(1998) 01 AP CK 0026

Andhra Pradesh High Court

Case No: Writ Petition No. 9206 of 1997 and Batch

M. Rajaiah and Others		APPELLANT
	Vs	
State Bank of India and Others		RESPONDENT

Date of Decision: Jan. 1, 1998

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 226, 232
- Contract Act, 1872 - Section 23
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10(2)
- Evidence Act, 1872 - Section 91, 92
- Industrial Disputes (Central) Rules, 1957 - Rule 58
- Industrial Disputes Act, 1947 - Section 10, 18(1), 18(3)(d), 19(2), 19(6)

Citation: (1998) 2 ALD 180 : (1998) 2 ALT 140

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Advocate: Mr. L. Ravichander, for the Appellant; Mr. K. Srinivasa Murthy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. These writ petitons constitute a batch between the similarly placed petitioners in all respects and the common respondents. They also sprout out queries of synonymous lex and factum. The antonym is individual grievances among the common. Spread Sheet-T is a chart comprising enumerated cases each batch, branches of the bank in which the petitioners are working (or were working), names of the Advocates and the reliefs claimed. The 1st respondent is the Central Office of the State Bank of India, the 2nd respondent the Chief Genera! Manager, Hyderabad, the 3rd respondent Deputy General Manager, Department of Commercial network, local Head Office, Hyderabad, 4th respondent-Deputy General Manager, Hyderabad and the 5th respondent, the Asst. General Manager, Region-11, Zonal Office,

Hyderabad as described in WP No.9206/97 and similar branches and its offices as described in other writ petitions. Distinguishably, the respondents in all the cases can be classified as the State Bank of India, its branches and the officers.

2. The petitioners are the hapless and helpless workers of the State Bank of India, called the temporary employees/daily wage casual workers/empanelled workers rolled into the expression ''subordinate staff, being designated as messengers, sweepers, water boys, watchman etc. Their services tenure in the bank service varies from 8 days at a time to 18 years, as a whole as projected sometimes on casual basis on daily payment and sometimes on wage basis and sometimes on regular scale basis, but intermittently without continuity in service. Most of the petitioners are the members belonging to SC and ST. It appears that they were engaged as such from 1974 onwards. They were appointed both from the list of the candidates sponsored by the Employment Exchange and directly by holding interviews. It appears that all of them possess the basic educational qualification having passed 8th class.

3. Having not been absorbed in the suitable posts by the bank inspite of their services rendered for a longtime with unsecured tenure, they and similarly placed employees took up the matter with the Bank through All India State Bank of India Staff Federation (in short, the Federation) to absorb them or regularise them in such posts. The management of the Bank also decided to provide them an opportunity to be considered for permanent appointment from among them who were found to be suitable for permanent appointment. That resulted in a settlement between the Federation and the Bank dated 17-11-1987 u/s 2(p) and 18(1) of the Industrial Disputes Act read with Rule 58 of the Industrial Dispute Central Rules (in short, the Act and the Rules). Under this settlement they were classified into three categories, viz., (i) those who have completed 240 days'' temporary service in 12 months or less after 1-7-1975, (ii) those who have completed 270 days'' aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975, and (iii) those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or a minimum of 70 days'' aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975. Certain conditions were prescribed to fix their suitability for their permanent appointment in the bank under the settlement. They were to be interviewed by a selection committee to determine the suitability. Clause 7 of the agreement provided for preparing the panel of the selected candidates to be wait listed in the order of the respective categorisation and the panels so prepared were to be valid upto December 1991. It also spelt out the various criteria for consideration and procedure to be followed in absorbing such wait listed candidates in the panels. In pursuance of the settlement, applications were called for from such of the temporary eligible employees by a notification of the Bank in the local newspapers for the purpose of absorption. The petitioners applied in response to the said notification. They were called for written test and viva voce in May 1989. Accordingly the petitioners took the written test and faced viva voce conducted by the selection committee of the Bank, they were

selected along with similar candidates and wait listed in the panels prepared by the Bank. It appears that all the petitioners were in such panels to be initially in force upto December, 1991. It appears that one more opportunity was afforded to such employees who had not applied in pursuance of the first notification and they were also empanelled in such lists by adopting same procedure. Some of the empanelled candidates were absorbed by the Bank whereas the petitioners were not absorbed and they continued as such till 31-3-1997. The life of such panels were extended from time to time as per the settlements between the Management and the Employees Federation till 31-3-1997. The petitioners who were working and not working as such as on 31-3-1997 and who were continued by virtue of the Interim Order of this Court are as per Spread Sheet I.

