(1976) 08 GUJ CK 0008

Gujarat High Court

Case No: Special Civil Application No. 665 of 1975

The Textile Labour Association, Ahmedabad		APPELLANT
	Vs	
Ashok Mills Ltd.		RESPONDENT

Date of Decision: Aug. 5, 1976

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 42(1), 46(2), 46(3), 46(5), 79
- Constitution of India, 1950 - Article 227

Citation: AIR 1977 Guj 37 : (1977) GLR 241

Hon'ble Judges: S. Obul Reddi, C.J; J.B. Mehta, J; B.K. Mehta, J

Bench: Full Bench

Advocate: S.B. Majmudar, for the Appellant; V.B. Patel, for the Respondent

Judgement

J.B. Mehta, J.

The short question which arises before us is whether the decision in Nagri Mills Ltd. v. Textile Labour Association, Ahmedabad (1971) 12 Guj LR 417, which has unsettled, the industrial law for a decade on this question of limitation u/s 79 (0 of the Bombay Industrial Relations Act, 1946, hereinafter referred to as the "Act", in respect of continuing illegal change is correctly decided. The Textile Labour Association, a representative union, has come up in this petition under Article 227 of the Constitution of India challenging the decision of the Industrial Court, dated. October 23, 1974, dismissing the four applications which were filed by this representative union on behalf of the four concerned permanent watchmen working in the respondent mill company for a declaration of illegal change as being time barred. The concerned watchmen were made permanent on April 10, 1967, May 1, 1968, August 1, 1.968 and May 1, 1968 respectively, and on the ground of the customary concession of amenity in the form of an allowance of Rs. 4.50 per month in lieu of house rent with additional fuel and kerosene which had been denied to them from the date of the permanence, the claim was made that the company had committed

an illegal change. Within a month of their permanence the demand was made but the mill company did not pay them the value of these amenities, month to month, as they became due under the aforesaid industrial usage or customary concession and that is why these applications for an illegal change had been made before the Labour Court. The Labour Court found that the fact was undisputed that these employees were made permanent watchmen on the dates alleged. There was also no dispute that there was a customary practice of giving the alleged amenities to the permanent watchmen. The only plea taken was that these watchmen being fresh entrants who were made permanent after the wage award reported in 1948 ICR 147, there would be no illegal change if the said amenities were denied to these new entrants after the 1948 award. The Labour Court accepted this contention and held that this was not an existing right and the employees could not claim benefit of these amenities after the award of 1948. Accordingly, these applications were dismissed by the order at Annexure A, dated September 30, 1970, by the Labour Court. In appeal, the Industrial Court, however, took up the question of limitation as it went to the root. The Industrial Court pointed out that the Full Bench of the Industrial Court had in its decision and even the Labour Appellate Tribunal had taken the view that there would be no such question of bar of limitation in such cases where there was a recurring illegal change for the period that was within the limitation but as the recent aforesaid decision in Nagri Mills case had taken a contrary view, these applications must be held to be time-barred. Accordingly the appeals having been disposed of, the representative union has filed this petition.

2. Before we go into the aforesaid question as to the correctness of the decision in Nagri Mills case, at the outset we would consider the background of this litigation in the context of the relevant provisions of the Act. The entire history of this litigation, even so far as this particular mill is concerned, has been exhaustively referred to by the Labour Appellate Tribunal in the decision in Shrinagar Mills Co. Ltd. v. Textile Labour Association, Ahmedabad (1951) 2 Lab LJ 25. The Labour Appellate Tribunal pointed out that in the 1948 award which fixed standard wages for certain occupations and minimum basic wages for certain other occupations, including this watch and ward department, had been preceded by the assessor''s report. In the assessor''s report a recommendation had been made while fixing the standard wages far discontinuance of certain amenities. The members of the Labour Appellate Tribunal ''however pointed Gut that the assessor''s report was, however, not an award. The award was made on April 21, 1948, after taking into consideration the assessor''s report and it was abundantly clear that the Industrial Court, although invited by the Mill Owners to permit them to deduct the cost of these amenities from wages, declined to do so. It, therefore, followed that by award the wages were fixed, but the amenities enjoyed by the employees were not in any way affected. It was an obligation on the part of the employers to pay the wages and to continue the amenities, and by their failure to continue the amenities, they had committed a breach of their obligations towards the employees. If it was their intention to

