
IPCL Employees Association Vs Reliance Industries Ltd. and Others

Special Civil Application No. 4709 of 2011

Court: Gujarat High Court

Date of Decision: May 10, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 115#Constitution of India, 1950 â€” Article 14, 16, 226, 227#Industrial Disputes (Appellate Tribunal) Act, 1950 â€” Section 25G, 7(2)#Industrial Disputes (Central) Rules, 1957 â€” Rule 58(2)#Industrial Disputes (Gujarat) Rules, 1966 â€” Rule 62#Industrial Disputes Act, 1947 â€” Section 18(1), 18(3), 2(p)

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

Bench: Single Bench

Advocate: B.A. Desai, S.D. Suthar and N.K. Majmudar, for N.K. Majumdar, for the Appellant; K.B. Trivedi, learned A.G., K.D. Gandhi, learned Advocate for Nanavati Associates for Respondent 2, for the Respondent

Final Decision: Dismissed

Judgement

H.K. Rathod, J.

Heard learned senior advocate Mr. B.A. Desai with learned advocate Mr. Suthar for learned advocate Mr. NK

Majmudar appearing on behalf of Petitioner IPCL Employees Association through General Secretary, learned Advocate General Mr. K.B. Trivedi

with learned advocate Mr. K.D. Gandhi appearing for Nanavati Association for Respondent No. 1 on Caveat.

2. The present petition was heard by this Court on 2/5/2011. Thereafter, matter was kept reserved for judgment. In this petition, Petitioner

Association has challenged award passed by Industrial Tribunal No. 1, Baroda exh 26 in reference IT No. 95/2009 dated 7/2/2011. The

Industrial Tribunal No. 1, Baroda has accepted settlement arrived between Respondent No. 1 Reliance Industries Ltd, Respondent No. 2 IPCL

Employees Union and Respondent No. 3 Petrochemicals Employees Union vide exh 14 and found to be just, proper, fair and reasonable.

Therefore, in terms of aforesaid settlement exh 14, award has been passed and disposed of reference in terms of settlement and such terms of

settlement is binding to the parties, which considered to be a part of present award. No order has been passed for cost.

3. Before, I began with submission made by both learned senior advocates, it is necessary to consider following observations made by Honorable

Mr. Justice Holmes and Honorable Abraham Lincoln, which are as under:

Justice Holmes: One of the eternal conflicts out of which life is made up is that between the efforts of every man to get the most he can for his

services, and that of a society, disguised under the name of Capital, to get his services for the least possible return. Combination on the one side is

patent and powerful. Combination on the other is necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.

Abraham Lincoln: ""You cannot bring about prosperity by discouraging thrift;

You cannot help the wage - earner by pulling down the wage payer;

You can not help the poor by destroying the rich"

You can not help men permanently by doing for them what they could and should do for themselves.

The industrial harmony, is, """"industrial peace" and "industrial harmony" may have the same meaning; but we are inclined to think that the concept of

industrial peace is somewhat negative and restrictive. It emphasises absence of strife and struggle. The concept of industrial harmony is positive

comprehensive and it postulates the existence of understanding cooperation and a sense of partnership between the employers and employees.

That is why we prefer to describe our approach as one in quest of industrial harmony.

The Social Justice, is, ""The concept of social justice is not narrow, or one sided, or pedantic, and is not confined to industrial adjudication alone.

Its sweep is comprehensive. It is founded on the basic ideal of socio economic equality and its aim is to assist the removal of socio economic

disparities and inequalities; nevertheless in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to

abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and

employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good

relationship. (See: Per Gajendragadkar, J., Cotton Spinning and Weaving Mills Co. Ltd v. Labour Appellate Tribunal (1963) II LLJ 436 (S.C.)

Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate

them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of

complex social change or relieve the poor etc. from handicaps, penury to ward off distress and to make their life livable, for greater good of the

society at large. In other words, the aim of social justice is attain substantial degree of social, economic and political equality, which is the legitimate

expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to

life and to achieve self expression of his personality and to enjoy the life with dignity. (See: K. Ramaswamy J., in *Air India Statutory Corporation v.*

United Labour Union and Ors. (1971) 1 LLJ 1113 (S.C.)

4. Along with present petition, certain documents are produced on record while annexing same with petition by Petitioner Association. The order

of reference made by Labour Commissioner dated 27/7/2009 for referring industrial disputes for adjudication to Industrial Tribunal, Baroda. The

copy of settlement/memorandum of settlement executed between Respondent No. 2 Company and Respondent Nos. 3 and 4 Unions. The copy

of objections submitted by Petitioner Association dated 10/12/2010. The copy of application dated 14/12/2010 preferred by Respondent No. 2

Company and Respondent No. 3 and 4 Unions. The copy of objection/submission dated 21/12/2010 and detailed submission dated 25/1/2011 in

opposing settlement by Petitioner Union. The copy of detailed reply dated 30/12/2010 and 25/1/2011 of Respondent No. 1 Company and copy

of present award in question and copy of notification dated 14/2/2011. The above referred documents are placed on record of present petition by

Petitioner.

5. Learned senior advocate Mr. B.A. Desai raised contention before this Court that Industrial Tribunal, Baroda misdirected in respect to question

of law and failed to exercise jurisdiction and not properly appreciated contention raised by Petitioner Association while relying upon settlement

which is not legal it violates Section 18 Sub-Section 1 and Section 2(p) of I.D. Act, 1947.

6. He submitted that Industrial Tribunal, Baroda has wrongly applied Section 18(3) of I. D. Act, 1947 and made it applicable to all employees

which is not permissible under law. He emphasized his submission to the effect that merely 98% employees have signed undertaking subsequent to

settlement, therefore, such declaration by employees not being part of settlement. The settlement has been published on notice board and

produced it calling to employees to accept or not to accept benefits depend upon individual expectation of concerned employees or not. The said

settlement having prospective effect but past period, lump sum amount has been given to existing employees but living those died or retired and

obtained VRS, for that, there is no provision is made in settlement and also no benefit is given to such past employees. He submitted that no notice

has been given to heirs or legal representatives of such person who died prior point of time and also obtained v. prior point of time.

7. The present settlement is covered other two references, being reference No. 111/2009 and reference No. 59/2009. The reference No.

111/2009 is pending for dispute of expectation of employer Company being demand raised by employer. However, he has made clear before this

Court that both these references are still pending before Industrial Tribunal No. 2, Baroda and same has been disposed of by Industrial Tribunal

No. 1 Baroda in present award, which is under challenged. The present reference No. 95/2009 was pending before Industrial Tribunal No. 1,

where award is passed. The Industrial Tribunal, Baroda has committed error in considering fact and issue, which are not referred for adjudication

in reference No. 95/2009.

8. He submitted that demands relating to reference No. 111/2009 and 59/2009 are including in present settlement arrived in reference No.

95/2009. He submitted that Industrial Tribunal, Baroda has committed gross error and misdirected itself relying upon decision of Apex Court in

case of Herbertsons Ltd v. The workmen of Herbertsons Ltd and Ors. AIR 1977 SC 322.

9. He distinguished above referred decision of Apex Court that in case of Herbertsons Ltd, it was a case of recognized Union but in this case

Respondent No. 3 and 4 are not recognized Unions but merely representing employees even they are not majority Union. Therefore, Herbertsons

Ltd., case of Apex Court is not applicable to facts of this case.

10. He relied upon decision of Apex Court in case of Workmen of M/s Delhi Cloth General Mills Ltd v. Management of M/s Delhi Cloth General

Mills AIR 1970 SC 1851. He submitted that statute and rules thereunder prevails over settlement and relying upon it, he also says that Section 18

Sub-Section 1 is binding to signing person of settlement.

11. He submitted that Industrial dispute which referred for adjudication being reference No. 95/2009, has been raised by all three Unions jointly.

Therefore, Petitioner Association is a party to dispute which has been ignored by Industrial Tribunal, Baroda. However, he has made clear before

this Court that reasonable opportunity of hearing was given to Petitioner Association by Industrial Tribunal, Baroda.

12. He relied upon one recent decision of this Court in case of United Phosphors Ltd v. Commissioner of Labour 2010 (II) CLR 1045. He also

submitted that such settlement is against industrial peace because it binds signing person and Petitioner Employee Association has not signed

settlement. Therefore, such settlement is not binding to Petitioner Association and its members.

13. He submitted that Industrial Tribunal has committed gross error in jumping to conclusion that merely 98% employees have signed undertaking

and accepted settlement, that itself can not be considered that settlement is just and proper because subsequent acquiesced has no meaning

because it is irrelevant.

14. According to his submission, first settlement arrived between Respondent No. 1 Company with Respondent Nos. 3 and 4. Thereafter,

undertaking has been obtained from employees. Therefore, such undertaking to accept settlement by employees is become irrelevant. The

settlement covered dispute reference No. 111/2009 and 59/2009 that go beyond scope of terms of reference. Therefore, Industrial Tribunal has

no jurisdiction to record settlement exh 14, which covered industrial dispute, which are not referred for adjudication to concerned Industrial

Tribunal. In such circumstances, justness and fairness of settlement can not be examined by Industrial Tribunal, Baroda. If settlement is legally not

valid, then question of justness and fairness does not require to be examined by Industrial Tribunal, Baroda.

15. Therefore, he submitted that Industrial Tribunal has committed gross error in including reference Nos. 111/2009 and 59/2009 in its award

based on settlement. Therefore, Industrial Tribunal has avoided adjudication on merits and failed in exercising jurisdiction.

16. He submitted that industrial dispute Act, 1947 is not provided for such settlement and award which has been published by Assistant

Commissioner of Labour is contrary to Rules 31(A) read with Section 17 - 17A of I. D. Act, 1947.

17. He submitted that in eye of law, there is no publication at all of award in question in accordance with law. Therefore, it is not legal award,

which can enforceable by Company against employees. However, Respondent No. 1 Company is implementing award but also implementing

other demand of reference Nos. 111/2009 and 59/2009, that is a clear case of violation of statutory provisions.

18. Therefore, he submitted that implementation of award in question is to be stayed and whatever benefits has been extended in favour of such

employees, may be considered interim relief and let Industrial Tribunal may adjudicate entire dispute on merits which has been referred for

adjudication, so long status quoted is to be granted not to be implemented award in question.

19. He submitted that during pendency of aforesaid two references being Nos. 111/2009 and 59/2009, service condition has been changed

without complying with provisions of Section 33 and Section 9(A) of I. D. Act, 1947. He submitted that after settlement is arrived and before

award is passed, 1500 employees on 13/12/2010 have opposed settlement but all have accepted subsequently means acquiesced. The Petitioner

Association is not minority Union but it is oldest Union.

20. He submitted that when settlement arrived between parties, at that occasion, Petitioner Association having 900 membership but after

settlement, it has been increased upto 1100. Accordingly, submission has been made in detailed in writing before Industrial Tribunal by Petitioner

Association. Even though, submission which has been made by Petitioner Association has not been properly dealt with by Industrial Tribunal,

Baroda.

21. In short his submission is that Industrial Tribunal has committed gross error in recording settlement/accepting settlement placed before

Industrial Tribunal exh 14 by Respondent No. 1 Company and Respondent Nos. 3 and 4, wherein without obtaining signature of Petitioner

Association, who are party to reference, which has been arrived being 2(p) Settlement read with Section 18 Sub-Section 1 of I. D. Act, 1947, is

binding only signing persons not other person. However, Industrial Tribunal, Baroda has recorded such settlement and giving effect to such

settlement as award u/s 18 Sub-Section 3 is binding to all employees working with Respondent No. 1 Company including it binding also to

Petitioner Association. Except that no other submission is made by learned senior advocate Mr. Desai before this Court and no other decision has

been relied by him before this Court.

22. Learned Advocate General Mr. KB Trivedi submitted that initially settlement arrived between Respondent No. 1 Company and Respondent

Nos. 3 and 4 Union u/s 2(p) and 18 Sub-Section 1 on 30/11/2010 signed by all parties of settlement except Petitioner Association. This

settlement has been produced on record by signing parties exh 14 with a prayer to record settlement and to pass award in terms of settlement.

23. He submitted that once settlement arrived between parties u/s 2(p) and 18 Sub-Section 1, it binding to signing persons. A moment it has been

placed on record before Industrial Tribunal in pending reference then stage of Section 18 Sub-Section 1 has gone and matter is at large before

Industrial Tribunal to examine legality and validity of settlement and also justness and fairness of settlement, which has been rightly examined by

Industrial Tribunal, Baroda while considering facts that out of total employees 2456/-, 98% employees comes to 2418 have signed undertaking

while accepting each terms of settlement including members of Executive Committee of Petitioner Association. He relied and referred upon page

120, 131 and 135 of petition. He also relied upon one decision of Apex Court in case of Herbertsons Limited Vs. The Workmen of Herbertsons

Limited and Others, and relied upon para 21, 24 and 25 from decision.

24. He relied upon another decision of Apex Court in case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, para 8

and 9. He also submitted that recent decision of this Court in case of United Phosphorous Ltd v. Commissioner of Labour and Ors. 2011 Lab IC

1006. After referring para 9, 9/1, he submitted that this decision is not applicable to facts of this case, because in that decision, this Court has

considered order of reference made by Appropriate Government challenged by Company and opposed by Union. Therefore, this was not

decision where question of settlement is whether just and fair or not examined by this Court.

25. Learned senior advocate Mr. BA Desai while giving answer to submission made by learned Advocate General as referred above, relied upon

page 119 and 120 memorandum of settlement and pointed out that Section 18(1) has been applied which binding to parties to settlement and

Petitioner is not a party to settlement. Therefore, such settlement can not be binding to Petitioner Union/Association though Petitioner Association

was a party to reference 95/2009. Therefore, in absence of Petitioner Association or in absence of signature of Petitioner Association, Industrial

Tribunal can not pass an award which binding other than parties means Petitioner Association. He submitted that Section 18 Sub-Section 3

ingredient/condition are not satisfied because initially private settlement can not consider to be an industrial settlement binding to all employees.

26. He again submitted that award is not published according to statutory Rules 31 A read with Section 17A of Industrial Disputes Act, 1947.

Learned Advocate General Mr. KB Trivedi submitted that this settlement is having effect from 1/1/2007 and referring clause/item No. 17(2) of

settlement at page 130.

27. I have considered submissions made by both senior learned advocates. I have also perused all annexures which are attached to petition and

also perused award passed by Industrial Tribunal in reference No. 95/2009 dated 7/2/2011. The memorandum of settlement is placed on record

at page 119 Annexure B dated 30/11/2010. This settlement arrived between parties u/s 2(p) read with Section 18(1) of I. D. Act, 1947.

Therefore, Section 2(p), Section 18(1), Section 18(3) and Section 12(3) are quoted as under:

Section 2(p): ""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 wherein 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 authorized in this behalf by) the appropriate

Government and the conciliation officer.

Section 18(1): A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding

shall be binding on the parties to the agreement.

Section 18(3): A settlement arrived at in the course of conciliation proceedings under this Act (or an arbitration award in a case where a

notification has been issued under Sub-section (3A) of Section 10(A) or (an award (of a Labour Court, Tribunal or National Tribunal) which has

become enforceable) shall be binding on-

(a) all parties to the industrial dispute;

(b) all parties summoned to appear in the proceedings as parties to the dispute, unless the Board, (arbitrator) (Labour Court, Tribunal or National

Tribunal), as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the

dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were 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.