4. It is contended that the petitioners were given the impression that the panels will be kept alive till all the empanelled candidates were absorbed in pursuance of the settlements and that no fresh recruitment will be taken up by the Bank till they were absorbed. Therefore, it is contended that the petitioners had the legitimate expectation of being regularised in the services of the Bank on a permanent basis. Their impression and expectation is also strengthened by the Circular of the Government of India dated 16-8-1990 to alt the Chief Executives of the public sector banks including the bank in question that until the problem of existing temporary employees is resolved, no bank will be permitted to make, any temporary appointments. It is complained that inspite of all this, the bank chose to absorb or regulanse only some of the persons in the panels but did not regularise the petitioners and others. Therefore, the State Bank of India Temporary Employees'' Union filed W.P.No.4194/97 in this Court seeking the relief of declaration that the action of the respondents in not implementing the settlements as illegal, arbitrary etc., and to direct the respondents to absorb them within 31-3-1997. That Writ Petition was disposed of on 5-3-1997 directing the respondents to implement the settlement before the expiry of March 1997. Thus, the petitioners and other empanelled candidates were all along under the bona fide impression that the implications of the settlements as above would be carried out by the bank. But the officers of the bank were issued directions by the 1st respondent/bank on 25-3-1997, 27-3-1997 and 31-3-1997 seeking to terminate the services of the petitioners and others in the panel and further directions not to engage them after 31-3-1997. Consequently there has been the oral termination of the petitioners and the empanelled candidates violating the terms of the settlement legitimate expectation of such persons and in violation of the directions of this Court in W.P.No.4194/97. These impugned proceeding are. challenged to be arbitrary, illegal, unjust and contrary to the provisions of Section 2(p) and 18(1) of the Act read with Rule 58 of the Rules and violative of the fundamental rights under Articles 14, 16 and 21 of the Constitution of India.

5. In some of the petitions, it is contended that persons not empanelled are appointed, unsuitable candidates are empanelled and appointed, candidates in the

second panel have been appointed in preference and without exhausting the candidates in the first panel, candidates who had put in comparatively less service have been appointed, there has been discrimination in choosing the candidates for such appointment and absorption and therefore the action of the respondents is illegal, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India. They have even tried to demonstrate the number of days they worked as a whole in each year and sometimes number of years and that they have been discriminated against others. It is also contended that there has been unfair labour practice in regard to the implementation of the settlements etc. In some of the petitions, it is contended that they were regularly employed after selection, but called temporary casual employees or permanent casual employees and they resorted to an unethical and illegal method of terminating their services before the expiry of 240 days to avoid the legal consequences to absorb them in service inspite of empanelling them for absorption after selection. It is contended that the rights of the petitioners to have recourse to the provisions of the Industrial Disputes Act and the other Labour Laws have been impaired by imposing the condition in the settlement that it is in the full and final settlement of their rights regarding their absorption in the posts of the Bank. Therefore, it is contended that all the exercise by the respondents in preparing the panels of the petitioners and others is only for absorption and not for termination at any cost. Thus, the respective reliefs have been claimed in the Writ Petitions as detailed in Spread Sheet.