discontinue the amenities, they should have first given a notice of change u/s 42 of the Act. It was also mentioned that the term ''wages'' had been defined in Section 3(39) of the Act as remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment, and includes the value of any house accommodation, light, water, medical attendance, or other amenity or service. It, therefore, could not be doubted that the granting of these amenities or privileges constituted a part of the wages of the employees, and, therefore, any unilateral change in such amenities would require a notice of change u/s 42. The other contention was also negatived by pointing out that the customary concession would not mean a concession which had existed from times immemorial, but it was intended in the context of industrial relations to convey the idea of an amenity or advantage which had been consistently enjoyed by the employees for a sufficient duration to justify the view that it had become part of his emoluments,'' because any other construction would lead to an absurdity. Thereafter the Labour Appellate Tribunal considered the pertinent question of limitation as the award having been made on April 21, 1948, the concessions were soon thereafter withdrawn. Thereafter even an interpretation matter failed on January 18, 1949. But an application for an illegal change was delayed upto June 8, 1949. At that time the proviso for condonation of delay was introduced in Section 79(4) of the Act. Assuming that the limitation had started soon after April 9, 1948, there was some substance in the objection of limitation. Thereafter these relevant observations were made by the Labour Appellate Tribunal which ''had finally approved the Full Bench decision in Government Labour Officer, Bombay v. Shree Ram Mills Ltd. 1950 ICR 1241 with a slight modification as under:-

"We have already pointed out that the amenities in question are to be regarded as ''wages'' according to its definition in the Industrial Relations Act and the 1948 Award did not empower the employer to deduct their money value from the wages as fixed by that award. Accordingly the action of the employers complained of amounted to illegal change in the matter of "wages." The employees had the right to receive and the employers were under the obligation to pay and to provide the amenities month by month as long as the service of employees had not been rightfully terminated. Accordingly the refusal of the employers to act according to that obligation month by month constituted a fresh breach every Month. Translating it into the language of Industrial Relations Act there would be an illegal change and in such cases its repetition occurred every month. In this view of the matter, an application for a declaration that the change was illegal, and for the withdrawal, in respect of the amenities due but withheld by the employer within three months of the making of the application would be within time. To this extent we agree with the decision of the Full Bench of the Industrial Court in the case of the Government Labour Officer, Bombay v. Shree Ram Mills Ltd. 1950 ICR 1241 but not with the further observations made therein implying that the position would be different in the matter of limitation if the denial on the Part of the employer was of an

unequivocal nature. We think that it is the nature of the right of the employee recurring or non-recurring and not the character or the force of the denial on the part of the employer that determines in such cases the starting point of limitation."

Under Section 95A of the Act the determination of any question of law in any order, decision, award or declaration passed or made, by the Full Bench of the Industrial Court constituted under the regulations made u/s 92 shall be recognised as binding and shall be followed in all proceedings under the Act. That is why the Labour Appellate Tribunal, which had been constituted for achieving uniformity in labour decisions throughout the country, finally set at rest the vexed question of limitation in the context of Section 79(4) when the question arose of such recurring illegal changes 6y approving the decision in Shri Ram Mills of the Full Bench of the Industrial Court, with the slight modification that it was the nature of the right of the employee recurring or non-recurring and not the character or the force of the denial on the part of the employer that determines in such cases the starting point of limitation. That settled law operated in the larger bilingual Bombay State and had been the settled position of the State Industrial law for over a decade till the same was unsettled by the aforesaid decision in Nagri Mill''s case. Even after this decision the respondent company and some other mills gave a notice of change u/s 42(1) to discontinue these amenities to the watchmen about the rent free quarters, fuel oil, kerosene etc. In the decision of the Industrial Court reported in 1952 ICR 1405, where this respondent company was also a party, the Industrial Court rejected this demand on a consideration of the whole question of amenities of such workers as no justification whatever was found for this notice of change then given for the purpose of discontinuing these customary amenities. It was held that it would not be in the interest of industrial peace if such long standing custom or practice was put to an end without adequate grounds and if any uniformity was desired, it should be for the Mill Owners'' Association to give a general notice of change on behalf of all the mills at this particular centre. It was observed that on the other hand, the other mills were still continuing with that old practice and only the mills concerned'' had given a notice of change. Therefore, the watchmen of the respondent mill company continued to get benefit of this customary usage in the form of these amenities which augmented their wages to a small extent every month and every watchman when he was made permanent got benefit of this concession. As the concerned four employees had been denied this benefit by this novel plea that the persons recruited after 1948 award who were new entrants could not claim benefit of these amenities the representative union has been driven to file this application of, illegal change.