Section 12(3): If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the

conciliation officer shall send a report thereof to the appropriate Government (or an officer authorized in this behalf by the appropriate

Government) together with a memorandum of the settlement signed by the parties to the dispute.

28. The said settlement is having objectives as mentioned in terms No. 1 at page 123, which is as under:

OBJECTIVES:

1.1 To optimize resources and maximize productivity in order to produce quality products at reasonable and affordable cost, to achieve all round

efficiency and inculcate World Class Safety culture in the Company.

1.2 To bring and promote a conducive work culture that is prerequisite for the progress of the organization and maintaining organizational

discipline. Also to ensure value addition by Employees commencement with fair compensation.

1.3 To strengthen bilateral relationship and trust between Management and Non Supervisory Employees.

1.4 To Promote and maintain harmonious and productive Industrial Relations.

29. This settlement is having applicability as per terms No. 2, which is as under:

APPLICABILITY:

The provisions of this Settlement shall be applicable to:

2.1 All permanent Non Supervisory Employees (i.e. Workmen) who are on the regular payroll of the Company on the date of signing of the

Settlement and who submit the duly signed undertaking cum declaration form as at Annexure I.

2.2 The terms of the Settlement shall also apply to all such Non Supervisory employees who may hereafter join on the regular pay roll of the

company.

2.3 This settlement shall not be applicable to Apprentices, Learners, Trainees, Temporary, Casual and Non Supervisory Employees under

suspension or any person employed by the Contractor/s.

30. The period of settlement having effect from 1/12/2010 and will remain in force for a period of four years and six months upto 31/5/2015. The

non supervisory employees shall be entitled to receive benefits under this settlement. The amount of benefit under settlement shall comprise of

increase in basic wages, allowances and consequential benefits arising out of same. In said settlement, one time lump sum amount has been paid to

employees to eligible Non Supervisory Employees, who are on the payroll of company on the date of signing of its settlement. The lump sum

amount as mentioned at Annexure (V) as discussed and decided in item No. 17 of settlement at page 130, is as under:

17. ONE TIME LUMP SUM PAYMENT:

17.1 It is agreed to pay a one time lump sum amount (Not to be reckoned for PF and any other benefit) for the period from 01/01/2007 to

30.6.2010 to eligible Non Supervisory employees who are on the rolls of the company on the ate of signing of this settlement. Amount of Lump

sum is mentioned at Annexure V.

17.2 However, one time lump sum amount will be payable to Non Supervisory Employees who died, superannuated or promoted to supervisory

cadre during the period from 01.01.2007 to the date of signing of the settlement proportionately for the period they were on the rolls of the

Company as Non Supervisory employee. This amount of lump sum so arrived shall be payable to all eligible Non Supervisory employees based on

actual attendance and shall not be considered as wages/pay for any purpose whatsoever.

It is also necessary to consider item No. 19 which relating to general condition at page 131, is as under:

19. GENERAL:

19.1 Any overdue installments of loan advances remaining outstanding or any other dues of the company, against any employee either in full/part

shall be recovered from lump sum payment or arrears payable on account of this settlement.

19.2 The demands contained in the Charter of Demand raised by the Unions which are not specifically mentioned in this settlement, shall be

deemed to have been settlement/withdrawn. Any other issues/disputes pertaining to service conditions involving financial implications or otherwise,

raised by the signatory Unions relating to Charter of Demands and pending before the conciliation officer or any other Adjudicating Authorities

shall also stand settled/withdrawn.

19.2.1 Parties agree to submit the settlement to honorable Industrial Tribunal where proceedings are pending in IT Ref. No. 95/09, IT Ref No.

111/09 and IT Ref. 59/09 to obtain award.

31. The parties have settled disputes, for that, two settlement arrived separately, one is discussed as referred above and second is relating to

productivity, manning pattern and work practice Annexure (IV) page 138 dated 30/11/2010.

32. The award passed by Industrial Tribunal No. 1, Baroda vide exh 26 is at page 409 in reference IT No. 95/2009. The industrial dispute

referred for adjudication by appropriate Government on 27/7/2009. On behalf of Petitioner Association, one representative Mr. J. D. Majmudar

had appeared before Industrial Tribunal and made their submission before Industrial Tribunal, Baroda. The statement of claim has been filed before

Industrial Tribunal, Baroda exh 5 by Union. The Respondent No. 1 company has filed reply vide exh 9. The settlement which has been arrived

between parties except Petitioner Association was sent to Industrial Tribunal, Baroda by all parties through registered post. The same has been

recorded vide exh 10 by Industrial Tribunal, Baroda. The Petitioner Union/Association has raised objections exh 11 and submitted that this

settlement is not binding to them and this settlement may not be recorded because it is against interest of employees, those who are working with

Respondent No. 1 Company. It is being a private settlement, Petitioner Association can not be bifurcated from this settlement and denied or

ignored benefits to employees for a period from 2007 to 2010. The Respondent No. 1 Company has produced settlement vide exh 12.

Thereafter, both Union Respondent No. 3 and 4 have also produced settlement with an application to record it and to pass award in respect to

pending reference and to disposed of reference in terms of settlement vide exh 14. Vide exh 14, an application made by Respondent No. 1

Company and Respondent No. 3 and 4 both Unions to record it and to disposed of reference in terms of settlement. The reference No. 111/2009

is pending relating expectation of employers Company and reference No. 59/2009 is relating to claim of bonus. The copy of this settlement has

been sent to various statutory authorities as required under provision of I. D. Act, 1947. According to Annexure 1 of settlement, this settlement is

binding to employees, who gave declaration and undertaking to Respondent No. 1 Company. Only on those persons, this settlement is binding.

The said settlement is published in Gujarati and English language and in a various place of plant as well as understanding of this settlement has been

given to all workmen, those who are working with Respondent No. 1 Company. According to Respondent No. 1 company and Respondent No.

3 and 4 Union that in pursuance to Annexure I, declaration and undertaking received upto 11/12/2010 by 2383 employees out of 2456 employee,

which beyond 96% employees for accepting terms of settlement while giving declaration and undertaking to Respondent No. 1 company. The

Respondent No. 1 company has paid one time lump sum amount to such employees who have accepted it as well as also extended benefits of

present settlement, which is just and fair and accepted by 96% employees working in Non Supervisory Category with Respondent No. 1

company. This settlement has been arrived with purpose and object to maintain industrial peace and harmony and also in interest of working class

at large.

33. The Petitioner Association Union has filed his objection vide exh 15 and written submission made exh 20 before Industrial Tribunal, Baroda.

The Petitioner Association has raised only a legal contention against settlement that Petitioner Association has not signed the settlement. This

settlement is u/s 18 Sub-Section 1, binding to concerned parties only being a private settlement. Therefore, entire dispute which has been referred

for adjudication can not be disposed of in terms of settlement because more than 130 demands are referred for adjudication. The Petitioner

Association has also raised contention that certain matter (items) of settlement is out side scope of reference. Therefore, can not be recorded it and

if this settlement is recorded then it amounts to binding all employees working with Respondent No. 1 Company in Non Supervisory category u/s

18 Sub-Section 3 of I. D. Act, 1947. This settlement is not made applicable to employees, those who have been left job in the year 2007 and

retired and obtained v. During pendency of reference, service condition of employees can not be altered by employer. This settlement is also

including two other references being IT Nos. 111/2009 and 59/2009 relating to claim of bonus and relating to expectation of employer company.

Therefore, one settlement can not cover three references. Such kind of conditional settlement is binding to employees those who have given

declaration and undertaking. Therefore, settlement is objected by Petitioner Association. The statement of claim filed by all three Unions. Now

Petitioner Association can not be by pass by other parties to the settlement, it also change the system of giving Dearness allowance, medical

facilities and other service benefits.

34. Against that vide exh 21, written argument has been produced on record by Respondent No. 1 Company. The Respondent No. 1 Company

has relied upon facts that this being a just and fair settlement accepted by more than 98% employees of Non Supervisory category working with

Respondent No. 1 Company. This settlement is on the principles of give and take, which has been accepted by almost employees except 2% and

it also having object to maintain industrial peace and harmony for long period in industry. Therefore, initial settlement arrived between parties u/s 18

Sub-Section 1 read with Section 2(p) of I. D. Act can be placed before Industrial Tribunal to test justness and fairness then to record it, which

binding to all employees those who are working in Non Supervisory category of Respondent No. 1 Company. Therefore, it can not consider to be

private settlement, once it is produced before Industrial Tribunal by respective parties. The settlement covered other dispute that itself can not

consider to be settlement being a unjust and unfair. According to Respondent No. 1 Company, handsome amount and service benefits have been

given in favour of each employee in settlement, those who are working with Respondent No. 1 company in Non Supervisory category.

35. After pleading has been over by respective parties in para 9, Industrial Tribunal has given detailed reasoning in support of its conclusion. The

Industrial Tribunal has discussed entire facts as well as decision of Apex Court in case of Herbertson Ltd v. Workmen reported in 1977 SCC 48

Lab and Service page 48. The important facts has been considered, that in entire reply, objection and written submission made by Petitioner

Association, no where contention has been raised by Petitioner Association that this settlement, which arrived between parties is malafide, fraud,

based on corruption and misrepresentation. The Industrial Tribunal has also considered that Petitioner Association has not demonstrated before

Industrial Tribunal that how this settlement is not just and fair and contrary to interest of employees. For that, no such pleadings are found in written

statement, objection and written submission made by Petitioner Association before Industrial Tribunal.

36. The Industrial Tribunal has also considered one another decision of Apex Court in case of Tata Engineering and Locomotive Co. Ltd reported

in 1982 (1) LLN 28 , where also similar circumstances has been discussed by Apex Court. The Apex Court has considered that when most of

employees have accepted terms of settlement with open eyes, then it should have to be presumed that such settlement is just and fair. Merely,

some of employees have objected it, does not mean that such settlement is found to be unjust and unfair. In case of Tata Engineering &

Locomotive Co. Ltd, similar facts have been discussed by Industrial Tribunal and Industrial Tribunal has also considered one another decision in

case of Abdul Ahad Vs. The Inspector General of Police and Others, The Industrial Tribunal has also considered aforesaid decision, which has

been relied by Respondent No. 1 Company and also considered that when most of employees means majority employees have accepted

settlement while submitting declaration and undertaking, then it must have to be considered that it is a voluntarily acceptance of settlement by each

employee because there is no allegation has been made by Petitioner Association against employer that this declaration and undertaking has been

obtained by coercive method or by adopting unfair tactic by employer. The Industrial Tribunal has considered that once 98% employees have

accepted settlement with open eyes on the principles of give and take service benefits including lump sum amount, which has been paid and

extended in favour of such employees then such settlement can not consider to be unjust and unfair. Merely one Union has objected it, who is not

party to settlement only on that ground, such settlement can not consider to be unfair and unjust. The Industrial Tribunal has also considered one

decision of Apex Court in case of *Sirsilk and Ors. v. Government of Andhra Pradesh* reported in 1963 (II) LLJ 674 as well as considering

decision of Bombay High Court in case of *Airlines Cabin Crew Association Vs. Indian Airlines Corporation and others*, and another decision of

Bombay High Court in case of *All Employees Association v. V.V.F. Ltd* reported in 2002 (4) LLM 266, in case of *Tata Consultancy Engineering*

and *Associates Staff Ltd Union and Tata Sons Ltd* reported in 2002 (1) LLM 781.

37. After considering above referred decisions, which have been relied by Respondent No. 1 Company, Industrial Tribunal has come to

conclusion that even minority Union, if it is not accepted terms of settlement then also Industrial Tribunal has jurisdiction to examine justness and

fairness of settlement in light of facts that majority employees have accepted it with open eyes and against that there is no allegation made by

Petitioner Association that such declaration and undertaking obtained by employer by adopting coercive method and by other illegal measures.

Therefore, merely Petitioner Association has not signed the settlement that itself is not enough to declare that settlement is unjust and unfair. The

said settlement has been accepted by executive members of Petitioner Association and obtained benefits as per settlement and not objected it

while filing declaration and undertaking submitted to Respondent No. 1 Company.

38. Learned Advocate General Mr. KB Trivedi has brought to notice of this Court that this being a package deal having effect from 1/7/2010 and

lump sum amount about more than Rs. 60 Crores has been paid to concerned employees. The thirty eight Executive members of Petitioner

Association has also accepted lump sum amount, those who have not signed declaration and undertaking in Rs. 80 Lacs, which have been paid to

such employees having executive members of Petitioner Association. Therefore, according to learned Advocate General Mr. Trivedi, for

implementing settlement in question no discrimination has been made while paying amount as per settlement to concerned employees by company.

This amount has been paid to 38 employees of Executive members of Petitioner Association which comes to Rs. 80 Lacs in March, 2011. The

arrears has been paid to concerned employees as per terms of settlement between December, 2010 to January, 2011. The settlement is dated

30/11/2010 but pay has been revised w.e.f. 1/7/2010. This being a package deal accepted settlement by 2418 employees including executive

members of Petitioner Association.

39. He submitted that this being principles of give and take between parties while keeping object in mind to maintain industrial peace and harmony

and security of service of each employees with Respondent No. 1 Company.

40. Learned Advocate General Mr. KB Trivedi has submitted that Petitioner Association has not led any oral evidence to justify their stand and to

establish it that settlement is unjust and unfair. Learned Advocate General Mr. Trivedi has submitted that in such circumstances, if majority

employees are accepted settlement and except 2% no objection has been raised by any other employees including two Unions Respondent Nos. 3

and 4, then such negative attitude, stand, conduct and approach of Petitioner Association should not have to be encouraged by this Court,

otherwise it adversely affects to right of majority workers and it also adversely affects industrial peace and harmony and also it affects production

of Respondent No. 1 company.

41. The Industrial Tribunal has also considered one important decision on the subject which is having identical cases in case of KCP Ltd reported

in 1996 (2) LLN 970 where only twelve employees, those who are not accepting settlement. In that case, Apex Court has decided that settlement

is bound to them also, merely objected settlement by twelve employees, out of twenty nine, Apex Court has held that such settlement can not

consider to be unjust and unfair because some of the employees are objected it.

42. The Industrial Tribunal has also considered case of National Engineering Co Ltd reported in 1999 (4) LLN 1185. The Apex Court has

considered that two type of settlement are there u/s 2(p) of I. D. Act, 1947, one is being private settlement and another is settlement during

conciliation proceeding. The binding effect have been given factually but once private settlement is recorded by Conciliation officer or by Industrial

Tribunal and if it is considered by independent authority and examine justness and fairness of settlement and recorded it, then such settlement is

having complete binding effect to cover all employees working with company. The Industrial Tribunal has examined in detail contention raised by

Petitioner Association in para 12 and 13. The Industrial Tribunal has recorded one important fact that nine office bearers of Petitioner Association

has also given consent submitted declaration and also given undertaking and accepted benefits under settlement. The Industrial Tribunal has also

considered merits of matter and examined terms of settlement and what benefit is made available under particular settlement by concerned

employers which has been discussed in detail in respect to each and every item.

43. Ultimately, Industrial Tribunal has come to conclusion that such kind of settlement can not cover each and every demand raised by Union but it

covers demand mostly which are relating service benefits where principles of give and take applied. Accordingly, Industrial Tribunal has come to

conclusion that expectation of company demand is also considered in present settlement while granting benefits in favour of concerned employees.