6. On behalf of the respondents, one Mr. Suryanarayana, the Assistant General Manager, filed number of counter affidavits dated 1-4-1997, 7-4-1997, 1-5-1997, 29-5-1997, 29-8-1997, 2-9-1997 and 6-9-1997. One Sri Vinod Kumar Malhotra, the Chief General Manager of the Bank has also filed an affidavit on 25-5-1997. Some of the counter affidavits supra were in answer to certain queries made by the Court as and when necessary. Apart from the counter affidavits, replies to the queries of the Court were also filed by the respondents on 31-7-1997 and 9-9-1997. The respondents have also to inevitably file number of material papers to justify their action or inaction. With this, their contentions can be recorded in brief:

7. It is contended that the petitioners have got alternative remedy under Industrial Disputes Act, the petitions are not maintainable under Article 226 of the Constitution of India. The allegations of the petitioners either in regard to the discrimination or in regard to unfair labour practice or in regard to any action or inaction of the respondents are denied It is pointed out to tide over the severe subordinate staff constraints which arose out of leave vacancies or otherwise and owing to the restriction imposed by Government of India/ Reserve Bank of India on intake of staff, the bank used to engage subordinate staff viz, messengers, sweepers, sweeper cum water boys etc., on a purely temporary basis for smooth and uninterrupted functioning of the branches and that it was only such employed persons who had completed continuous service viz., who had put in 240 days in the preceding 12 calendar months or less as provided in Section 25B of the Act and

whose services were discontinued without notice and without payment of retrenchment compensation were entitled for reinstatement in view of the law laid down by the Supreme Court in State Bank However, in view of the representation of All India SBI State Federation (in short, the Federation), even the cases of the temporary employees who had put in less than 240 days service in the preceding 12 calendar months during 1984 were also considered. In view of the increasing problem of such employees, the settlement dated 17-11-1987 between the Federation and the Bank was entered into u/s 2(p) and 18(1) read with Rule 58 of the Act and the. Rules and in pursuance of that the persons who were eligible, to be considered for absorption or appointment were empanelled after holding a written test and interview. Therefore, some of the petitioners, who had put in less than the required number of days had no right to be considered for absorption except by virtue of the terms of the settlement. Similarly, the scope of the settlement was extended by giving chance even for other employees of the similar nature subsequently and ultimately a panel was prepared for daily wagers also. In view of both the parties agreeing before the Regional Labour Commissioner on 9-6-1995 both the panels of temporary employees or daily wagers/casual labour were kept alive upto 3 1-3-1997. It is pointed out the vacancies were being filled up from both the lists concurrently as and when they arose. It is denied that any promise was made to the empanelled persons that they will be absorbed as it was made clear in the advertisement released on 1-8-1988 inviting applications for waitlisting the candidates. It is denied that the panels of such employees were prepared only for absorption and not for termination after absorbing some of the candidates therein. It is denied that some of the persons who were not eligible or some of the persons who are not in the panels were appointed and the petitioners were discriminated in such appointments. The vacancies if existed in any branch on account of death, promotion etc., were being filled up by promotion and transferring permanent part time non messengers from other branches and by senior ex temporary employees in the panel and there is no discrimination. It is denied that the benefit of re-employment as provided u/s 25H of the ID Act is available to such of the retrenched workman who had rendered one year continuous service within the meaning of Section 25B of the Act. It is denied that the services of such employees were terminated only to avoid the benefits of the provisions of the ID. Act. By virtue of para 12 of the settlement, it was agreed between the parties that all the disputes between the Federation and the individual employees in regard to the matter in question were deemed to have been settled by virtue of the agreement and it must be reported to the Industrial Tribunal, Labour Court, Conciliation Officer or other Court and that such disputes no longer subsist and deemed to have been withdrawn. Therefore, it is contended that the claim of the petitioners have been fulfilled in view of the terms of the settlement when once it was implemented. It is contended that in W.P.No. 12964/96 this Court has held that the petitioners are not entitled to any relief to enforce the settlement and they must only seek the relief according to law. It is denied that there has been discrimination in appointing the