3. In this context it would be proper to consider some of the relevant provisions. The Act is not only an industrial disputes legislation but as its title and the preamble indicate it is meant to regulate relations of employers and employees, and to make provision for settlement of industrial disputes and to provide for certain other purposes. Section 3(16) defines an illegal change as an illegal change within the

meaning of sub-sections (4) or (5) of Section 46. Section 3(18) defines ''Industrial matter'' in the widest context so as to include in Clause (d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and/or the community as a whole. The Act divides industrial matters in three Schedules. Schedule I is regulated by certified standing orders where all disputes regarding the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders, and as to the application and interpretation of the standing orders go to the Labour Court u/s 78(1)A(a)(i), (ii) with a right of appeal to the Industrial Court. So also Schedule III matters after a collective bargaining between an individual or representative union with the concerned employer by a notice of approach u/s 42(4) read with Rule 53 also go to the Labour Court and they are to be decided under Sec. 78(1)A(a)(iii) for getting changes desired in matters of Schedule III. Both the individual and a representative union have been given a right to approach to the Labour Court for getting these changes under Schedule III or for raising a dispute about the orders under the standing orders or as to the application and interpretation of standing orders. It is only Schedule II matters which are considered as very important matters where a provision is made for a notice of change before any unilateral change is made in Chapter VIII. So far as an employer is concerned, when he desires to make any change in any matter in Schedule II, it is obligatory for him to give a notice of change to the representative union u/s 42(1) in the prescribed form for the purpose of collective bargaining. Thereafter, the employer is prohibited to make any change unilaterally in the industrial matters mentioned in Schedule II, u/s 46(2), without giving any notice of change and without going through the whole gamut of collective bargaining which would result in a collective agreement, settlement or adjudication award of the Industrial Court or the Wage Board, which would have to be complied with by the parties. That is why this State Act is a peculiar legislation which prohibits class warfare as it gives rights even to the employees so far as matters in Schedules I and III are concerned to approach the Labour Court and in other matters of Schedule II or residuary matters, when the changes are desired by the employees, collective bargaining is envisaged with the sole bargaining agent, or the sole mouth piece, the representative union or other representatives of employees so that peaceful solution is reached by collective agreement, settlement or award for this purpose. By such a prohibition of strikes, lock-outs, closures and stoppages, the industry goes on peacefully producing for the community without any dislocation by strikes, lock-outs or stoppages. The scheme of Section 97(1)(c) is to completely prohibit any strike if it is commenced or continued only for the reason that the employer has not carried out the Provisions of any standing order or has made an illegal change, as it gives the right to approach the Labour Court in such disputes or when an illegal change has been made by his employer, to every individual employee and, therefore, the right of strike has been absolutely taken away. Therefore, in the matter of illegal change the right to strike does not exist under this Act and the employee or the representative union would have only to

approach the Labour Court by making an application u/s 78(1)A(c) to get a decision whether any such change is illegal under the Act. The Legislature does not stop at merely giving a declaration that the change was illegal under the Act but provides a remedy u/s 78(1)C that the employer could be required by the Labour Court to withdraw any change which is held by it to be illegal. Thereafter on appeal is provided to the Industrial Court u/s 84 against the decision of the Labour Court. The penalty provisions in Chapter XVI, Sections 102 and 103 provide for penalty for an employer who has commenced a lock-out or a closure which had been held to be illegal by the Labour Court or the Industrial Court and in Section 103 an employee going on such strike or stoppage which was held to be illegal is penalised. Section 106(1) provides for a Penalty for illegal change by enacting that an employer who makes an illegal, change shall be punished with a fine which may extend to R9. 5,000. Section 106(2) provides that any employer who contravenes the provisions of Section 47 shall on conviction, be punishable with imprisonment which may extend to three months, or for every day on which the contravention continues with fine which may extend to Rs. 5,000, or with both. u/s 106(3) the Labour Court exercising criminal jurisdiction while convicting any person u/s 106 (1), or (2) may direct such person to pay compensation as it may determine to any employee directly and adversely affected by the change in issue. But in criminal jurisdiction there is no provision of withdrawal of the illegal change as it is only penalizing the employer and mere compensation can be awarded, to the concerned workman affected by the change in issue. Section 114 provides for the parties on whom the registered agreement, settlement or award are binding as in cases of such representative union they bind all employees in the industry, past, present, or future. Thus, it is for peaceful settlement of industrial disputes and for improving the employer employee relations, so that there would be real participation of the labour by a joint productive effort in the industrial production that the whole Act has been enacted which avoids all industrial class warfare by substituting peaceful procedure of resolving disputes by collective bargaining with such a representative union or other authorised representatives of employees, and if there is no agreed solution, by resorting to compulsory adjudication under the Act. That is why in Section 46(2) the employer is prohibited from making any change in industrial matters mentioned in Schedule II which are substantial matters without giving any notice of change u/s 42(1) and without going through the whole gamut of collective bargaining. u/s 46(3) it is provided that no employer shall make any change in contravention of the terms of a settlement, effective award, registered agreement or effective order or decision of a Wage Board. Sub-clause (4) provides that any change made in contravention of the provisions of sub-section (1), (2) or (3) is illegal. The other clause is the material clause in Section 46(5) which provides that any failure to carry out the terms of any settlement, award, registered agreement, or effective order or decision of a Wage Board. A Labour Court or Industrial Court affecting industrial matters shall be deemed to be an illegal change.