The Industrial Tribunal has come to conclusion after appreciating facts which are on record that 98% employees have accepted terms of

settlement. Therefore, it can not consider to be unjust and unfair. Exh 22 produced by company, where nine employees of BMS, who are Office

bearers of Petitioner Union have accepted terms of settlement. Exh 25 statement produced by company where lump sum amount is already paid in

Bank account of each employee as per statement and none employee has objected such payment made by company in righting to Respondent No.

1 Company. The Industrial Tribunal has appreciated important facts that out of 98% employees, those who have been accepted settlement

submitted declaration and signed undertaking, none employees go before Industrial Tribunal and deposed that signature of such employee has been

obtained by employer while adopting coercive measures, fraud and malafide or misrepresentation of fact made by Company. Therefore, there was

no evidence at all produced by Petitioner Association before Industrial Tribunal that this settlement is malafide obtained by fraud and result of

misrepresentation made by company and whatever subsequent reaction of Petitioner Association is result of change their mind because of passage

of time as considered by Apex Court in case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, Therefore, once

settlement is accepted by 98% employees and no allegation has been made by Petitioner Association against company that this signature obtained

by them using method of misrepresentation or adopting coercive method or fraud or malafide then Industrial Tribunal has rightly accepted entire

settlement being just, fair and reasonable. For that, According to my opinion, Industrial Tribunal has not committed any error which would require

interference by this Court while exercising power under Article 227 of Constitution of India.

44. The contention which has been raised by Petitioner Association has been properly dealt with by Industrial Tribunal, Baroda in para 16, 17 and

18. In para 19, Industrial Tribunal has discussed it that it is not necessary that in respect to each demand referred for adjudication it must require

settlement. The Industrial Tribunal has to consider while examining terms of settlement whether this settlement is a result of adopting method of

coercive, corruption and malafide by Company or not? It is a case of collective bargaining with two Unions having majority workers with them and

also considered principles of give and take. Therefore, it is not necessary to adjudicate disputes referred by appropriate Government. The

Industrial Tribunal has rightly relied upon case of Harbertson and Tata Engineering and in case of KCP Ltd of Apex Court reported in 1996 (2)

LLN 970. The Industrial Tribunal has also rightly appreciated decision of Apex Court in case of National Engineering reported in 1999 (4) LLN

1185. If settlement is not arrived by means of cheating to employees denying legal right and service benefits to them while misrepresenting facts

before workers by company and there is no coercive method adopted by employer and it is not a malafide and based on fraud then naturally

reaction would be that such settlement is must be presumed to be just, fair and reasonable. That decision has been given by Apex Court in case of

National Engineering, which has been rightly relied by Industrial Tribunal, Baroda.

45. For that, Industrial Tribunal Baroda has not committed any error which would require interference by this Court. The contention which has

been raised by learned senior advocate Mr. Desai can not be accepted. It is necessary to note that learned senior advocate Mr. Desai even before

this Court appearing for Petitioner Association has not demonstrated that how settlement is unjust and unfair except legal submission made by him

before this Court. The genuineness of settlement is not challenged by Petitioner Association before Industrial Tribunal, Baroda and before this

Court. It is not case of the Petitioner Association before this Court that this settlement is bad because signatures have been obtained by adopting

coercive measures and based on fraud as well as result of misrepresentation of fact made by Company. The Petitioner Association has also not

able to point out to this Court that benefit which has been extended in favour of employees working in Non Supervisory category with Company

as per settlement is meager amount and it adversely affects livelihood, security and withdrawing existing service benefits and it is not at all in the

interest of workers. So, settlement in short not challenged by Petitioner Association on merits and even justness and fairness is also not in

challenged except legal aspect which has been pointed out by learned senior advocate Mr. Desai before this Court. The real fact being an

undisputed between parties that 98% employees of Non Supervisory category working with Respondent company have voluntarily accepted terms

of settlement while giving undertaking and declaration to Respondent No. 1 company to each employees in pursuance to present settlement, which

has been rightly implemented in Toto by Respondent No. 1 company in favour of each employee who has given declaration and undertaking while

accepting terms of settlement including nine office bearers of Petitioner Association. This suggest itself and prove that settlement is really just, fair,

reasonable and therefore contentions relied by learned senior advocate Mr. Desai can not be accepted that this settlement is not legal and valid.

46. The legal contention raised by learned advocate Mr. Desai that 30/11/2010 settlement is u/s 2(p) read with Section 18(1) of I. D. Act, 1947

being a private settlement not binding to Petitioner Association but merely signature of Petitioner Association is not obtained or Petitioner

Association has not signed settlement, then it hurts ego of Petitioner Association, which creates legal fight unnecessarily before this Court. Under

provisions of Industrial Dispute Act, 1947 when private settlement is permissible between parties and that private settlement is accepted by 98%

employees while submitting declaration and signing undertaking and accepting each and every terms of settlement, then that private settlement is

binding to signing persons. According to legal provisions, before producing settlement by parties exh 14, 98% employees have signed it. The

private settlement is permissible under law. Therefore, present settlement is binding to 98% employees of Non Supervisory category working with

Respondent No. 1 Company. The industrial dispute which has been raised in favour of 100% employees by three Unions being reference No.

95/2009 which has been settled with two Unions and 98% employees then it placed before Industrial Tribunal inviting award in reference 95/2009

with a requests to pass an award and disposed of reference on the basis of consent terms arrived between parties. This can not consider that

Industrial Tribunal, Baroda has no jurisdiction to record such private settlement arrived between parties which represented 98% employees

working with Respondent company in non supervisory category. Therefore, such private settlement remained private till it has been signed by

respective parties of settlement. A moment matter has been settled between parties, it is open for parties in pending reference to invite award on

the basis of terms of settlement. At that occasion, it is not necessary that each party to reference must sign in settlement. In Industrial Law, real

party is ""Workman"" not ""Union"". Because Union is only espousing cause of workman while raising industrial dispute under provisions of Industrial

Dispute Act, 1947. The Industrial Tribunal has also kept open right of Petitioner Association that in case if other references are pending before any

other Industrial Tribunal, for that, concerned parties may approach to Industrial Tribunal concerned and invite award. But only on the ground that

because of present settlement recorded including demand out side terms of settlement, then this can not consider to be beyond the scope of

reference. The settlement, therefore, accepted by Industrial Tribunal, Baroda being a just, fair and reasonable and in interest of workers for

maintaining industrial peace and harmony, which resulted to accelerate production process and income of Industry, which ultimately give better

service benefits and security to concerned employees, those who are working with Company.

47. The contention raised by learned senior advocate Mr. Desai that this award is not properly published by appropriate Government on

14/2/2011. He submitted that under Rule 31(A) State Government must have to be published award under provisions of Section 17 and 17A of

Industrial Disputes Act, 1947. The relevant rules 31(A), Section 17 and Section 17(A) are quoted as under:

Rule 31(A): Publication of report of award, etc - (1) Within thirty days of the date of receipt of the report of a Board or award of a Labour Court

or Tribunal by it, the State Government,-

(a) shall, if it considers that having regard to the importance of such report or award, its publication in the Official Gazette is necessary, cause it to

be published in the Official Gazette

(b) if it considers that the report or award is not sufficiently important it may cause a copy thereof together with a notification u/s 17 to be

forwarded to the Board or a Court or Tribunal, as the case may be, for publication on the notice board at its office.

(2) Where the report or award is published in the official Gazette or on notice board of the Board, Court or tribunal, the State Government shall

at the time of such publication forward a copy thereof to the parties to the dispute, and where the report or award is published on notice, board of

the Board, Court or Tribunal, such Board, Court or Tribunal shall inform the State Government and the parties concerned of the such publication

on the notice board.

Section 17:(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award

of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be

published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of Section 17A, the award published under Sub-section (1) shall be final and shall not be called in question by any

Court in any manner whatsoever.) Section 17(A). Commencement of the award:

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication u/s 17:

Provided that -

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an

industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal,

that will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the

appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall

not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to Sub-section (1), the appropriate Government or the Central

Government may, within ninety days from the date of publication of the award u/s 17, makes an order rejecting or modifying the award, and shall,

on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by

a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under Sub-section (2) is laid before the Legislature of a State or before

Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid, and where no order under Sub-

section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in Sub-section (2).

(4) Subject to the provisions of Sub-section (1) and Sub-section (3) regarding the enforceability of an award, the award shall come into operation

with effect from such date as may be specified therein, but where no date is so specified it shall come into operation on the date when the award

becomes enforceable under Sub-section (1) or Sub-section (3), as the case may be)

The Section 17 of I. D. Act, give powers to appropriate Government to publish award in such manner as thinks fit subject to provisions of Section

17A of Industrial Disputes Act, 1947. In light of this provisions Rules 31A, Section 17, and Section 17A, in this case, appropriate Government

has delegated powers initially in favour of Labour Commissioner for publication of award. Thereafter, it has been delegated in favour of Assistant

Commissioner of Labour to publish such award as required u/s 17 as per notification dated 12/3/2003. Accordingly, powers have been rightly

exercised by Assistant Commissioner of Labour, Baroda u/s 17 as per power delegated to concerned authority.

48. Therefore, contention raised by learned senior advocate Mr. Desai that award in question is not properly published by Appropriate

Government can not be accepted because it is merely a procedural aspect how to publish it. For that, under notification dated 12/3/2003, powers

have been given to Assistant Commissioner of Labour to publish award, which has to be notified under Rules 31(A) sub Rule 2 on notice board of

Industrial Tribunal concerned. Therefore, contention against procedural aspect can not be accepted. Even though, this procedural aspect will not

adversely affect enforceability of award once it is published u/s 17 of I. D. Act, 1947 in question which is already implemented in favour of

concerned employees by Respondent company.

49. The decision which has been relied and considered by Industrial Tribunal as well as also relied by Advocate General Mr. KB Trivedi in case of

Tata Engineering and Locomotive Company Limited Vs. Their Workmen, The relevant discussion made in para 5 to 7 are quoted as under:

5. The correctness of finding (a) has not been assailed before us on behalf of either party and in view of the provisions of Sub-section (1) of

Section 18 of the Act that finding must be upheld so that the settlement dated the 7th Feb., 1970 would be binding on all workers who were

members of the Sanghatana as on that date including the 564 workers who signed the declaration. Consequently finding (c) which is

unexceptionable insofar as it goes, loses all its relevance and we need take no further notice of it.

6. The conclusion reached by the Tribunal that the settlement was not just and fair is again unsustainable. As earlier pointed out, the Tribunal itself

found that there was nothing wrong with the settlement in most of its aspects and all that was necessary was to marginally increase the additional

daily wage. We are clearly of the opinion that the approach adopted by the Tribunal in dealing with the matter was erroneous. If the settlement had

been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be

presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71,

i.e., 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally

higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just

and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. In

this connection we cannot do better than quote extensively from *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*,

wherein Goswami, J., speaking for the Court observed (at p. 327 of AIR): "Besides, the settlement has to be considered in the light of the

conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was

pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a

Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer, in the

interest of general peace and well being there is always give and take. Having regard to the nature of the dispute, which was raised as far back as

1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the

parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if

there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is

unfair and unjust.

We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a

voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even

shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties

agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all

unnecessary expenses in uncertain litigation. The settlement, therefore, cannot on the touch-stone of the principles are laid down by this Court for

adjudication.

There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once

cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is

always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This

is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and

not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in

adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.

It is not possible to scan the settlement in its bits and pieces and hold some parts good and acceptable and others bad.

Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be

slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole

as unfair or unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this

settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that

all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the

employer and the 3rd Respondent are negotiating another settlement with further improvement. These factors, apart from what has been stated

above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the

course of collective bargaining have impelled us not to interfere with this settlement.

The principles thus enunciated fully govern the facts of the case in hand, and, respect following them, we hold that the settlement dated the 7th

Feb., 1970 as a whole just and fair.

7. There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a

worker would not make him a party to the settlement for the purpose of Section 18 of the Act (vide The Jhagrakhan Collieries (P) Ltd. Vs. Shri

G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, It is further unquestionable

that a minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement

with the employer (vide Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, But then here the company is not

raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already

arrived at or a plea that the reference is not maintainable because the Telco Union represents only a minority of workers. On the other hand the

only two contentions raised by the company are:

(i) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it,

and

(ii) that the reference is liable to be answered in accordance with the settlement because the same is just and fair.

And both these are contentions which we find fully acceptable for reasons already stated.

50. In case of K.C.P. Limited Vs. Presiding Officer and Others, The relevant discussion made in para 17 to 21 and 23 to 26 are quoted as under:

17. Having given our anxious consideration to these rival submissions, we find that the terms of the settlement cannot be considered to be in any

way ex facie, unjust or unfair and that the said settlement consequently must be held to be binding on these contesting workmen also.

18. It has to be kept in view that the industrial dispute was raised by Respondent No. 2 - union on behalf of all the 29 workmen who were

dismissed from service by the Appellant company. It was an industrial dispute as defined by Section 2(k) of the Act raised by the Union on behalf

of its members. Respondent Nos. 3 to 14 were at the relevant time, members of the union and even till date they continue to be the members of the

sponsoring union. This was not a reference raised by a dismissed employee as per Section 2-A of the Act. Consequently, as per Section 36 of the

Act, it was Respondent No. 2 Union which was in charge of the proceedings and could represent all the 29 dismissed workmen on whose behalf

the dispute was raised by it. When the said union having considered the pros and cons of the situation, entered into the settlement on behalf of all

the workmen for whom it had taken cudgels unless the said settlement was found to be ex facie, unjust or unfair it could not be gone behind by

these Respondents who can be said to be parties to the same through their representative union-Respondent No. 2. In this connection a reference

is also required to be made to Section 18(1) of the Act which lays down as under:

A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding

on the parties to the agreement.

19. It is not in dispute that the settlement arrived at by Respondent No. 2 - union with the Appellant company was not in the course of conciliation

proceedings. Therefore, it would be binding to the parties to the agreement, namely, the Appellant company on the one hand and Respondent No.

2- union representing all the 29 dismissed employees, who were its members and on whose behalf it had raised the industrial dispute u/s 2(k) of the

Act, on the other.

20. Section 2(p) of the Act defines a settlement to mean a settlement arrived at in the course of conciliation proceedings and includes a written

agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been

signed by the parties thereto in such manner as may be prescribed and a copy thereof had been sent to an officer authorised in this behalf by the

appropriate Government and the Conciliation Officer.

21. It is also not in dispute that parties to the settlement were the Appellant company on the one hand and Respondent No. 2- union on the other,

which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these

parties. Under these circumstances, Respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative

union with the company unless it is shown that the said settlement was ex facie, unfair, unjust or mala fide. No such case could be even alleged

much less made out by the dissenting Respondent Nos. 3 to 14 before the trial Court. It is interesting to note that before the Labour Court the only

argument put forward on behalf of Respondent Nos. 3 to 14 was that they were not parties to the settlement and therefore, , it was not binding on

them. Once it is kept in view that the entire industrial dispute was raised by Respondent No. 2 union on behalf of all the 29 dismissed workmen

and as it was not an industrial dispute covered by Section 2-A whereunder individual dismissed workman could come in the arena of contest, it

could not be held, as wrongly assumed by the Labour Court that this settlement was not entered into u/s 18(1) of the Act by these dissenting

workmen when the Respondent-union did represent them from beginning to end and is still representing them as they are members of the union

even at present. In the case of Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, a Bench of three Hon"ble Judges of this Court

had an occasion to consider the effect of a settlement entered into by the union of workmen which had espoused the cause of its members by

raising an industrial dispute u/s 2(k) of the Act and the further question whether under these circumstances an individual workman had any

independent locus stand in proceedings before the reference Court. Rejecting the contention on behalf of the individual workman, it was observed

by Das Gupta, J. speaking for the Court that the concerned workman was not entitled to separate representation when already represented by the

Secretary of the union which espoused his cause. A dispute between an individual workman and an employer cannot be an industrial dispute as

defined in Section 2(k) of the Act unless it is taken up by a union of workmen or by a considerable number of workmen. When an individual

workman becomes a party to a dispute under the Act he is a party, not independent of the union which has espoused his cause. It was further

observed that although no general rule can be laid down in the matter, the ordinary rule should be that representation by an officer of the trade

union should continue throughout the proceedings in the absence of exceptional circumstances justifying other representation of the workmen

concerned.

