, is not a party to the settlement and not bound by the aforesaid settlement dated March 10, 1993 and for that reason he cannot get any benefit of the said settlement. He is not bound by the said settlement.

The learned Advocate for the Respondent No. 1 drew the attention of the Court to *Macneill & Magor Ltd. v. Sri Jogendra Lal Malakdr* reported in 1979 (1) CHN 408 and in *Eastern Coal Fields Ltd.* 1982 Lab. I.C. NOC 75(Cal). In *M/s. Macneill & Magor Limited's* case (supra) a Division Bench of this High Court held that in the background of Welfare State the Payment of Gratuity Act, 1972 has been enacted to do social justice and it should be construed liberally to extend the benefit granted by it to as many persons as possible. In *Eastern Coal Fields Limited's* case (supra) G.N. Roy, J. (As His Lordship then was) held that the Payment of Gratuity Act being a beneficial legislation its provisions, should be construed, liberally so that the benefit under the Act reaches the maximum possible employees, It was held that u/s 4(5) of the Act, the Controlling Authority has power to grant higher quantum of gratuity under the Act in terms of favourable contractual provisions of service although in the absence of such favourable terms such higher quantum could not have been decided by the Controlling Authority. Both the said decisions do not help the Respondent No. 1. When the Respondent No. 1 is not a party to the settlement dated March 10, 1993 then he is not entitled to get the benefit of the said settlement. The Controlling Authority or the Appellate Authority under the Payment of Gratuity Act has no power, authority, jurisdiction or competence to grant the Respondent No. 1 higher quantum of gratuity in terms of the said settlement dated March 10, 1993.

The learned Advocate for the Respondent No. 1 put much stress upon the following lines of the said Settlement:

"These above increments will be applicable to all categories of permanent staff on active permanent rolls of the company as on January 1, 1992."

It was argued that on January 1, 1992 the Respondent No. 1 was a permanent staff on active permanent rolls of the employer, therefore, the Respondent No. 1 is entitled to get the benefit. I am unable to accept this argument. On March 10, 1993 the Respondent No. 1 was not a workman of the employer, so in view of Section 2(p) read with Section 18(1) of the Industrial Disputes Act the Respondent No. 1 was not a party to the said settlement and he cannot get any benefit of the settlement. In my view the benefit of the above quoted lines of the settlement can be enjoyed by the persons who were workmen of the employer on March 10, 1993 and permanent staff on active permanent rolls of the company as on January 1, 1992. It is also not shown that the aforesaid settlement either expressly or by necessary implication lays down that those who had retired prior to March 10, 1993 would be entitled to any additional amount by way of gratuity.

In view of the discussions made hereinabove I quash and set aside the appellate order passed by the Appellate Authority and also the order passed by the Controlling Authority under the Payment of Gratuity Act which are subject matters of challenge in all these writ applications. This judgment shall cover W.P. Nos. 19311 (W) of 1997, 19312 (W) of 1997, 19313 (W) of 1997, 19314 (W) of 1997, 19315 (W) of 1997, 19316 (W) of 1997, 19317 (W) of 1997 and 19318 (W) of 1997. In these terms the aforesaid writ applications are allowed. However, there shall be no order as to costs.

Later.

If urgent certified copy is applied for, the same may be supplied to the applicants as expeditiously as possible.