4. Therefore, illegal change under the scheme of this Act results not only by these positive acts of making unilateral changes in industrial matters mentioned in Schedule II, without a notice of change u/s 42(1) and without going through the whole gamut of collective bargaining, but also when the employer fails to carry out the terms of any settlement, registered agreement or order of a Labour Court or Wage Board or of the Industrial Court. In Schedule II so far as the present matter is concerned, the relevant matters are Item No. 7 of withdrawal of any customary concession or privilege or change in usage, and Item No. 9, wages including the period of payment and mode of payment. Therefore, if the employer without a notice of change discontinued a long standing customary concession by stopping these amenities so as to reduce the wages to the extent of their value every month of these concerned watch and ward employees, when they were entitled to get these amenities from the date they were made permanent, the change would be an illegal change within the meaning of the Act. In fact, in this particular mill company, when a notice of change was given to stop these amenities because of the alleged recommendation in the assessor''s report, after considering all aspects the Industrial Court had rejected this demand. Therefore, by refusal to give this benefit of extra wages Month to month to the concerned permanent employees, the employer obviously committed an illegal change as per the settled legal position. The Labour Appellate Tribunal had categorically held that the assessor''s report was not an award and such long standing customary concession could not be discontinued, The change affected these concerned employees by depriving them every month of this small additional wage in the wider sense used in Section 3(39), where it contemplated such value of the amenities, and such a change would be a recurring change as per the view taken in this very Mill''s case by the Labour Appellate Tribunal in the aforesaid decision. Therefore, the first ground raised by Mr. Patel at the outset that there was no question of illegal change in this petition is wholly misconceived in view of this settled legal Position when the law had been finally settled by the Labour Appellate Tribunal in this very Mill''s case and for this very department, and when the Mill''s attempt has finally failed to have these amenities discontinued even after a notice of change, which resulted in the subsequent decision in 1952 ICR 1405.

5. That is why the question of limitation would have to be considered in view of the entire scheme and such construction must be made of this self-contained limitation provision in Section 79(4) that the policy of the Act is advanced and not frustrated. It should also be borne in mind that the Legislature had an occasion during this long period after law was finally settled by the Labour Appellate Tribunal in the decision in (1951) 2 Lab LJ 25 to amend this very provision in Section 79(4) where the period was changed from three months to six months by the Gujarat Amending Act No. 22 of 1966, but the Legislature did not make any change so far as the interpretation was put on this relevant provision in Section 79(4) in the context of recurring illegal change by the Full Bench with the slight modification done by the Labour Appellate