22. It is true that the said decision was rendered prior to the insertion of Section 2-A in the Act by which individual workmen were also given a

right to raise industrial dispute in case of discharge, dismissal or retrenchment or otherwise termination of service. It is also true that the present

controversy has arisen after the coming into operation of Section 2-A but as noted earlier the industrial dispute raised for 29 dismissed workmen

was raised by the union-Respondent No. 2 u/s 2(k) of the Act and there was no reference u/s 2-A of the Act, so far as Respondent Nos. 3 to 14

are concerned.

23. In the case of *Herbertsons Ltd. v. Workmen of Herbertsons Ltd.*, AIR 1977 SC 322, another Bench of three learned Judges of this Court

considered the effect of a settlement arrived at by recognised union of majority of workers pending appeal to Supreme Court. It was observed by

Goswami, J., speaking for the Court that when a recognised union negotiates with an employer the workers as individuals do not come into the

picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected

to protect the legitimate interests of labour enters into a settlement in the best interests of labour. This would be the normal rule. There may be

exceptional cases where there may be allegations of mala fide, fraud or even corruption or other inducements. But in the absence of such

allegations a settlement in the course of collective bargaining is entitled to due weight and consideration.

24. In connection with the justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that

were in force at the time of the reference. When, therefore, negotiations take place which have to be encouraged, particularly between labour and

employer in the interest of industrial peace and well-being, there is always give and take. The settlement has to be taken as a package deal and

when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned,

it cannot be said that the settlement as a whole is unfair and unjust. It was further observed that it is not possible to scan the settlement in bits and

pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it

completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be

accepted or rejected as a whole.

25. It was to be kept in view that under the scheme of labour legislations like the Act in the present case, collective bargaining and the principle of

industrial democracy permeate the relations between the management on the one hand and the union which reports to collective bargaining on

behalf of its members-workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would

always be beneficial to the management as well as to the body of workmen and society at large as there would be industrial peace and tranquility

pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and promote industrial and commercial

development on the other hand. Keeping in view the aforesaid salient feature of the Act the settlement which is sought to be impugned has to be

scanned and scrutinised. Settlement of labour disputes by direct negotiation and collective bargaining is always to be preferred for it is the best

guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more

easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of

conciliation proceedings which may be the first step towards resolving the industrial dispute which may be lingering between the employers and

their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial disputes gets referred for

adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding to the parties to the settlement unlike

settlement arrived at during conciliation proceedings which may be binding not only to the parties to the settlement but even to the entire labour

force working in the concerned organisation even though they may not be members of the union which might have entered into settlement during

conciliation proceedings. The difference between the settlement arrived at under the Act during conciliation proceedings by parties and the

settlement arrived at otherwise than during conciliation proceedings has been succinctly brought out by the decision of this Court in Barauni

Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., wherein Ahmadi, J. (as His Lordship then was) spoke for the Court to

the following effect:

Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18(1)) and (ii) those arrived

at in the course of conciliation proceedings (Section 18(3)). A settlement which belongs to the first category has limited application in that it merely

binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has

extended application as it 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 the 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.

26. As in the present case the settlement arrived at between the parties was not during conciliation proceedings, it would remain binding to parties

to the settlement as per Section 18(1) of the Act. But as we have seen above, Respondent No. 2 union while entering into that settlement acted on

behalf of all the 29 dismissed workmen who were its members including the present Respondent Nos. 3 to 14 who are also its members as noted

earlier. We have also seen earlier that the Labour court had erred in taking the view that Respondents 3 to 14 were not parties to the said

settlement as individually they had no locus standi and they were represented by their union Respondent No. 2 which had signed the settlement on

behalf of its members for whom the dispute was raised by the union. Nothing could be alleged by Respondents 3 to 14 to the effect that the said

settlement was in any way unjust or unfair or was a mala fide one. There were no exceptional circumstances to reject this settlement qua even the

contesting Respondents. However, as learned Counsel for the Respondent-workmen tried faintly to suggest to the effect we have carefully gone

through the circumstances which are brought on record which had led to the settlement. It may be noted that about 500 workmen had done on

strike and that had resulted in the lock-out by the Appellant company and ultimately disciplinary action was initiated against 29 workmen who had

indulged into various acts of misconduct. It is for these 29 workmen who were ultimately dismissed from service that the Respondent-union had

raised a dispute u/s 2(k) of the Act on their behalf. Earlier the remaining workmen had gone on strike for nearly 5 months. Ultimately, the strike

was withdrawn; lock-out was lifted and a broad understanding was reached between the Appellant company and the workmen represented by

their union whereby it was agreed that 29 workmen, who were dismissed, would be either given Rs. 75,000/- as compensation or reinstatement

with continuity of service without back wages and the concerned workmen should express apology for mis-conduct and also assure good conduct

in future.

In case of GMDC Employees Union v. Gujarat Mineral Devp. Corporation reported in 2002 (2) GLH 523. The relevant discussion made in para

27 to 33 are quoted as under:

27. As indicated earlier, it is very clear that majority of the workman working as daily rated labourers through their Sangh entered into various

agreement to solve their labour disputes. They entered into agreements, and therefore, it cannot be said that any dispute survives now.

28. One has to remember that this is a matter governed by the provisions contained in the Industrial law and the ID Act. How a settlement is to be

considered is an important aspect to be borne in mind. When there is a settlement arrived at between the management and a recognised union

having majority of the workmen, and if the settlement is just, fair and binding, whether interference by the Court is called for or not is required to be

considered.

29. It is required to be noted that a settlement in the course of collective bargaining is entitled to due consideration. As pointed out by the Apex

Court in the case of HERBETSONS LIMITED v. WORKMEN reported in AIR 1977 SC 322, the justness and fairness of a settlement has to

be considered in the light of the conditions that were in force at the time of the reference. So far as the parties are concerned, there will always be

uncertainty with regard to the result of the litigation in a court proceedings. When, therefore, negotiations take place which have to be encouraged,

particularly between labour and employer in the interest of general peace and well being, there is always give and take. The settlement has to be

taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so

far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

30. In the above case (HERBETSONS), the Court further pointed out that a settlement cannot be judged on the touchstone of the principles

applicable in adjudicating disputes by the Tribunal.

31. The Apex Court further pointed out that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable

and other bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained,

the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

32. Mr. Patel, learned advocate submitted that merely because 10% of the workmen are not agreeable the settlement does not cease to be just and

fair. He relied on the decision of the Apex Court in the case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, The

Apex Court, in paragraph 6 pointed out as under:

...If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its

totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers

(in this case 71, i.e. 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers

deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the

question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial

dispute is under adjudication.

32.1 In this paragraph, the Apex Court has also referred to the judgment in the case of HERBETSONS, which we have referred hereinabove.

33. In the instant case, as majority of the workman, i.e. more than 90% of the daily rated workmen, have signed the settlement, in our opinion, the

same must be accepted and it cannot be said that there is any dispute pending to be decided now by the Court till the settlement is in force.

In case of I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others, The relevant para 14 to 24 are

quoted as under:

14. In answering the reference the industrial adjudicator has to keep in the forefront of his mind the settlement reached u/s 12(3) of the Industrial

Disputes Act. Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not open to the Industrial

Tribunal to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be

contrary to the mandatory provisions of the Act or unless it is found that there is non-conformance to the norms by which the settlement could be

subjected to limited judicial scrutiny. This is infact the approach of the Tribunal in the instant case. The High Court which examined the issue from a

different angle as well was, in our view, justified in affirming the award of the Tribunal.

15. As the settlement entered into in the course of conciliation proceedings assumes crucial importance in the present case, it is necessary for us to

recapitulate the fairly well settled legal position and principles concerning the binding effect of the settlement and the grounds on which the

settlement is vulnerable to attack in an industrial adjudication. Analysing the relative scope of various clauses of Section 18, this Court in the case

of Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., succinctly summarized the position thus:

Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18(i) and (ii) those arrived at

in the course of conciliation proceedings (Section 18(3)). A settlement which belongs to the first category has limited application in that it merely

binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has

extended application as it 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 the 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.

16. In General Manager, Security Paper Mill, Hoshangabad Vs. R.S. Sharma and Others, E.S. Venkataramiah, J. Speaking for the Court

explained the rationale behind Section 18(3) thus:

Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to

assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither

party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the

settlement Sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation

proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in Clause (i) is an employer, his

heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in Clause (i) is comprised

of workmen, all persons who were 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. Law thus attaches importance and

sanctity to settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding

on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above.

17. Admittedly, the settlement arrived at in the instant case was in the course of conciliation proceedings and therefore it carries a presumption that

it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates

and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the

settlement merely because it does not suit him.

18. The next principle to be borne in mind is that in a case where the validity of the settlement is assailed, the limited scope of enquiry would be,

whether the settlement arrived at in accordance with Sub-section (1) to (3) of Section 12, is on the whole just and fair and reached bonafide. An

unjust, unfair or mala fide settlement militates against the spirit and basic postulate of the agreement reached as a result of conciliation and,

therefore, such settlement will not be given effect to while deciding an industrial dispute. Of course, the issue has to be examined keeping in view

the presumption that is attached to the settlement u/s 12(3).

19. In Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, this Court called for a finding on the point whether the

settlement was fair and just and it is in the light of the findings of the Tribunal that the appeal was disposed of. Goswami, J. speaking for the three-

Judge Bench made it clear that the settlement cannot be judged on the touch stone of the principles which are relevant for adjudication of an

industrial dispute. It was observed that the Tribunal fell into an error in invoking the principles that should govern the adjudication of a dispute

regarding dearness allowance in judging whether the settlement was just and fair. The rationale of this principle was explained thus:

There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once

cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is

always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This

is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and

not by the yardstick adopted in scrutinizing an award in adjudication.

20. The line of enquiry whether settlement was unfair and unjust in K.C.P. Limited Vs. Presiding Officer and Others, , was adopted by a three-

Judge Bench of this Court speaking through Majmudar, J. It was observed at paragraph 21 that ""under these circumstances, Respondents 3 to 14

also would be ordinarily bound by this settlement entered into by their representative Union with the Company unless it is shown that the said

settlement was ex facie, unfair, unjust or mala fide"". The Court came to the conclusion that the settlement cannot be characterised to be unfair or

unjust. It was further observed that ""once this conclusion is reached it is obvious that another industrial dispute should have been disposed of in the

light of this settlement"". It was reiterated in the case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, that ""a settlement

cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from

those which come into play when an industrial dispute is under adjudication"". Earlier, it was observed:

If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its

totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers

(in this case 71, i.e., 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers

deserved marginally higher emoluments than they themselves thought they did.

21. Another principle which deserves notice is the one firmly laid down in Herbertsons case (supra). It was emphasised that the settlement has to

be taken as a package deal and it should not be scanned "in bits and pieces" to hold some parts good and acceptable and others bad. Then, it was

observed:

unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be

slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole

as unfair or unjust.

22. Having noted that the only objectionable feature of the settlement as found by the Tribunal was reduction of dearness allowance from cent per

cent to 85 per cent, it was held that, that part of the settlement cannot be held to be invalid or inoperative. This proposition laid down in

Herbertsons case was reiterated in K.C.P. Ltd. case (supra), approvingly citing the said decision. The passages in Herbertsons case were quoted

in extenso and approved by the three-Judge Bench in TELCO case (supra) as well.

23. What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and

consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional

circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental

in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of

settlement cannot be examined in piecemeal and in vacuum.

24. Viewed in the light of these principles, it cannot be said that the settlement in the present case which is otherwise valid and just suffers from any

legal infirmity merely for the reason that one of the clauses in the settlement extends the benefits of life pension scheme only to the employees

retiring after a particular date i.e. 24.8.1986. Exclusion of workmen retiring before that date is no ground to characterise the settlement as unjust or

unfair. Of course, the allegations of mala fides such as corrupt motives have not been levelled against anyone and that aspect becomes irrelevant

here.

In case of Herbertsons Ltd v. The workmen of Herbertsons Ltd and Ors reported in AIR 1977 SC 322. The relevant discussion made in para 15,

17, 18, 21, 22, 24, 25 and 27 are quoted as under:

15. Before we proceed further it is necessary to appreciate the implication of the order of this Court passed on December 19, 1974, set out

earlier. This order was passed after hearing the parties for some time when the appeal was first called for hearing on December 19, 1974. From

the recitals in the order it is apparent that the parties were prepared to abide by the settlement if the same was fair and just. We are not prepared

to accept the position, as urged by the 2nd Respondent, that even if the settlement is binding on the parties executing the document, namely, the

company and the 3rd Respondent representing a large majority of the workmen, since the same is not binding on the members of the Mumbai

Majdoor Sabha Union, howsoever small the number, u/s 18(1) of the Industrial Disputes Act, the appeal should be heard on merits. On the other

hand, we take the view that after hearing the parties this Court was satisfied when it had called for a finding of the Tribunal that if the settlement

was fair and just it would allow the parties to be governed by the settlement substituting the award. The wording of the issue sent to the Tribunal

for a finding clearly shows that there was an onus on the 2nd Respondent to show how many workers of the Appellant were their members upon

whom they could clearly assert that the settlement was not binding u/s 18(1) of the Industrial Disputes Act. It cannot be assumed that the parties

were not aware of the implications of Section 18(1) of the Industrial Disputes Act when the Court passed the order of December 19, 1974. This

Court would not have sent the case back only to decide the legal effect of Section 18(1) of the Industrial Disputes Act. Since a recognised and

registered union had entered into a voluntary settlement this Court thought that if the same, were found to be just and fair that could be allowed to

be binding on all the workers even if a very small number of workers were not members of the majority union. It is only in that context that after

hearing the parties the case was remanded to the Tribunal for a finding on the particular issues set out above.

17. The Tribunal thought that the question of the quantum of membership of the 2nd Respondent did not call for a finding at all in view of this

Court's order. As observed above that was not a correct assumption. On the other hand, we feel that this view of the Tribunal has led it to

approach the matter in an entirely erroneous manner. The Tribunal is, rightly enough, conscious that u/s 18(1) of the Industrial Disputes Act the

settlement was binding on the company and the members of the 3rd Respondent union. Even so, the Tribunal devoted nearly half of its order in

scanning the evidence given by the company and Respondent No. 3 to find out whether the terms of the settlement had been explained by the

President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the "consequences". This to

our mind is again an entirely wrong approach.

18. When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each

individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of

labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where

there may be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the

President of the 3rd Respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and,

therefore, is entitled to due weight and consideration.

21. Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to

judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will

always be uncertainty with regard to the result of the litigation in a court proceedings. When, therefore, negotiations take place which have to be

encouraged, particularly between labour and employer in the interest of general peace and well being, there is always give and take. Having regard

to the nature of the dispute, which was raised as far back as 1968, the very fact the existence of a litigation with regard to the same matter which

was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal

and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is

concerned, it cannot be said that the settlement as a whole is unfair and unjust.

22. There are three categories of workers, permanent workers, listed casual workmen and certain other casual workmen. It is said that the third

category of workmen are employed seasonally for a period of 20 days or so. Their number is also said to be not more than 20 or 30. The terms

and conditions relating to this category of casual workmen were left, under the settlement, to be mutually decided by the parties. It is because of

this feature in the settlement that the Tribunal held that the settlement was incomplete. We are, however, informed that as a matter of fact by mutual

agreement some terms have been settled even for this third category of casual workmen. At any rate, because no decision was arrived at with

regard to this small number of seasonal workmen, it cannot be said that the settlement is bad on that account.

24. We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a

voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even

shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties

agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all

unnecessary expenses in uncertain litigation. The settlement, therefore, cannot be judged on the touchstone of the principles which are laid down by

this Court for adjudication.

25. There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining.

Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is

always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This

is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and

not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in

adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.

27. It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be

demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a

settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or

unjust. Even before this Court the 3rd Respondent representing admittedly the large majority of the workmen has stood by this settlement and that

is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the

company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd

Respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for

industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining

have impelled us not to interfere with this settlement.

51. I have considered reasoning given by Industrial Tribunal, Baroda. The Industrial Tribunal Baroda has considered each and every objection

raised by Petitioner Association and also considered terms of settlement arrived between parties Respondent Nos. 1, 3 and 4. The Industrial

Tribunal has applied mind that what benefit is available to employees according to terms of settlement. The legal aspect has been also taken into

account by Industrial Tribunal that in respect to rest of two references being No. 111/2009 and 59/2009, which are not disposed of by Industrial

Tribunal, Baroda along with present reference No. 95/2009, but that remained pending and it is open for parties to approach to concerned

Industrial Tribunal, where reference is pending to invite award in terms of settlement but in present award dispute in respect to two reference as

referred above has not been disposed of. Therefore, it can not consider that present award is beyond scope of terms of reference. The Industrial

Tribunal has also considered various decisions on the subject and each decision has been considered with application of mind and also considered

important aspect that merely Petitioner Association has not signed settlement which is not necessary when settlement has been arrived between

parties u/s 2(p) and Section 18(1) of Industrial Disputes Act, 1947. Once Section 2(p) settlement arrived between parties placed on record before

Industrial Tribunal inviting award in terms of settlement and such settlement is accepted by majority of workers about 98% those who are

concerned in pending dispute then question of having objections raised before Industrial Tribunal by Petitioner Association can not be accepted.

Because there is no demonstration has been made by Petitioner Association that how settlement is unjust, unfair and unreasonable. On merits no

contention has been raised by Petitioner Association before Industrial Tribunal. The Industrial Tribunal has also rightly considered that out of 98%

employees none has made complaint to Industrial Tribunal that their signatures have been obtained by adopting coercive measures, fraud, malafide

and based on misrepresentation of fact. Therefore, presumption of Industrial Tribunal is that 98% employees of Non Supervisory category

working with Company has voluntarily signed declaration and undertaking including nine Office Bearers of Petitioner Association exh 22.

Therefore, employees who voluntarily signed settlement accepted it and submitted declaration and undertaking to Company. On that basis,

Company has extended benefits in favour of each employee then to doubt bonafide of Respondent No. 3 and 4 Union with Respondent No. 1

Company can not be accepted. The Petitioner Association has doubted bonafide of Company as well as Respondent Nos. 3 and 4 Union but that

contention can not be accepted in absence of specific evidence, which has not been led by Petitioner Association before Industrial Tribunal.

52. In case of General Manager, Security Paper Mill, Hoshangabad v. R.S. Sharma and Ors. reported in 1986 Lab I C 667. The relevant para 5

is quoted as under:

5. The expression "settlement" is defined in Section 2(p) of the Industrial Disputes Act, 1947. It means a settlement arrived at in the course of

conciliation proceeding and also includes a written agreement between employer and workmen arrived at otherwise than in 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 Govt. and the Conciliation Officer. A distinction is made in the Industrial Disputes Act, 1947 between a

settlement arrived at in the course of conciliation proceeding and a settlement arrived at by agreement between the employer and workmen

otherwise than in conciliation proceeding both as regards the procedure to be followed in the two cases and as regards the persons on whom they

are binding. Section 12 of the Industrial Disputes Act, 1947 lays down the duties of Conciliation Officer. Under Sub-section (1) of Section 12

where any industrial dispute exists or is apprehended, the Conciliation Officer is required to hold conciliation proceedings in the prescribed manner.

By Sub-section (2) thereof he is charged with the duty of promptly investigating the dispute and all matters affecting the merits and the right

settlement thereof for the purpose of bringing about the settlement of the dispute and he is required to do all necessary things as he thinks fit for the

purpose of inducing the parties to come to a fair and amicable settlement of the dispute. If a settlement of the dispute or of any of the matters in

dispute is arrived at in the course of the conciliation proceedings the Conciliation Officer shall send a report thereof to the appropriate Government

or an officer authorised in that behalf by the appropriate Government together with a Memorandum of Settlement signed by the parties. Even

though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to assist

them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither party

takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the

settlement Sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation

proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in Clause (i) is an employer, his

heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in Clause (i) is comprised

of workmen, all persons who were 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. Law thus attaches importance and

sanctity to a settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding

on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above. But in the case of a

settlement not arrived at in the course of the conciliation proceeding it has to be in writing and signed by the parties in the prescribed manner and a

copy thereof should be sent to the officer authorised by the appropriate Government in this behalf and to the Conciliation Officer. Such a

settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on

the parties to the agreement as provided in Section 18(1) of the Industrial Disputes Act, 1947. Such a settlement is not binding on the other

workmen who are not parties to the settlement.

53. The declaration and undertaking is to be given by each individual employees which is at page 135 is quoted as under:

DECLARATION AND UNDERTAKING

TO,

The Site President

Reliance Industries Limited

Vadodara Manufacturing Division

Sir,

I...PL No...hereby declare that I have read and understood/expalained by my colleagues, the contents in full of the Settlement dated 30.11.2010

regarding wage revisions and the also the settlement dated 30.11.2010 regarding medical benefits along with annexures thereof entered into

between the Company i.e. Reliance Industries Limited, VMD and unions i.e. IPCL Employees" union (AITUC) and Petrochemicals Karmachari

Union (INTUC) under the provisions of the Industrial Disputes Act.

I hereby declare that I have also read the contents of the settlements displayed at various notice boards/ location of VMD and understood the

benefits of the settlements and terms and conditions mentioned therein.

I being the employee of the company accept both the settlement and undertake to abide by all terms of the said settlements.

I now request the Company to extend to me full benefits of the settlements as applicable to me.

Signature of the employees

Name of the employee:

PL No. :

Date:

Witness:

Signature of the employee:

Name of the employee:

PL No. :

Date:

54. It is necessary to note that Union is not a real party to industrial dispute referred for adjudication by appropriate Government. The Union has

espoused cause of industrial disputes raised by workman and sent demand notice on behalf of workman to employer. Thereafter, conciliation

proceeding due to intervention made by Conciliation Officer is to be started or commenced. Therefore, in industrial dispute real party is

Workmen"". The Industrial Dispute which referred for adjudication in facts of this case page 60 dated 27/7/2009 i.e. an industrial disputes

between Reliance Industries Ltd, Baroda and its workmen. Therefore, each workman is a party to industrial dispute which referred for

adjudication to Industrial Tribunal, Baroda. The roll of Union is only representing workmen before Industrial Tribunal as if lawyer engaged by client

to represent their case before Court of law. The Union is authorized by workmen to raise industrial disputes on their behalf and accordingly Union

is representing case of workmen before Industrial Tribunal, Baroda. Therefore, real party in industrial dispute referred for adjudication is

concerned ""Workmen not Union"". The definition of Industrial Dispute given in Section 2(k) of Industrial Disputes Act, 1947, is as under:

Section 2(k): ""industrial dispute"" means any dispute or difference between employers and employees, or between employers and workmen, or

between workmen and workmen, which is connected with the employment or non employment or the terms of employment or with the conditions

of labour, of any person.

55. The above referred definition suggests that industrial disputes means any dispute or difference between employer and workmen, which is

connected with employment and non employment or a terms of employment or with the conditions of Labour, of any person. In this case, industrial

dispute raised by three Unions but in all the three reference No. 95/2009, 111/2009 and 59/2009 real party are concerned workmen working with

Respondent No. 1 Company. Therefore, appropriate Government has referred industrial dispute for adjudication to Industrial Tribunal and

industrial Tribunal u/s 10 Sub-Section 4 also have jurisdiction to adjudicate and shall confine its adjudication to those point which has been referred

for adjudication and matter incidental thereto. Therefore, Section 10 Sub-Section 4 is quoted as under:

Section 10(4): Where in an order referring an industrial dispute to (a Labuor Court, Tribunal or National Tribunal) under this section or in a

subsequent order, the appropriate Government has specified the points of dispute for adjudication, (the Labour Court or the Tribunal or the

National Tribunal, as the case may be,) shall confine its adjudication to those points and matters incidentally thereto.)

The Conciliation Officer after receiving demand notice through Union in respect to industrial dispute u/s 12 Sub-Section 2 shall for purpose of

bringing about a settlement of dispute, without delay, investigate the dispute and all matters affecting the merits and right settlement thereof and may

do all such things as he thinks fit for the purpose of inducing parties to come to a fair and amicable settlement of the dispute. If the settlement

arrived at in course of Conciliation proceeding then Conciliation Officer shall send a report thereof to appropriate Government u/s 12 Sub-Section

3. Similarly, where industrial dispute has been referred to Industrial Tribunal, for adjudication u/s 15, it shall hold its proceeding expeditiously and

shall submit its award to Appropriate Government. As per Section 20 Sub-Section 3, when proceeding before Tribunal shall deemed to have

commenced on the date of reference and such proceeding shall be deemed to have concluded on the date on which award becomes enforceable

u/s 17A. Section 17 suggests that every award of Industrial Tribunal shall within a period of thirty days from date of its receipt by appropriate

Government to be published in such manner as Appropriate Government thinks fit. Therefore, manner how to publish award that manner is to be

decided by appropriate Government means procedure to publish award is to be determined by appropriate Government. As per Section 17A,

commencement of award shall become enforceable on expiry of 30 days from date of its publication u/s 17. In this case, award has been published

by appropriate Government on 14/2/2009 as per page 429 and 430. This award is required to be published by Secretary, Industrial Tribunal,

Baroda on or before 1/3/2011 on notice board of Industrial Tribunal, Baroda. Therefore, notification u/s 17 is already issued by appropriate

Government and same has been enforceable u/s 17A Sub-Section 1 of Industrial Dispute Act, 1947. A moment an award has been published u/s

17A Sub-Section 1, then u/s 20 Sub-Section 3, proceeding of reference pending before Industrial Tribunal shall be deemed to have concluded.

In Industrial Law, there is no barred providing private settlement to be arrived during pendency of Conciliation proceeding. Similarly, there is no

barred provide to have private settlement during pendency of reference u/s 10(1)(d) of Industrial Disputes Act, 1947 before Industrial Tribunal,

Baroda. So, it is clear from provisions of Section 12 and Section 10(1)(d) that during pendency of conciliation proceeding and also during

pendency of reference proceeding, private settlement arrived between parties has not be prohibited or having any barred for such private

settlement. So, during pendency of conciliation proceeding or reference proceeding if parties to the industrial dispute arrived private settlement as

required u/s 2(p) of Industrial Dispute Act, 1947 then such settlement can be placed before either Conciliation Officer, where dispute is pending or

before Industrial Tribunal, where reference is pending. In such circumstances, in both cases, either conciliation Officer or Industrial Tribunal must

have to accept such private settlement arrived between parties to be taken on record and to examine whether such settlement is just, fair,

reasonable and in interest of workers or not? If Conciliation Officer/Industrial Tribunal satisfied after examining settlement that such settlement is

just, fair, reasonable and in the interest of workers, then such settlement must have to be recorded by Conciliation Officer or Industrial Tribunal.

The Conciliation Officer or Industrial Tribunal after receiving settlement arrived between parties being private settlement can not insist to ignore it

and say that matter will decide or adjudicate according to dispute raised and referred for adjudication to Industrial Tribunal.

Similarly, in facts of this case, during pendency of reference proceeding, two Unions representing workmen who is real party as arrived at private

settlement u/s 2(p) and Section 18(1) of Industrial Disputes Act, 1947. Therefore, this settlement being a private settlement published by employer

on notice board of Company and given understanding to each employee working with employer. Thereafter, each individual employee has signed

declaration and undertaking while accepting terms of settlement as per page 135. After obtaining such declaration and undertaking from each

employee, settlement was placed on record before Industrial Tribunal with a prayer to record such settlement and pass an award in terms of

settlement. At that occasion, Petitioner Association who has not signed settlement as objected it, for that, reasonable opportunity of hearing was

given by Industrial Tribunal, Baroda to Petitioner Association. After examining each and every terms of settlement and also considering objections

raised by Petitioner Association, Industrial Tribunal has kept in mind that this private settlement has been accepted in Toto by 98% employees

working in Non Supervisory category with employer. Therefore, considering facts that such settlement is found to be just, fair, reasonable and in

the interest of workers. Therefore, same has been recorded by Industrial Tribunal with application of mind and then to pass award according to

settlement produced by parties.

In light of aforesaid facts, view taken by Division Bench of Delhi High Court in case of Hindustan Housing Factory Employees" Union v. Hindustan

Housing Factory Ltd reported in 1971 (II) LLJ 222. The relevant observations made by Delhi High Court in para 35 and 36, which are quoted as

under:

35. The question regarding the power of the Industrial Tribunal to make an award in terms of a compromise arrived at between the parties came

for consideration before the Supreme Court in State of Bihar v. D.N. Ganguli (1958) 15 F. J. R. 118, where it was urged that if a dispute referred

to the Industrial Tribunal u/s 10(1) was settled between the parties, the only remedy for giving effect to such a compromise would be to cancel the

reference and to take the proceedings out of the jurisdiction of the Industrial Tribunal. This was almost a direct challenge to the authority of the

Tribunal to make an award in terms of the compromise between the parties. The argument was repelled. Gajendragadkar. J., who wrote the

judgment of the Court, said

This argument is based on the assumption that the Industrial Tribunal would have to ignore the settlement by the parties of their dispute pending

before it and would have to make an award on the merits in spite of the said settlement. We are not satisfied that this argument is well founded. It is

true that the Act does not contain any provision specifically authorizing the Industrial Tribunal to record a compromise and pass an award in its

terms corresponding to the provisions of Order XXIII, Rule 3, of the Code of Civil Procedure. But it would be very unreasonable to assume that

the Industrial Tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicable settled

between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and

harmony are the primary objects of this Act. Settlements reached before the Conciliation Officers or Boards are specifically dealt with by Section

12(2) and 12(3) and the same are made binding u/s 18. There can, therefore, be no doubt that if an industrial dispute before a Tribunal is amicably

settled, the Tribunal would immediately agree to make an award in terms of the settlement between the parties.