juniors as against the seniors in the panels. It is further contended that the claim of the petitioners have been considered in terms of the settlements between the Federation and the Bank dated 17-11-1987, 16-7-1988, 27-10-1988, 9-1-1991 and 30-7-1996 and vacancies arising upto December, 1994 will be filled from 1989 panel on the basis of seniority and thereafter the panel automatically gets lapsed and therefore the remaining candidates in the panel had no claim whatsoever for being considered for permanent appointment from the panel. Therefore, it is contended that on the expiry of 31-3-1997, the bank having implemented the settlements by virtue of its terms, the panels have lapsed and the petitioners have no claim to be absorbed by appointment in the regular vacancies. It is contended that since the settlements between the parties have come into existence as per the provisions of the ID Act, they are binding on them and therefore, the petitioners cannot seek any right or relief against the stipulations of the settlements and the reliefs claimed by them is opposed to the same and the Writ Petitions are not maintainable. It is pointed out that in each zone and branches, vacancies were identified for the purpose of filling up from the panels and accordingly it has been complied with. As to how the panels should be exhausted have been stipulated in the settlements as to the vacancies arising during different years upto 31-3-1997. It is pointed out that the Bank is absorbing the empanelled workers in the permanent vacancies subject to the guiddines issued by the Reserve Bank of India regarding the intake staff and there is no deviation from the terms of the settlement It is contended that there was no assurance to the petitioners that they would be either regularised or allotted the work temprorarily on similar terms after the expiry of 31-3-1997 and there was automatic termination after the panels lapsed and therefore there is no question of informing them orally or otherwise and thus the impugned directions were issued to the officers of the Bank not to continue them or appoint anybody afresh. It is pointed out that the bank or its officers have not acted in violation of the instructions or the directions issued by the Government of India as alleged by the petitioners, and a working paper was issued in pursuance of such a direction and also the settlements and they have been implemented accordingly. It is denied that Articles 14, 16 and 21 of the Constitution of India have been violated by the respondents. It is specifically contended that by virtue of the terms of the settlement dated 30-7-1996 both the panels of temporary employees and daily wagers/casual labour have lapsed with effect from 31-3-1997. As a whole, the respondents have sought for dismissal of the writ petitions.

8. In the nature of the contentions raised by Sri S.Ramachandra Rao, the learned Senior Counsel for the Petitioners and other Counsd appearing in the other writ petitions and Sri Manohar and Sri Gopalakrishna Murthy, the learned Counsel appearing for the respondent/bank, the following points have been raised for consideration :-

1. Whether the petitioners are workmen within the meaning of Section 2(s) of the ID. Act and whether they have any remedy in law apart from the settlements ?

2. Whether debarring the empanelled members for having any other remedy in law by virtue of the settlements hits Section 23 of the Indian Contract Act and would be void to that extent ?

3. Whether the writ petitions are not maintainable in the present forum for the reliefs claimed therein ?

4(a) Whether the settlements between the parties raise an Industrial Dispute which should be adjudicated by the Industrial Tribunal ?

(b) If so, whether the reliefs claimed in the petitions can be granted ?

5(a) Whether this Court can interpret the settlements between the parties within the power, under Article 226 of the Constitution of India''?

(b) If not, whether the writ petitions are maintainable ?

6. What are the true implications of the settlements between the parties -

(a) Whether they were meant for absorbing the petitioners and others empanelled in the panels till the panels are exhausted?

(b) Whether they were to lapse by 31-3-1997 even when all the empanelled persons are not absorbed ?

(c) Whether the services of the petitioners and similar workers empanelled could be discontinued after 31-3-1997 even if it was not possible to absorb all the empanelled workers by 31-3-1997 ?

(d) Whether the implications of the orders of this Court in WP.No. 13082/95 dated 5-7-1996 was to absorb all the empanelled workers including the petitioners on or before 31-3-1997 ?

(e) Whether all the terms of the settlement are binding on the parties to the settlement including the petitioners and other empanelled workers.

7. If the respondent/management has implemented the settlements according to the terms therein and as per the directions of this Court in W.P. No. 13082/95, whether they have furnished all the necessary particulars in this regard -

(a) total number of empanelled workers under the settlements,

(b) number of vacancies arising each year from the date of first settlement till 31-3-1997,

(c) how many empanelled workers were absorbed each year till 31-3-1997,

(d) methods adopted in absorbing,

(e) Whether the petitioners reached the seniority for absorption by 31 -3-1997,

(f) how many vacancies were left unfilled by 31-3-1997,

(g) how many vacancies will arise each year after 31-3-1997 till empanelled workers are absorbed,

h) if the panels in force upto 31-3-1997 could not be exhausted by absorption of all the workers therein, whether the respondent/bank is bound to bring about a settlement with the Federation and the petitioners from 1.4.1997 for the purpose of their absorption during subsequent years.