Tribunal as earlier set out. As observed by their Lordships in Sakal Deep Sahai Srivastava Vs. Union of India (UOI) and Another, in such cases this would be a very vital consideration for interpretation of this statutory provision. The question arose before their Lordships as to the correctness of the view taken by the Supreme Court that Article 102 of the Limitation Act was applicable to the question of arrears of salary. A reference was made to this provision being reenacted even in the new Limitation Act of 1963 in identical terms without any modification. It was pointed out at page 341 that the Legislature must be presumed to be cognizant of the view taken by the Supreme Court that a claim of the nature for arrears of salary fell within the purview of Article 102 of the Limitation Act, 1908. If Parliament, which was deemed to be aware of the declarations of law by this Court did not alter the law, it must be deemed to have accepted the interpretation of this Court even though the correctness of it might be open to doubt. If doubts had arisen, it was for the Legislature to clear those doubts. When the Legislature had not done so, despite the repeal of the Limitation Act of 1908, and the enactment of the Limitation Act of 1963, after the decision of this Court, embodying a possibly questionable view, it must be held that this question which had been long settled should not be reopened. These observations would be all the more appropriate in the context of such industrial law when the settled legal position after a decade is to be unsettled, even if two views are possible, because the employees concerned after six months limitation period would be without any effective remedy. The penal remedy would be a Door consolation because the criminal jurisdiction of the Labour Court would have to be invoked by filing a complaint against the company or persons in management by straining the industrial relations and there also only the employer would be penalised, but the change would not be withdrawn, and even compensation to the concerned employee would be a matter of discretion. The penal remedy is no effective substitute for the salutary civil remedy of withdrawal of illegal change, on consideration of which the Legislature completely took away the right of strike of these concerned employees, for the sole reason that the employer had committed an illegal change. In fact, the decision in The Manager, The Asoka Mills Ltd. Vs. The Industrial Court and Others, by a Division Bench consisting of Bhagwati, J. (as he then was) and Divan J. (as he then was) had in terms taken the view that an application for declaration of an illegal change u/s 78(1)A(c) of the Act and a complaint for an offence u/s 106(1) were two distinct and independent remedies unconnected with each other and a complaint for an offence u/s 106(1) was not required to be preceded by a declaration of an illegal change obtained from the Labour Court u/s 78(1)A(c). An employee aggrieved by an illegal change may file a complaint in the Labour Court or the Labour Officer may make a report in writing to the Labour Court u/s 82 and the Labour Court would then take cognizance of such offence and try it by virtue of the power conferred upon it u/s 78(1)B. It is therefore not necessary to obtain prior declaration of an illegal change from the Labour Court u/s 78(1)A(c). The second proviso to Section 79(4) was also considered which enacted that if an application for a declaration of an illegal change was admitted beyond the

period of three months, the employer wag exonerated from the criminal liability provided u/s 106(1). It was pointed out that Section 79(1) dealt only with proceedings by way of an application for a declaration of an illegal change u/s 73(1)A(c) and did not comprehend within its scope and ambit proceedings by way of a prosecution for an offence u/s 106(1) triable by the Court u/s 78(1)B. two offences, one u/s 106(1) and the other u/s 106(2) were entirely distinct. One punishes the making of an illegal change while the other punishes disobedience to the order of the Labour Court, It was also pointed out that it might be that in a complaint for an offence u/s 106(1) the Labour Court trying the offence might take the view that no illegal change was made by the employer and, might, therefore, acquit the employer. But if on an application for a declaration of an illegal change u/s 78(1)A(c) and for withdrawal of an illegal change u/s 78(1)C(a), the Labour Court makes an order declaring an illegal change and requiring the employer to withdraw the illegal change, the employer must carry out the order of the Labour Court and if he did not do so he would render himself open to prosecution for the offence u/s 106(2) of the Act. An approach for these two distinct remedies would not be the same as pointed this decision. Therefore, we must proceed on the basis of these two remedies being distinct. Therefore, unless relevant provision was construed so as to advance the purpose of this Act, the whole purpose of maintaining industrial peace and avoiding industrial fiction would be frustrated. Mr. Patel ignored the fact that limitation bars only a remedy but does not extinguish the right. In any industrial context so long as an illegal change was continued and reoccurring month to month, the Legislature could never have intended to deny the peaceful remedy in civil jurisdiction to the affected employee so that the illegal change can be obliterated and original industrial conditions in these important matters in Schedule II would be restored by the Labour Court. It is in the light of this background that we will have now to consider the relevant provisions of Section 79(4) and the view taken by this Court in Nagri Mill''s case M971) 12 Gui LR 417). Section 79(4) with the two provisos runs as under:

"79. (4) An application in respect of a matter falling, under Clause (c) of paragraph A of sub-section (1) of Section 78 shall be made within six months of the commencement of the strike, lock-out, closure or stoppage or of the making of the illegal change, as the case may be:-

Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under this Act, after the expiry of six months from the date on which such change was made-

Provided further that when an application is admitted after the expiry of six months under the preceding proviso the employer who made the change shall not be liable to the penalty u/s 106."