In view of this clear pronouncement of the Supreme Court it hardly seems necessary to refer to a few other cases to which our attention was

invited by Shri. V. S. Desai, learned Counsel for the company.

36. We are, therefore, clearly of the opinion that a consent award is as good an award as an award made by the Tribunal after contest and is to be

treated as an award within the meaning of Section 2(b) and not as a settlement defined in Section 2(p). We are also of the opinion that so long as

the compromise embodied in the award resolves the disputes between the parties which had been referred to the Tribunal for adjudication and is

not tainted with fraud, collusion, coercion or undue influence, it continues to remain binding on the parties unless it is terminated in the manner

provided by sub -Section (6) of Section 19 of the Act.

56. Learned senior advocate Mr. Desai submitted relying upon one decision of Apex Court in case of Workmen of M/s Delhi Cloth General Mills

ltd v. The Management of M/s Delhi Cloth and General Mills reported in 1972 (I) LLJ 99, where Apex Court appears to have taken diametrically

opposite view holding that during Conciliation proceedings or after a failure of conciliation proceedings, parties can not arrive at a private

settlement and clothe it with a binding effect even on the members of Union which entered the settlement.

57. The observation which has been made by Apex Court in aforesaid decision, which has been relied by learned senior advocate Mr. Desai

appearing for Petitioner are clearly contradictory to ratio of The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another, and also

contradictory to ratio of Amalgamated Coffee estate reported in 1985 (II) LLJ 110.

58. In Sirsilk case, it was pointedly stated that as soon as agreement is signed in prescribed manner and copy of it is sent to Government and

Conciliation Officer, it becomes binding at once on the parties to it and comes into operation on the date it was signed. Applying this rule, it would

appear that settlement became binding on the date it was signed. The requirement of Section 2(p) to send copy of settlement to conciliation officer

was also obviously complied with. Hence, settlement was in accordance with law and was binding u/s 18 Sub-Section 1 on the workmen who

were parties to it, particularly workmen concerned who at the time of settlement himself was President of Union. In this connection, it is relevant to

note that Section 18 Sub-Section 1 makes an agreement between employer and workmen otherwise than in course of Conciliation proceeding,

binding on the parties to agreement. In other words, if workman concerned himself enters into private agreement with employer, that will make

agreement binding on him. The workman in this case, therefore who was a party to settlement was also bound by settlement. The observation of

the Court that in case of Delhi Cloth as referred above that when dispute is referred to Conciliation Officer, parties can not claim absolute freedom

of contract to arrive at settlement is not borne out by the statute of Industrial Disputes Act, 1947. The Industrial Dispute Act does not postulate

any reference to Conciliation Officer of any Industrial Dispute. The Conciliation proceeding in public utility service, as in this case, commence when

a notice of strike is received by the Conciliation Officer, and where no settlement is arrived at, they are deemed to have concluded when failure

report of Conciliation Officer is received by Appropriate Government. It is nowhere provided in the Industrial Disputes Act or Rules that during

pendency of Conciliation Proceedings or after failure report of such proceeding the parties are barred from arriving at private settlement. If there is

no bar to private settlement after an award has been made, as in *Sirsilk* case and even after publication of award as in *Amalgamated Coffee Estate*,

much less can there be a bar to such a settlement during the pendency of conciliation proceedings or after the failure of such proceedings means

pending industrial dispute before Industrial Tribunal. Therefore, view taken by Apex Court in case of *Workmen of M/s Delhi Cloth* as referred

above that parties can not arrive at private settlement after Conciliation Officer had commenced Conciliation proceedings or after failure of such

proceedings, is, therefore, neither warranted by statute nor by precedent. The further observations of Apex Court in case of the *Workmen of M/s*

Delhi Cloth as referred above that provision of Section 18 Sub-Section 1 do not vest in parties is unfettered freedom to settle the dispute as they

please and clothe it with a binding effect, is on same reasoning equally unwarranted in law.

59. A Division Bench of Patna High Court in *Rohtas Industries Ltd v. Presiding Officer, Industrial Tribunal, Bihar* reported in 1977 Lab I.C.

147(Patna), has taken view that Tribunal has complete jurisdiction to decide whether settlement which has been arrived at between ""the parties to

the industrial disputes"" was arrived at bona fide and as to how far the settlement would bind the workman concerned. It has been further observed

that Tribunal ""would take into consideration the settlement while passing the final award by it."" it may perhaps be permissible for Tribunal to go into

question of bona fides of a settlement. But to say that the Tribunal will take such settlement into consideration while passing the final award will

bring a conflict between settlement which is binding u/s 18(1) and award which will be binding u/s 18(3). In *Sirsilk Ltd* case, Supreme Court

prohibited publication of award with a view to avoid such a conflict. The High Court does not appear to have appreciated ratio of that decision of

Supreme Court and contented itself merely by saying that ""this decision also has no application to present case."" The Court has perhaps confused a

compromise between the parties before the Tribunal in the course of the adjudication proceedings and the agreement which partakes the character

of a settlement arrived between the employer and workman otherwise than in the course of conciliation proceedings after complying with the

requirements of law. Such settlement, if arrived at genuinely and bona fide, will become binding on the parties u/s 18(1) and the Tribunal will have

to accept it as it is and cannot deviate from it.

60. In *Blue Star Limited Vs. K.S. Khurana and Others*, pending adjudication, the parties had jointly filed an application bringing to the notice of

the Labour Court that a private settlement had been arrived at between them to the effect that the workman will be reinstated without back wages

or allowances. As a matter of fact, pursuant to the settlement the workman had even joined the duty. But the Labour Court did not pass an order

on the application for a period of two years. Then the workman filed an application before the Labour Court seeking the relief of back wages

based on an alleged oral agreement and the Labour Court proceeded to enquire into the claim. In a writ petition filed by the employer for

prohibiting Labour Court from proceeding with the enquiry, a single Judge of the Delhi High Court held that the Labour Court could not adjudicate

upon the question which stood settled by the settlement because after the settlement the adjudication had become infructuous. The learned Judge

further observed that since there was no explanation from the workman as to why there is delay of two years in seeking the relief of back wages,

the workman had acquiesced and estopped from raising any dispute.

61. Therefore, contentions raised by learned senior advocate Mr. Desai relying upon Apex Court decision in case of Workmen of M/s Delhi Cloth

as referred above can not be accepted by this Court.

62. Similarly, considering facts of present case, during pendency of reference in respect to industrial disputes between parties u/s 2(p) read with

Section 18 Sub-Section 1 of Industrial Disputes Act, 1947 settlement arrived between parties being private settlement which signed by 98%

employees accepting entire terms of settlement and thereafter it has been produced before Industrial Tribunal Baroda and then Industrial Tribunal,

Baroda has recorded it and after scrutinizing it found to be just, fair, reasonable and in interest of workman. Therefore, settlement which recorded

by Industrial Tribunal, Baroda and award is passed in terms of settlement then such award passed on settlement covered by Section 18 Sub-

Section 3 and having binding effect of award to all parties to industrial dispute as per Section 18 Sub-Section 3(d) and also it binding to all parties

who are employees in establishment or part thereof on the date of dispute and all persons who become subsequently employed in establishment or

part thereof as per Section 18 Sub-Section 3(d).

63. The contention raised by learned senior advocate Mr. Desai that Industrial Tribunal can not jump from private settlement to giving binding

effect of such settlement u/s 18 Sub-Section 3(d) of Industrial Dispute Act, 1947. The entire settlement as whole is binding to all employees

because Industrial Tribunal has passed an award in terms of settlement and Petitioner Association and other 2% employees are not entitled to seek

challenge on the ground that implementation of award with reserve treating part of terms as binding thereof and part is of not binding.

64. Therefore, such challenge which has been made by Petitioner Association before this Court is considered to be half hearted challenged and can

not be entertained by this Court when overall settlement has been accepted by 98% employees voluntarily with open eyes working with employer.

65. The Apex Court in case of New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others, which judgment is also considered by

Industrial Tribunal, Baroda while dealing with settlement and passing award. The relevant observation made in para 7, 10 to 12 are quoted as

under:

7. Settlement of labour disputes by direct negotiation or settlement through collective bargaining is always to be preferred for, as is obvious, it is the

best guarantee of industrial peace which is the aim of all legislation for the settlement of labour disputes. In order to bring about such a settlement

more easily, and to make it more workable and effective, it is no longer necessary, under the law, that the settlement should be confined to that

arrived at in the course of a conciliation proceeding, but now includes, by virtue of the definition in Section 2(p) of the Act, a written agreement

between the employer and the workmen arrived at otherwise than in the course of a conciliation proceeding where such agreement has been signed

by the parties in the prescribed manner and a copy thereof has been sent to the authorised officers. Rule 58 (2) of the Industrial Disputes (Central)

Rules, 1957, prescribes the manner of signing the settlement and it is not in dispute before us that this requirement has been complied with. The

other relevant provision is that contained in Section 18(1) of the Act which specifically states that a settlement arrived at by agreement between the

employer and the workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. In fact it has

clearly been held by this Court in *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, that as soon as an agreement is

signed in the prescribed manner and a copy of it is sent to the officers concerned, it becomes binding on the parties and comes into operation on

the date it is signed, or on the date mentioned in it for its coming into operation. We have therefore to examine the arguments of counsel for the

parties with due regard to these provisions of the law.

10. The question of justness and fairness of a settlement should, in a case like this, be examined with reference to the situation as it stood on the

date on which it was arrived at i.e. on July 31, 1973. As has been stated, the award was made on November 29, 1972 but it was under challenge

in the High Court on the Company's petition under Articles 226 and 227 of the Constitution. It has been pointed out by Mr. Kaka, and has not

been disputed by Mr. Chitaley, that one of the grounds of challenge was the contention that the Tribunal had not made a proper comparison of the

wages and the dearness allowance on "industry-cum-region basis" even though it was enunciated by this Court in *Greaves Cotton and Co. and*

Others Vs. Their Workmen, It cannot therefore be said that the award was not at all in jeopardy, at the time of the settlement.

11. It is well known that the possibility of an adverse decision by the Court operates as a positive force in favour of deliberate and careful effort by

both parties to settle their dispute through direct negotiations. And we have no doubt that it is that force which has brought about the settlement

under consideration. Then there is the further fact that, as has been stated by the Tribunal, the workmen were liable, in the event of the success of

the Company, to a refund of the amounts which had already been paid to them on that understanding.

12. Moreover, as has been found by the Tribunal, out of 1328 workmen who were in the Company's service on July 31, 1973, 995 workmen

have signed the settlement and have also accepted their dues thereunder, and 242 workmen have accepted their dues under the settlement by

actually signing the receipts though they have not signed the settlement. It will also be recalled that 910 workmen who left the Company between

Jan. 1, 1968 and July 31, 1973 have also accepted their dues under the settlement. As has been stated the settlement was made with Bhartiya

Kamgar Sena (Respondent No. 3) which represented a very large majority of the workmen of the Company. It is a significant fact that the bona

fides of that Union have not been challenged before us. There is therefore no reason why the Tribunal's finding that the settlement is just and fair

should not be accepted.

In case of Amalgamated Coffee Estates Ltd., v. Their Workmen reported in 1965 II LLJ 110, similar aspect has been examined by Apex Court,

which is as under:

These two appeals by Special leave arise of an award of the special industrial tribunal for plantation, Coimbatore in a dispute between 228 coffee,

tea and rubber estates and their employees. The dispute began in 1952 and was finally referred for adjudication to the special tribunal in January

1954. The items in dispute were classified under three categories, one referring to the staff only, the second referring to the workmen and the third

to both the staff and workmen. The award was pronounced on 15 September 1956 and thereafter there were two applications for special leave

which have given rise to these appeals. Appeal No. 541 is by a large number of estates involved in the dispute while appeal No. 543 is by Silver

Cloud Estate only. Pending the hearing of the appeals, it was urged that the dispute had been compromised. Consequently an application was

made to this Court on 19 July, 1962 to dispose of the appeals in terms of the said settlement. It was, however, argued on behalf of some of the

Respondents workmen that they were not bound by the settlement, though it was not in dispute that a settlement had been arrived at between the

estates and a large number of the employees who had accepted payments consistently with the terms of the settlement. It was however, urged that

the settlement was not legally binding on the Respondents because some of the unions which represented the employees did not participate in the

negotiation of the settlement and were not parties to it. It was also urged that the mere acceptance by the workmen of payment consistently with a

terms of the settlement did not necessarily show that they knew the effect of their acceptance of the said payments or that they had voluntarily and

knowingly agreed to the terms of the said settlement. This matter came up before this Court on 9 and 10 December 1963 and in view of this

dispute between the parties about the settlement, this Court framed an issue in the following terms:

In view of the fact that admittedly a large number of workmen employed by the Appellants have accepted payments consistently with the terms of

the agreements set up by the employers in their present petition, is it shown by the Respondents that the said agreement is not valid and binding on

them?

The Industrial Tribunal, Madras, thereafter went into the issue which this Court sent down for decision and its finding is that in every estate

payments were made in terms of the Madras settlement and such payments were voluntarily and knowingly accepted by the workmen. It also

came to the conclusion that the settlement was fair settlement having regard to the basic facts of the dispute between the parties. Finally the tribunal

held that Silver Cloud Estate which is the Appellant in appeal No. 543 was not party to the settlement.

On the return of this finding the matter was again set down for hearing and then an application was made on behalf of Silver Cloud Estate on 16

December 1964, in which it was stated that as a large majority of the managements had accepted the settlement, the Appellant was also prepared

to abide by the final decision of this Court in Civil Appeal No. 541 of 1961. The two unions which were concerned with Silver Cloud Estate are

Respondents 2 and 27 and notice of this application was given to these unions. It may be mentioned that those unions were parties to the settlement

with reference to other estates. Notice has been served on the two unions and they have not appeared to object and have apparently no objection

to Civil appeal No. 543 being decided in the same manner as Civil Appeal No. 541 on the basis of settlement.

An objection was raised on behalf of some of the Respondents that the finding of the tribunal on the issue sent down to it was incorrect. But it has

not been seriously pressed. We have considered that finding and are of opinion that the tribunal has carefully considered the issue sent down to it

and there is no reason to disagree with its conclusion.

The settlement appears to us also to be a fair one. We are therefore of opinion that the two appeals should be decided in accordance with the

settlement. Even those estates which were not parties to the settlement are prepared to abide by it. We think that in that in the interest of uniformity

and industrial peace the settlement should bind all estates which were represented before the special tribunal.

We therefore order that the two appeals be decided in accordance with the settlement. We therefore substitute annexure A to the application

dated 19 July 1962 in place of the award so far as the workmen (other than staff) are concerned. We also substitute annexure C to the application

dated 19 July 1962 in place of the award so far as the staff is concerned. In the circumstances, we pass no order as to costs.