8(a) Whether the manner in which the respondent has implemented or interpreted the settlements amounts to unfair labour practice even assuming that the panels can be lapsed or allowed to be lapsed,

(b) If so, whether such a conduct of the respondent should bind the petitioners ?

(c) Whether the implications of the settlements between the parties as understood by the Federation and the respondent would bind the petitioners, both from their own rights in Labour Law and Industrial Law and the provisions of the Contract Act ?

(d) If so, whether such stipulations affecting the interest and rights of the petitioners should be read down to preserve and enforce their rights ?

9. Whether the panels could be lapsed in accordance with law apart from the terms of the settlement particularly in view of Clause 12 of the first settlement ?

10. Even assuming that the settlements could be technically interpreted as contended by the Bank, whether it amounts to irreparable damage and extreme injustice to the petitioners and similar empanelled workers to invoke the extraordinary powers of the High Court under Article 226 of the Constitution of India to render absolute justice by granting the appropriate remedies in accordance with law and equity ?

9. The unquestioned status of the petitioners as the workmen of the Bank needs no probe. That they were the workmen within the meaning of Section 2(s), that the Bank is the employer u/s 2(g) and the settlements in question are the settlements within the meaning of Section 2(p) of the Act are the core and the sprouting result. In fact the settlements dated 17-11-1981, 16-7-1988, 27-10-1988, 9-1-1991 and 30-7-1996 are styled as settlements u/s 2(p) and 18(1) read with Rule 58 of the Act and the Rules. Such settlements are the results of certain disputes raised by the Federation with the respondent bank. While issuing the proceedings, No.F.3/3/104/87-IR dated 16-8-1990 to the Chief Executives of all the public sector banks, which include the respondent bank, modalities were laid down in regard to resolving the problem of existing temporary employees (which include the petitioners) which has been the part of the proceeding. Actually such employees have been called as workmen employees classified into a) permanent employees, b) probationers, c) temporary employees and d) part time employees. The petitioners might fall under the category of temporary employees and part time employees. The definition of ''temporary employees'' as per Shastri ''s award is noted in the

approach paper as hereunder :

''temporary employee'' means an employee who has been appointed for a limited period for a work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature".

The modification of the definition in para 23.51 of the Desai ''s award is also noted as

''temporary employees will mean a workman who has been appointed for a limited period of work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes a workman other than permanent workman who is appointed in a temporary vacancy caused by the absence of a particular permanent workman"

It is also pointed out therein that following the definition of temporary employees in Desai''s award such employees are placed in the Bipartite settlement dated 19-10-1966. Referring to para 20.8 of Bipartite settlement, para 3 of the approach paper dealt with the question of appointment of temporary workmen subject to certain conditions viz, that such temporary appointment shall not exceed a period of 3 months during which time the bank shall make arrangement for filling up the vacancies permanently and after such a temporary workman is eventually selected for filling up the vacancies, the Penal of such temporary employment will be taken into account as part of his probation period and that temporary workman will be given preference for filling up permanent vacancies and if selected, they may have to undergo probation. The priorities of absorption or appointment of such categories of workmen has been spelt out therein. Therefore, in whatever manner such employees are called, no doubt is left in the understanding of the matter both by such employees and the bank and the Government of India they are the workman. There is also an indication in the settlement dated 17-11-1987 and also in the office note described as Annexure B attached to it that such industrial disputes as to appointment or absorption were pending before Industrial Tribunals and Labour Courts for adjudication and therefore it was agreed under the settlement in Clause 12 as follows :

"12. All the disputes raised by an affiliate of the Federation or an individual employee or anybody else in regard to the above matter will be deemed to have been settled by virtue of this Agreement, the parties to such disputes should report this agreement for being recorded by all authorities like an Industrial Tribunal, Labour Court Conciliation Officer or other Courts or any other Authority before whom disputes may be pending and all such disputes shall no longer subsist and be deemed to have been withdrawn."