In The Nagri Mills v The Textile Labour Association, Ahmedabad (1971) 12 Guj LR 417, before a Division Bench consisting of Divan J. (as he then was) and P. D. Desai J.,

in the context of recurring change where the doffer was not paid award wages for the work of oiling done by him and where the Industrial Court had held the application to be within time cause this was recurring illegal change, this question had arisen. This Court took the view that it was clear on a grammatical construction of Section 79(4) that words "of the commencement" occurring immediately after the words "three months" apply only to the strike, lock out, closure or stoppage and the words "of the commencement" do not go with the making of an illegal change which is provided for in the latter part of sub-section (4). The second proviso to this sub- section gave a clue to the intent of the Legislature regarding the period of limitation prescribed because under that proviso when an application was admitted after the expiry of three months, the employer was exonerated from all liability to the penalty provided in Section 106, if the application was admitted after the delay in filing the application had been condoned under the first proviso by the Labour Court. It was further observed that it was difficult to conceive of any possible case, on the reasoning of the Industrial Court in that case, which would be barred by limitation so far as the making of an illegal change was concerned. A further consideration was made that after several years the employer would be called upon to meet pecuniary liabilities arising out of order of withdrawal of any change which was found to be illegal by the Court. On these considerations it was held that the Legislature had intended that so far as the period of limitation regarding applications complaining of the making of an illegal change is concerned, the applications should be filed within three months from the first making of an illegal change. With great respect this view is both against the principle and authority. There is intrinsic evidence in Section 79(4) itself as to the true legislative intention. So far as the strike, lock-out, closure or stoppage is concerned, where a prohibition under Sections 97, 97A, 98 and 98A was against both the commencement or continuation of such illegal strike, lockout, closure or stoppage, the Legislature preferred to lay down a period of limitation by fixing the limitation in Section 79(4) from the date of the commencement of the strike, lock-out, closure or stoppage. The commencement date has not been used so far as making an illegal change is concerned. In the context of strike, lockout, closure or stoppage the object of the Legislature was to put an end to this class warfare at the earliest and, therefore, this shorter limitation was contemplated even if it continued for a longer period. That would not be the reason applicable in the case of making of an illegal change because illegal changes would arise as regards the host of industrial conditions mentioned in Schedule II where an employer may without any notice of change introduce new conditions and, therefore, would frustrate the whole policy of collective bargaining and would set at naught the salutary prohibition enacted in the Act. So far as the contravention of the terms of an agreement, settlement or award or effective order of the Wage Board are concerned, there may be continuous obligations from day to day or month to month, which may not he capable of being executed by single compliance once for all. As pointed out by the Full Bench in Shri Ram Mill''s case 1950 ICR 1241 (IC Bom) in the context of bonus or retrospective

difference in the shape of past arrears, the occasion of change would arise once and for all while in the cases of wage awards or payments of such amenities month to month, the question of making an illegal change would arise every month, when these wages in the sense of basic wages or value of amenities would be refused by the employer. The employer can choose to withdraw that illegal change even voluntarily at any time and then there would be no grievance. It is only when the employer would persist in his illegal change that the employees would have to resort to the Labour Court for getting a decision about the illegal change and an order of its withdrawal. Therefore, in the context of such recurring obligations, the term making of an illegal change could never have same meaning of change made once for all so 6at what continues is only its effect in the context of such recurring obligations to Pay month to month the wages or value of such amenities. The illegal change would be made afresh every month when the employer refuses to carry out that continuous obligation. In fact, Section 46(5) which gives a deemed definition of an illegal change by including even the failure of the employer to carry out the term of any settlement, award or effective order or the Wage Board or the Labour Court or the Industrial Court would show that the Legislature could never contemplate the limitation in Section 79(4) to be fixed by reference only to the first making an illegal change. In that event, the orders of the Labour Court, or Industrial Court would successfully be flouted by every employer, and the context of such deemed illegal change would therefore make it clear that till the defaulting employer complies with the order, the illegal change would continue. The fresh cause, however, may differently arise in such context, whether every day till the order is complied with or in cases of the recurring obligations to pay month by month, every month. But in all such cases the wider phraseology which the Legislature has advisedly used not of "commencement of the illegal change but of making of the illegal change" would surely cover such illegal change. Of course, in such cases the limit of withdrawal would be subject to condonation of limitation only to the extent these recurring illegal changes are found to be within time. This is trite saying that the Court cannot rewrite the language when the Legislature in its wisdom used such clear phraseology of fixing a date of limitation with reference to the wider term "making of illegal change" and by not confining it to the commencement or the first making of illegal change. The proviso about condonation of delay would hardly be material in this context because that would be available in all cases, whether of changes made once for all or which are recurring changes. The second proviso has already been construed as earlier mentioned by us and it would have hardly thrown any light on the problem of statutory construction raised before us. There is also no substance in the assumption that the Provision of limitation would be futile and no case can be conceived where it would be applicable, because it is obvious that in the context of changes which are once for all made like bonus or past arrears and the host of such other changes which do not impose a continuous recurring obligation the term "making of an illegal change" would have only the narrow meaning. The term would have a wider meaning only in the context of recurring illegal changes.