66. The division Bench of Patana High Court in case of The Workmen of M/s Indian Cable Company Ltd v. M/s Indian Cable Company Ltd and

Ors reported in 1973 Lab IC 208. The relevant discussion made in para 7 and 8 are quoted as under:

7. Mr. Ghose, however strongly contended that Tribunal exceeded its jurisdiction in giving effect to the settlement dated the 20th March 1969,

arrived at between the Indian Cable Company Ltd and rival group inspite of the objection filed by R. N. Chaudhary, who according to Mr. Ghose,

was the duly elected the General Secretary of the Workers Union. His alternative submission was that in any view of the matter the Tribunal ought

to have gone into the matter and decided as to which of the parties real represented the Workers Union. It seems to me that the submission of

learned Counsel is no real consequence. In first place, the decision of this Court in Second Appeal No. 663 of 1964 was confined to the year

1961. Nothing has been brought to our notice that on 28th March, 1969, when the matter was pending before the Tribunal, R. N. Chaudhary was

the General Secretary of the Union for 1969. Moreover the duty of the Tribunal was not to decide as to which of the two groups was really

representing the workers but to see as to whether the compromise placed before it was reasonable and fair. It can not be said that this finding has

been arrived at by the Tribunal without hearing all the parties concerned including R. N. Chaudhary Petitioner No. 1 in this application and thus no

grievance can be made of the fact that the Petitioner had no opportunity to place his case before the Tribunal. As already stated, in the instance

case the Tribunal gave an opportunity to all the parties concern including Petitioner No. 1 to appear before it and, after considering various aspects

of the argument came to the conclusion that the said settlement was reasonable, fair and in interest of all the parties concerned. It is no doubt true

that a compromise can only bind those to are parties to it but in such contingency the Tribunal had option to adopt it as a part of its award after

considering as to whether it was proper from the point of view of all the workmen concerned in the dispute, and for that purpose it should hear all

the parties concerned, which it did (vide, (1960) 2 LAB LJ 556 (MAD), Coimbatory District Mill Workers Union v. Dhanlaxmi Mills Ltd

Tiruppur). In the instant case, the Tribunal had gone into the various aspects of the argument and after a close scrutiny has come to the conclusion

that it is fair, reasonable and just to all parties concerned. A similar view was expressed in Maria Soams v. Common Wealth Hosiery Factory.

Balmatta 1968 2 LAB LJ 438 : 1968 LAB IC 1329 (Mys)) wherein it was held - ""it is now well settled rule and principles that and award can be

based even upon settlement entered into between the management and one of the two unions, if there be more than one, where the settlement

appears to be fair and no force in the submission of learned Counsel. It is accordingly overruled.

8. It may also be stated that the agreement which has been accepted by the Tribunal is dated 20th March 1969 and it become effective from the

1st of June, 1969 for three years. The memorandum of settlement filed before the Supreme Court is dated the 1st January, 1970, and it had to

come into force from the 10th October, 1969 for a period of five years. It was admitted before us that the memorandum of settlement filed before

the Supreme Court superseded the earlier agreement filed before the Tribunal. A comparison of the two agreements makes it clear that the one

made before the Tribunal remained in force only for four months and nine days, but for all this small period also the award of the Tribunal does not

appear to me to be unreasonable or perverse as it the contention of the learned Counsel for the Petitioners.

67. In case of I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others, The relevant discussion

made in para 14 to 23 are as under:

14. In answering the reference the industrial adjudicator has to keep in the forefront of his mind the settlement reached u/s 12(3) of the Industrial

Disputes Act. Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not open to the Industrial

Tribunal to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be

contrary to the mandatory provisions of the Act or unless it is found that there is non-conformance to the norms by which the settlement could be

subjected to limited judicial scrutiny. This is infact the approach of the Tribunal in the instant case. The High Court which examined the issue from a

different angle as well was, in our view, justified in affirming the award of the Tribunal.

15. As the settlement entered into in the course of conciliation proceedings assumes crucial importance in the present case, it is necessary for us to

recapitulate the fairly well settled legal position and principles concerning the binding effect of the settlement and the grounds on which the

settlement is vulnerable to attack in an industrial adjudication. Analysing the relative scope of various clauses of Section 18, this Court in the case

of Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., succinctly summarized the position thus:

Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18(i) and (ii) those arrived at

in the course of conciliation proceedings (Section 18(3)). A settlement which belongs to the first category has limited application in that it merely

binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has

extended application as it 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 the 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.

In *General Manager, Security Paper Mill, Hoshangabad Vs. R.S. Sharma and Others*, E.S. Venkataramiah, J. Speaking for the Court explained

the rationale behind Section 18(3) thus:

Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to

assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither

party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the

settlement Sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation

proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in Clause (i) is an employer, his

heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in Clause (i) is comprised

of workmen, all persons who were 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. Law thus attaches importance and

sanctity to settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding

on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above.

17. The next principle to be borne in mind is that in a case where the validity of the settlement is assailed, the limited scope of enquiry would be,

whether the settlement arrived at in accordance with Sub-section (1) to (3) of Section 12, is on the whole just and fair and reached bonafide. An

unjust, unfair or malafide settlement militates against the spirit and basic postulate of the agreement reached as a result of conciliation and,

therefore, such settlement will not be given effect to while deciding an industrial dispute. Of course, the issue has to be examined keeping in view

the presumption that is attached to the settlement u/s 12(3).

18. In *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, this Court called for a finding on the point whether the

settlement was fair and just and it is in the light of the findings of the Tribunal that the appeal was disposed of. Goswami, J. speaking for the three-

Judge Bench made it clear that the settlement cannot be judged on the touch stone of the principles which are relevant for adjudication of an

industrial dispute. It was observed that the Tribunal fell into an error in invoking the principles that should govern the adjudication of a dispute

regarding dearness allowance in judging whether the settlement was just and fair. The rationale of this principle was explained thus:

There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once

cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is

always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This

is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and

not by the yardstick adopted in scrutinizing an award in adjudication.

19. The line of enquiry whether settlement was unfair and unjust in K.C.P. Limited Vs. Presiding Officer and Others, was adopted by a three-

Judge Bench of this Court speaking through Majmudar, J. It was observed at paragraph 21 that ""under these circumstances, Respondents 3 to 14

also would be ordinarily bound by this settlement entered into by their representative Union with the Company unless it is shown that the said

settlement was ex facie, unfair, unjust or mala fide"". The Court came to the conclusion that the settlement cannot be characterised to be unfair or

unjust. It was further observed that ""once this conclusion is reached it is obvious that another industrial dispute should have been disposed of in the

light of this settlement"". It was reiterated in the case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, that ""a settlement

cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from

those which come into play when an industrial dispute is under adjudication"". Earlier, it was observed:

If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its

totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers

(in this case 71, i.e., 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers

deserved marginally higher emoluments than they themselves thought they did.

20. Another principle which deserves notice is the one firmly laid down in Herbertsons case (supra). It was emphasised that the settlement has to

be taken as a package deal and it should not be scanned "in bits and pieces" to hold some parts good and acceptable and others bad. Then, it was

observed ""unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the

Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it

as a whole as unfair or unjust.

21. Having noted that the only objectionable feature of the settlement as found by the Tribunal was reduction of dearness allowance from cent per

cent to 85 per cent, it was held that, that part of the settlement cannot be held to be invalid or inoperative. This proposition laid down in

Herbertsons case was reiterated in K.C.P. Ltd. case (supra), approvingly citing the said decision. The passages in Herbertsons case were quoted

in extenso and approved by the three-Judge Bench in TELCO case (supra) as well.

22. What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and

consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional

circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental

in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of

settlement cannot be examined in piecemeal and in vacuum.

23. Viewed in the light of these principles, it cannot be said that the settlement in the present case which is otherwise valid and just suffers from any

legal infirmity merely for the reason that one of the clauses in the settlement extends the benefits of life pension scheme only to the employees

retiring after a particular date i.e. 24.8.1986. Exclusion of workmen retiring before that date is no ground to characterise the settlement as unjust or

unfair. Of course, the allegations of mala fides such as corrupt motives have not been levelled against anyone and that aspect becomes irrelevant

here.

68. In this case, settlement is produced on record at page 120 u/s 2(p) read with Section 18 Sub-Section 1 of Industrial Disputes Act, 1947 dated

30/11/2010 between I.P.C.L. Vadodara v. President, I.P.C.L. Employees Union. This settlement is signed by all parties as required u/s 2(p) of

Industrial Disputes Act, 1947. This settlement is out side conciliation proceeding and this settlement is not arrived during course of conciliation

proceeding. Therefore, Section 12(3) is not applicable in fact of this case, but it is relevant that this settlement has been arrived during adjudication

of pending references before Industrial Tribunal, Baroda being No. 95/2009. The private settlement if arrived u/s 2(p) read with Rules 62 part

(VII). According to Rule 62 of Industrial Disputes Gujarat Rules 1966 settlement arrived at in course of Conciliation proceedings or otherwise

shall be in form No. (xvi). The settlement shall be signed by in case of employer by employer himself or his authorized agent and in case of

workman either by President or Secretary or such other Officers of Trade Union and in case of workman, where settlement is arrived at between

employer and his workman otherwise than in course of Conciliation proceedings before Conciliation Officer, parties to settlement shall jointly send

copy thereof to Secretary to Government of Gujarat Education and Labour Department, Ahmedabad, Commissioner of Labour and Dy.

Commissioner of Labour, Ahmedabad and Conciliation Officer concerned. Therefore, Rule 62 (VII) has been fully complied with by Respondent

No. 1 Company and two other Unions as Respondent Nos. 3 and 4. The form No. (XVI) under Rule 62 as referred above also required to send

copy to Conciliation Officer in local area concerned, Commissioner of Labour, Ahmedabad, Deputy Commissioner of Labour and Secretary to

Government of Gujarat Education and Labour Department, Gandhinagar. The settlement dated 30/11/2010 arrived between parties which has

been placed before Industrial Tribunal, Baroda is fully complied with Rule 62 and Form No. (XVI). Therefore, it is a legal and valid settlement

arrived under Rules 62 read with Form No. (XVI). The private settlement arrived between parties otherwise than in conciliation proceeding, copy

of this settlement was send to Conciliation Officer. Therefore, legal formalities under Rule 62 read with Form No. (XVI) has been fully complied

with by Respondent Nos. 1, 3 and 4 and copy of this settlement was sent to concerned statutory authorities. That said fact has been specifically

made clear by Respondent Company as discussed in para 6 by Industrial Tribunal, Baroda vide exh 12 and 14. Therefore, settlement in question

produced before Industrial Tribunal, Baroda is legal and valid settlement arrived u/s 2(p) of Industrial Disputes Act, 1947. In such circumstances, if

valid settlement is produced before Industrial Tribunal, where dispute is pending then it is a duty of Industrial Tribunal must have to accept such

valid settlement and to examine in case of having objections by other parties whether settlement is just, fair and reasonable or not? The award is

published u/s 17 and after a period of 30 days it become enforceable u/s 17A of Industrial Dispute Act, 1947. If this settlement is challenged by

Petitioner Association before this Court that this settlement is unfair and unjust then it give rise to any other industrial disputes for that Petitioner

Association can raise dispute under provisions of Industrial Disputes Act, 1947 to the effect that this settlement is not just, fair and reasonable. So,

once settlement is recorded by Industrial Tribunal considering it just, fair and reasonable and passed an award on the basis of settlement which

award is published and thereafter 30 days is over from date of publication then it becomes enforceable and u/s 17 Sub-Section 2 such award is

final and can not be challenged to any Court of Law. Therefore, if Petitioner Association having any objection against this settlement for giving rise

to any other industrial dispute against this settlement but challenged before this Court in writ petition under Article 226 and 227 of Constitution of

India, this Court can not entertain such challenged made by Petitioner Association. It is also not case of Petitioner Association that copy of this

settlement is not send to other Statutory authority.

69. This aspect in facts in detailed examined by Apex Court in case of The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and

Another, along with to examine further question while reading Section 17 and 17A together and held it that both provisions are mandatory and not

accordingly directory. The certain relevant observation made by Apex Court which also applied to facts of this Case. Therefore, it is reproduced

as under in para 4 to 8:

4. We are of opinion that the first contention on behalf of the Appellants, namely, that the publication of the award u/s 17(1) is directory cannot be

accepted. Section 17(1) lays down that every award shall within period of thirty days from the date of its receipt by the appropriate government be

published in such manner as the appropriate government thinks fit. The use of the word ""shall"" is a pointer to Section 17(1) being mandatory,

though undoubtedly in certain circumstances the word ""shall"" used in a statute may be equal to the word ""may"". In the present case, however it

seems to us that when the word ""shall"" was used in Section 17(1) the intention was to give a mandate to Government to publish the award within

the time fixed therein. This is enforced by the fact that Sub-section (2) of Section 17 provides that ""the award published under Sub-section (1)

shall be final and shall not be called in question by any court in any manner whatsoever"". Obviously when the legislature intended the award on

publication to be final, it could not have intended that the Government concerned had the power to withhold publication of the award. Further

Section 17A. shows that whatever power the Government has in the matter of an award is specifically provided in that section, which allows the

Government in certain circumstances to declare that the award shall not become enforceable on the expiry of thirty days from the date of its

publication, which u/s 17-A is the date of the enforceability of the award. Section 17-A also envisages that the award must be published though the

Government may declare in certain contingencies that it may not be enforceable. Sub-section (2) of Section 17-A also gives power to Government

to make an order rejecting or modifying the award within ninety days from the date of its publication. It is clear therefore reading Section 17 and

Section 17-A together that the intention behind Section 17(1) is that a duty is cast on government to publish the award within thirty days of its

receipt and the provision for its publication is mandatory and not merely directory.

5. This however does not end the matter, particularly after the amendment of the Act by Central Act XXXVI of 1956 by which Section 18(1) was

introduced in the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and workmen otherwise than in the

course of conciliation proceeding shall be binding on the parties to the agreement. ""Settlement"" is defined in Section 2(p) as meaning 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 the appropriate Government and the conciliation officer. When such an agreement has been arrived at though not in

the course of conciliation proceedings, it becomes a settlement and Section 18(1) lays down that such a settlement shall be binding on the parties

thereto. Further Section 18(3) provides that an award which has become enforceable shall be binding on all parties to the industrial dispute and

others. Section 19(1) provides that a settlement comes into operation on such date as is agreed upon by the parties to the dispute, and if no date is

agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute. In the present case the settlement that

was arrived at between the parties to the dispute was signed on October 1, 1957, and as it had not fixed any date for its coming into force, it

became operative from October 1, 1957 itself and was binding on the parties to the agreement who were also before the industrial tribunal and

would be bound by the award after its publication.

6. The contention on behalf of the Appellant in the alternative is this. It is said that the main purpose of the Act is to maintain peace between the

parties in an industrial concern. Where therefore parties to an industrial dispute have reached a settlement which is binding u/s 18(1), the dispute

between them really comes to an end. In such a case it is urged that the settlement arrived at between the parties should be respected and industrial

peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. There is no doubt that a

settlement of the dispute between the parties themselves is to be preferred where it can be arrived at to industrial adjudication, as the settlement is

likely to lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to there being goodwill between

them. Even though this may be so, we have still to reconcile the mandatory character of the provision contained in Section 17(1) for the publication

of the award to the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided in Section 18(1).