6. The whole thing which really goes to the root is the wider consideration of public policy that a law of limitation which has been settled for over a decade by the Full Bench of the Industrial Court and which operates as binding declaration of law u/s 95A, till it is reversed by this Court or by the Supreme Court, and which was confirmed even by the highest Labour Appellate Tribunal a t the time and which was taken as correct interpretation of this law even over a decade, and even when the Legislature did not, when an opportunity arose in 1966 to amend this provision, depart from this accepted interpretation, the aforesaid just view which carries out the policy of the Act should never be unsettled, even if there was some reason to accept the view taken in the Nagri Mill''s case ((1971) 12 Guj LR 417). In fact, as pointed out by us, on all settled principles of construction such a view could not be taken bemuse it is rewriting statutory language and such narrow view of the term "making of an illegal change" would frustrate the whole policy of the Act.

7. Even there is considerable authority in support of this view because in the context of continuing, wrongs always a settled distinction is made between a wrong, which is once for all completed and whose effect only continues and the wrong which is itself a recurring wrong as pointed out by their Lordships in Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, , and in State of Bihar v. Deokaran AIR 1973 SC 909. In the later decision various illustrative cases were given to bring out pointedly a distinction between two types of offences. At page 910 it was pointed out that the distinction between the two kinds of offences lay between an act which constituted an offence once and for all and an act which continued and therefore constituted a fresh offence every time on which it continued. The illustration of the case of State v. Bhiwandiwala AIR 1955 Bom 151, was pressed in aid where a person was charged with three offences: (1) failure to submit a written notice of occupation of his factory as required by Section 7(1) of the Factories Act, 1948; (2) failure to submit an application for registration and grant of licence as required by Section 6 ad the Act read with Rule 4 of the Bombay Factories Rules, 1950, and (3) for using the premises as a factory without a licence. It was pointed out that only the first two offences were offences completed once and for all by failure to submit a notice and the application for registration and licence and, therefore, the complaint would be barred if it was lodged beyond the period of three months, limit from the date of that offence u/s 106 of the Factories Act but a prosecution in respect of the third offence would not be so, barred as that offence was a continuing offence in the sense that using the premises as a factory without registration and licence was an offence committed every time that the premises were used as a factory.

8. It is true that Mr. Patel had relied on the decision in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, where their Lordships had in terms taken the view, in the context of an application u/s 33C of the Industrial Disputes, Act that even the new Indian Limitation Act 1963, only dealt with applications to Courts and the Labour Court was mot a Court within the Limitation

Act, 1963, and, therefore, Sections 4 and 5 of the Limitation Act or Article 137 could not be pressed in aid. Mr. Patel had therefore argued that even Section 23 of the old Limitation Act or the corresponding Section 22 of the new Limitation Art incorporating the doctrine of continuing wrong as such could not be applied to, Labour Court. We are only relying on these decisions to show the settled distinction which is always made between a wrong once and for all committed and a continuing wrong, which is very relevant in the context of this expression "making of an illegal change" which is of such wide amplitude as to cover illegal changes once and for all made or recurring illegal changes. The third decision in this context is in Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, where their Lordships first pointed out at page 1159 that standardisation could be of anything not necessarily of wages. It may be standardisation of workload, standardisation of product, standardisation of working hours or standardisation of leave privileges, or other conditions of service, hours of work and wage structure. Various illustrations were, given at page 1161 as to how such amenities or customary concessions were treated as industrial conditions in which no change could be made by the employer without a notice of change. Finally at page 1162, when a question had arisen as to the date of change, before reference or during the pendency of the reference, to find out the maintainability of the application u/s 33A, it was pointed out that when a new rationalisation scheme introduced change in the conditions of service and the employees were refused their wages for doing their normal work, such change was continuous illegal change. Even though the scheme may have been introduced in September 5, 1961, and the reference was made on September 30, the application for wages for the month of October would be during the pendency of the reference. It was observed that payment of wages was one of the most important among the workers'' conditions of service. The workers work essentially only for the wages to be paid to them. Therefore, the question that would really have to be answered was whether the refusal of the worker to work was justified or not. The workers presented themselves for work every 4dav and offered to work according to the old scheme but they were not given any work according to the old scheme. They were told that as long as they refused to work under the new scheme they would be paid no wages it was, therefore, held that the refusal to pay was not a solitary instance in respect of which an application could have been made u/s 33C but it was a continued refusal for which cause of action arose de die in diem. Therefore, even there is high authority on this settled proposition to make a distinction between such changes made once and for all and recurring changes. In the first case only the effect continues, while in the later case the very illegal change continues which will give fresh cause of action, in such a case where the payment is to be made month to month, every month. Therefore, both on principle and on this high authority, we must hold that the decision in Nagri Mill''s case (1971) 12 Guj LR 417 with great respect, has been wrongly decided and has unsettled the settled industrial law in this State on this vital question of limitation in respect of recurring illegal change.

9. Mr. Patel had of course referred to decision of the Labour Appellate Tribunal in Sarangpur Mill''s case(1957) 1 Lab LJ 320 where in the context of a change in hours of work, it was held to be once and for all completed, but even in that decision the Labour Appelate Tribunal had approved the ratio of the other Division Bench already referred to by us in (1951) 2 Lab LJ 25 . In that view of the matter, the Industrial Court was obviously in error in holding that the present applications were time-barred.

10. The next question which arises for our consideration is as to whether after such a long period of seven years in this small matter, where these concerned watchmen are denied this small increase by way of value of amenities of house rent, fuel, kerosene etc. every month, even when the Industrial Court ,had refused to allow the Mill company any discontinuance of these amenities, should a remand be made to the Industrial Court when the only question which has been raised is that the fresh entrants after 1948 award were not entitled to these concessions? The writ petition in the present case is not merely for a writ of certiorari under Article 226 where the impugned decision would be only quashed and put out of the way, but the relief is claimed in the Wider superintendence jurisdiction under Article 227, where this Court would be able to exercise the same Power as that of the Industrial Court and dispose of this long pending litigation so that the just benefits would expeditiously Peach the concerned employees wh4 hard-hit by being deprived of the increase in their wages. The contention which Mr. Patel 1has raised is sought to be supported by the two decisions of the Industrial Court in Manager, B. E. S. T. Undertaking v. ''Secretary, B. E. S. T., Workers'' Union 1961 ICR 749 by President Meher, and in B. S. Salvi v. General Manager, B. E. S. T. Undertaking, Bombay 1962 ICR 756, where that view was followed by the Member Mr. Bilgrami. In these decisions it had been observed that where a concession was not a subject-matter of an award or settlement it could not be-said that an employer was withdrawing a concession from a person who has never enjoyed it. Unfortunately, in both these decisions the binding decision of the Labour Appellate Tribunal as to this very practice was not referred to. In case of such customary concession where industrial usages have crystallised as uniform binding industrial conditions, these are not matters of individual personal pay. These are matters of industrial conditions where an amenity is attached to the permanent post of a watch and ward staff. There is no nexus with the 1948 award where these watchmen were merely given minimum wages. Both the Industrial Court and the Labour Court had cleared away the misconception in the mind of the employer by holding that the assessor''s report was not the award. In fact, after the notice of change, given to discontinue this customary practice, prevailing in this department, by way of uniform industrial conditions of these permanent employees, was held to be unjustified, there would be no scope for any such plea being raised on the score of 1948 award. The Labour Appellate Tribunal has clarified that assessor''s report was not an award and the award never permitted or prohibited continuance of these amenities. Therefore, again on a

reference to the same award, these unfortunate persons could never be denied benefit of these salutary amenities. The Industrial Court in these two decisions ignores the basic concept of industrial usages which because of their very uniformity would be applicable both to new ''and old employees, because otherwise there would be an invidious discrimination between the same workers on the mere accident of their date of confirmation whether before or after the 1948 award. Therefore, there is no substance even in this plea of the employer which had been accepted by the Labour Court, and these applications should have been allowed by both the Courts.

11. In the result, this petition must be allowed by setting aside the impugned orders of the Industrial Court and the Labour Court and by declaring that the employer has made an illegal change by not paying as per the prevailing practice for the value of the amenities, at the rate of Rs. 4.50 p. for house rent and the additional amount for fuel, kerosene etc. month by month to all these employees concerned in the four Applications Nos. 741 to 744 of 1970 and the company is directed to withdraw this illegal change by making the payment right from the last six months prior to the date of the applications which were made on December 2, 1969. Rule is accordingly made absolute with costs.

12. Rule made absolute.