Ordinarily there should be no difficulty about the matter, for if a settlement has been arrived at between the parties while the dispute is pending

before the tribunal, the parties would file the settlement before the tribunal and the tribunal would make the award in accordance with the

settlement. In *The State of Bihar Vs. D.N. Ganguly and Others*, dealing with an argument urged before this Court that where a settlement has been

arrived at between the parties while an industrial dispute is pending before a tribunal, the only remedy for giving effect to such a settlement would

be to cancel the reference, this Court observed that though the Act did not contain any provision specifically authorising the industrial tribunal, to

record a compromise and pass an award in its terms corresponding to the provisions of O. XXIII, Rule 3 of the Code of Civil Procedure, it would

be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the

dispute has been amicably settled between the parties, and there can be no doubt that if a dispute before a tribunal is amicably settled, the tribunal

would immediately agree to make an award in terms of the settlement between the parties. In that case this Court dealt with what would happen if

a settlement was arrived at while the matter was pending before the tribunal. The difficulty arises in the present case because the proceedings

before the tribunal had come to an end, and the tribunal had sent its award to Government before the settlement was arrived at on October 1,

1957. There is no provision in the Act dealing with such a situation just as there was no provision in the Act dealing with the situation which arose

where the parties came to an agreement while the dispute was pending before the tribunal. This Court held in *The State of Bihar Vs. D.N. Ganguly*

and Others, that in such a situation the settlement or compromise would have to be filed before the tribunal and the tribunal would make an award

thereupon in accordance with the settlement. Difficulty however rises when the matter has gone beyond the purview of the tribunal as in the present

case. That difficulty in our opinion has to be resolved in order to avoid possible conflict between Section 18(1) which makes the settlement arrived

at between the parties otherwise than in the course of conciliation proceeding binding on the parties and the terms of an award which are binding

u/s 18(3) on publication and which may not be the same as the terms of the settlement binding u/s 18(1). The only way in our view to resolve the

possible conflict which would arise between a settlement which is binding u/s 18(1) and an award which may become binding u/s 18(3) on

publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding u/s

18(1) has been arrived at. It is true that Section 17(1) is mandatory and ordinarily the Government has to publish an award sent to it by the

tribunal; but where a situation like the one in the present cases arises which may lead to a conflict between a settlement u/s 18(1) and an award

binding u/s 18(3) on publication, the only solution is to withhold the award from publication. This would not in our opinion in any way affect the

mandatory nature of the provision in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation

arising in such cases.

7. The matter may be looked at in another way. The reference to the tribunal is for the purpose of resolving the dispute that may have arisen

between employers and their workmen. Where a settlement is arrived at between the parties to a dispute before the tribunal after the award has

been submitted to Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a

case, the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from

publishing such an award because no dispute remains to be resolved by it.

8. It is however urged that the view we have taken may create a difficulty inasmuch as it is possible for one party or the other to represent to the

Government that the settlement has been arrived at as a result of fraud, misrepresentation or undue influence or that it is not binding as the

workmen's representative had bartered away their interests for personal considerations. This difficulty, if it is a difficulty, will always be there even

in a case where a settlement has been arrived at ordinarily between the parties and is binding u/s 18(1), even though no dispute has been referred

in that connection to a tribunal. Ordinarily however such difficulty should not arise at all, if we read Section 2(p), 18(1) and 19(1) of the Act

together. Section 2(p) lays down what a settlement is and it 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 the appropriate Government and the conciliation officer."" Therefore, the settlement has to be signed

in the manner prescribed by the rules and a copy of it has to be sent to the Government and the conciliation officer. This should ordinarily ensure

that the agreement has been arrived at without any of those defects to which we have referred above, if it is in accordance with the rules. Then

Section 18(1) provides that such a settlement would be binding between the parties and Section 19(1) provides that it shall come into force on the

date it was signed or on the date on which it says that it shall come into force. Therefore, as soon as an agreement is signed in the prescribed

manner and a copy of it is sent to the Government and the conciliation officer it becomes binding at once on the parties to it and comes into

operation on the date it is signed or on the date which might be mentioned in it for its coming into operation. In such a case there is no scope for

any inquiry by Government as to the bona fide character of the settlement which becomes binding and comes into operation once it is signed in the

manner provided in the rules and a copy is sent to the Government and the conciliation officer. The settlement having thus become binding and in

many cases having already come into operation, there is no scope for any inquiry by the Government as to the bona fides of the settlement. In such

a case in view of the possibility of conflict between the settlement in view of its binding nature u/s 18(1) and an award which might become binding

on publication u/s 18(3), the proper course for the Government is to withhold the award from publication to avoid this conflict. If any dispute of the

nature referred to above arises as to a settlement, that would be another industrial dispute, which the Government may refer for adjudication and if

on such an adjudication the settlement is found not to be binding u/s 18(1) of the Act it will always be open to the Government then to publish the

award which it had withheld, though we do not think that such instances are likely to be anything but extremely rare. We are, therefore, of opinion

that though Section 17(1) is mandatory and the Government is bound to publish the award received by it from an industrial tribunal, the situation

arising in a case like the present is of an exceptional nature and requires reconciliation between Section 18(1) and Section 18(3), and in such a

situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already come into

force in order to avoid possible conflict between a binding settlement u/s 18(1) and a binding award u/s 18(3). In such a situation we are of opinion

that the Government ought not to publish the award u/s 17(1) and in cases where Government is going to publish it, it can be directed not to

publish the award in view of the binding settlement arrived at between the parties u/s 18(1) with respect to the very matters which were the

subject-matter of adjudication under the award. We therefore allow the appeals and direct the Government not to publish the awards sent to it by

the industrial tribunal in these cases in view of the binding nature of the settlements arrived at between the parties u/s 18(1) of the Act. In the

circumstances we order the parties to bear their own costs.

82. In case of The State of Bihar Vs. D.N. Ganguly and Others, The relevant observation made in para 13 is quoted as under:

13. It is, however, urged that if a dispute referred to the industrial tribunal u/s 10(1) is settled between the parties, the only remedy for giving effect

to such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the industrial tribunal. This argument

is based on the, assumption that the industrial tribunal would have to ignore the settlement by the parties of their dispute pending before it and

would have to make an award on the merits in spite of the said settlement. We are not satisfied that this argument is well-founded. It is true that the

Act does not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms

corresponding to the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure. But it would be very unreasonable to assume that the

industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled

between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and

harmony are the primary object of this Act. Settlements reached before the conciliation officers or(boards are specifically dealt with by Section

12(2) and 13(3) and the same are made binding u/s 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably

settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. It was stated before us at the bar

that innumerable awards had been made by industrial tribunals in terms of the settlements between the parties. In this connexion we may

incidentally refer to the provisions of Section 7(2)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), which expressly

refer to an award or decision of an industrial tribunal made with the consent of the parties. It is true that this Act is no longer in force; but when it

was in force, in providing for appeals to the Appellate Tribunal set up under the said Act, the legislature had recognised the making of awards by

the industrial tribunals with the consent of the parties. Therefore, we cannot accept the argument that cancellation of reference would be necessary

in order to give effect to the amicable settlement of the dispute reached by the parties pending proceedings before the industrial tribunal.

83. Before this Court, learned senior advocate Mr. Desai has not raised any contention that this settlement is not arrived under Rules 62 read with

Section 2(p) of Industrial Disputes Act, 1947.

84. It is necessary to note that Respondent Nos. 3 and 4 both Unions have signed settlement. The Petitioner Association has not challenged or

doubted bonafide of either Respondent Nos. 3 and 4 Unions. No allegation is made by Petitioner Association against any office bearers of

Respondent Nos. 3 and 4. There is no allegation of collusion of Respondent Nos. 3 and 4 with Respondent No. 1 Company. In absence of that, it

is clearly established that settlement arrived between parties which are placed before Industrial Tribunal, Baroda that was genuine, bonafide

settlement arrived between parties. There is no allegation is made against Respondent No. 1 company by Petitioner Association that Company has

adopted unfair labour practice while arriving at settlement. The Petitioner Association has also not challenged legality and validity of present

settlement before this Court even before Industrial Tribunal, Boroda. So, this settlement is fully satisfied legal requirement u/s 2(p), 18(1), Rule 62

and Form No. (XVI). The copy of this settlement has been sent to all Statutory authority including Conciliation Officer concerned. For that, there

is no challenged made by Petitioner Association. No workman who has accepted settlement and benefits approach to Industrial Tribunal making

grievance about benefits and settlement. Similarly, recently in case of D. G. P. Windsor India Ltd since renamed as Windsor v. Kawil Kamdar

Association reported in 2011 (1) GLR 769. This Court has examined question that when withdrawal of references pending before Industrial

Tribunal pursuance to settlement between Management and Unions. The industrial dispute in reference was espoused by workman through Union

though same pertaining to particular workman. This Court has held that it is always open for body of workman. So espousing dispute to arrive at

settlement with management and withdrawal of references. The order passed by Industrial Tribunal decline permission for withdrawal of reference

has been quashed by this Court. Before this Court, in aforesaid decision, it was an admitted fact that almost all workmen have accepted settlement

and they have also made an affidavit giving their consent for withdrawal of references. The application for withdrawal of these references were

signed by almost all workmen and only objection has been raised by President of Union. That aspect has been considered by this Court and it has

been held that when almost all workmen have agreed for withdrawal of references pursuant to settlement arrived at between workmen and

management. Therefore, Industrial Tribunal has not justified in rejecting an application moved by Petitioner employer for withdrawal of three

references. The aforesaid decision is almost covered identical facts of present case because in facts of present case 98% employees have signed

settlement and accepted benefits and some of office bearers of Petitioner Association though not signed it but accepted benefits and this settlement

is extended by Company Respondent No. 1 in favour of each employee irrespective of facts whether they have signed or not signed, or accepted

or not accepted? Therefore, in light of this back ground, challenged by Petitioner Association against award passed by Industrial Tribunal, Baroda

based on settlement can not be entertained by this Court otherwise it goes to against basic principles of collective bargaining which is really object

and purpose of Industrial Law.

Therefore, according to my opinion, Industrial Tribunal, Baroda has rightly accepted settlement and passed an award in terms of settlement. For

that Industrial Tribunal, Baroda has not committed any error which would require interference by this Court. This Court is having very limited

jurisdiction under Article 227 of Constitution of India. This Court can not act as an Appellate authority which aspect recently has been considered

by Apex Court in case of Harjinder Singh Vs. Punjab State Warehousing Corporation, The relevant para 10 and 11 are quoted as under:

10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while

interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise

of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution - Syed Yakoob Vs. K.S. Radhakrishnan and Others, and

Surya Dev Rai Vs. Ram Chander Rai and Others, In Syed Yakoob's case, this Court delineated the scope of the writ of certiorari in the following

words:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by

this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction

committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess

of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or

Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order,

or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the

jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This

limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be

reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an

error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is

shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously

admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be

regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in

mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and

material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of

evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said

points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a

writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, Nagendra Nath Bora and Another

Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and Kaushalya Devi and Others Vs. Bachittar Singh and Others,

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected

by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record.

Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the

relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong

in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent

with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face

of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the

Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of

law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the

record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or

Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor

desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent

on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record,

must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have

been misconstrued or contravened.

11. In *Surya Dev Rai*'s case, a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large

number of judicial precedents, recorded the following conclusions:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction

of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC

Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High

Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to

have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or

crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural

justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their

jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have

or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated

argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one

view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the

judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings

in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would

obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as,

if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice

or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappraisal or

evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are

almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between

the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings

of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only

give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court

may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in

the facts and circumstances of the case.

A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the Labour Court. He also

did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice.

As a matter of fact, the learned Single Judge rejected the argument of the corporation that termination of the Appellant's service falls within the

ambit of Section 2(oo)(bb) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing

Director of corporation was contrary to Section 25G of the Act which embodies the rule of last come first go. Notwithstanding this, the learned

Single Judge substituted the award of reinstatement of the Appellant with compensation of Rs. 87,582/- by assuming that Appellant was initially

appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While

doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the Appellant's claim

for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any

evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the

issue whether reinstatement should be denied to the Appellant by applying the new jurisprudence developed by the superior courts in recent years

that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all

justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise

well reasoned award passed by the Labour Court and deprive the Appellant of what may be the only source of his own sustenance and that of his

family.

Apex Court has also considered similar question in case of *Jai Singh and Ors. v. Municipal Corporation of Delhi and Anr.* With Municipal

Corporation of Delhi v. Sh. Jai Singh and Ors. AIR 2010 SCW 5968. Relevant para 25 of said judgment is quoted as under:

25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the

Constitution of India had been discussed in the case of *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, wherein it was observed as follows:

The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and

explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts

and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is

not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the

subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious

dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice

remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or

substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High

Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse,

that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

In our opinion, the High Court committed a serious error of jurisdiction in entertaining the writ petition filed by MCD under Article 227 of the

Constitution of India in the peculiar circumstances of this case. The decision to exercise jurisdiction had to be taken in accordance with the

accepted norms of care, caution, circumspection. The issue herein only related to a tenancy and subletting. There was no lis relating to the

ownership of the land on which the superstructure or the demised premises had been constructed. The whole issue of ownership of plot of land

No:2, Block-B, transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi is the subject matter of a civil suit being

Suit No: 361 of 1980 in the High Court of Delhi. The High Court, therefore, ought not to have given any opinion on the question of ownership.

In MA Azim v. Maharashtra State Road Transport Corporation 2011 I CLR 283, it has been observed by Bombay High Court as under in para

11 and 12:

11. At this stage, it would be appropriate to refer to few important judgments of Hon"ble Supreme Court and this Court laying down therein the

scope to entertain petition under of Article 226 and 227 of the Constitution of India. The Hon"ble Supreme Court in a case of "" Nagendra Nath

Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, in para No. 30 held thus:

30. the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the

powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the

ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that

the tribunal functions within the limits of its authority.

Yet in another case, in a case of "" Surya Dev Rai Vs. Ram Chander Rai and Others, the Hon"ble Supreme in its conclusion held:

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following

requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter

disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated

argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one

view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the

judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or

proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in

an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct

the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not

corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or

where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or

evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

And in a case of Babulal S/o. Navalmal Pipada v. Dropadbai W/o. Manohar Gore and Ors. reported in 2010 (5) Mh. LJ, this Court has held thus:

One cannot be oblivious of the parameters required to be observed for the purpose of exercising supervisory jurisdiction under Article 227 of the

Constitution of India. Unless it is demonstrated that the impugned judgment suffers from vice of perversity, arbitrariness or is rendered without

considering material evidence or is rendered on the basis of no material interference with the finding of Courts/Tribunals is impermissible. The writ

jurisdiction cannot be invoked for reappreciating of the evidence or for the purpose of rectification of minor errors committed by the Tribunals.

Unless it is demonstrated that the view taken by the MRT is per se against the settled principles of law, it is difficult to interfere with the findings

recorded by the Tribunals below.

Therefore, it is clear from the pronouncements of Supreme Court and this Court which are referred supra that the Writ Jurisdiction cannot be

invoked for reappreciating the evidence or for the purpose of rectification a minor errors committed by the Tribunals. Supervisory jurisdiction

under Article 227 cannot be invoked unless it is demonstrated that the impugned judgments suffers from the vice of perversity, arbitrariness or is

rendered without considering material evidence or is rendered on the basis of no material evidence or is rendered on the basis of no material,

interference with the findings of Courts/Tribunals is impermissible. Therefore, in light of above, it is relevant to summarized here in below the

findings recorded by the Labour Court on the basis of evidence brought on record by the parties.

70. In view of above observations made by this Court after considering submissions made by both learned senior advocates and reasoning given

by Industrial Tribunal, according to my opinion, contention raised by learned senior advocate Mr. Desai can not be accepted.

71. Hence, there is no substance in present petition. Accordingly, present petition is dismissed summarily. No order as to costs.