Therefore, it was a full and final settlement after conciliation of the disputes between the employees like the petitioners and the bank of all the industrial disputes pending between them and before the Labour Courts and Industrial Tribunals. That is why it was also to be reported to the authorities or Courts to have the effect of withdrawal of all such proceedings and disputes. The legal effect of such settlement for the purpose of enforcement will be discussed at the appropriate stage. The stage suffices and supposes to say that the petitioners and such employees are treated as workman within the meaning of Section 2(s) of the Act. Therefore, the entitlement of the petitioners and similarly situated employees of the Bank to have the benefit of the provisions of the Act and other Labour Laws operating upon such employees as workman cannot be even doubted.

10. The subject matter of the settlement between the parties has been their appointment in the bank either by absorption or otherwise. In other words, if either the settlement or the terms are violated or could not be implemented for various reasons including the conduct of parties, such employees could really raise an industrial dispute and get it settled through appropriate authorities and the Courts as the case may be under Chapter III of the Act regarding which there cannot be any controversy. But what Mr Manohar, the learned Counsel for the respondent points out is that if the petitioners have got such a dispute, it must go before the appropriate authorities and not before this Court under Article 226 of the Constitution of India. Notwithstanding such a contention to be considered, the law and the fact remains that the remedies of the petitioners are still open under the provisions of the ID. Act in relation to any dispute arising out of such a settlement is the legal truth which we are to conclusively record. Clause 12 or any similar provision in the other settlements in question if intends to take away any such relief or remedy available to the petitioners or similar employees under the provisions of the Act, it would definitely defeat the provisions of the ID. Act and injure the rights of the parties by virtue of Section 23 of the Indian Contract Act and the consequence would be that such a stipulation or agreement to that extent would become void and can always be read down.

11. The Petitioners being the workmen of the respondent bank and their claim to be absorbed or regularly appointed by the bank not being done by virtue of the settlements, as already pointed out, can never be but an industrial dispute within the meaning of Section 2(k) of the Act as it is a dispute and difference between the employer and the workman and also between workman and workman and which is connected with the employment or non employment of such persons (because the petitioners themselves inter se raised the dispute as to their preferential claims for such appointment or absorption with the comparative seniority or the merit or the like as the case may be). Mr. Manohar, the learned Counsel for the respondent bank is also right in putting the settlement between the parties to come within the meaning of Section 2(p) of the Act. Since the petitioners have also raised the plea of unfair labour practice within the meaning of Section 2(r)(a) as specified in Schedule V

of the Act, that may also be an industrial dispute within the meaning of Section 2(k) of the Act. The settlements between the parties are sought to be interpreted and sought to be implemented and therefore that also govern the decision of an industrial dispute. Mr. S.Ramachandra Rao, the learned senior Counsel appearing for the petitioners and other Counsel have never controverted such a factual and legal position Such a dispute in any form existing or even apprehended definitely could be a subject of reference to the Board for settlement, to a Court for inquiry, to a Labour Court or Industrial Tribunal for adjudication. Such a dispute can also be referred for arbitration by the petitioners and the respondent/bank u/s 10(a) of the Act. The jurisdiction of the authorities, the Labour Court and the industrial Tribunal to adjudicate upon such disputes is beyond doubt under Chapter III and IV of the Act. Such authorities defined or constituted under Chapter II and Sections 4, 7(a) and (b) of the Act having jurisdiction to settle or adjudicate such dispute is also certain. The bar for the Civil Court u/s 9 of C.P.C., to deal or settle such disputes except on limited questions is also beyond reproach. With such a legal result, Sri Manohar and Sri Gopala Krishna Murthy, the learned Advocates have strived hard to put a bar on this Court to entertain such disputes, under Article 226 of the Constitution of India. Mr S. Ramachandra Rao, the learned senior Counsel for the petitioners has fervently pleaded and vociferously contended that in the first place the unfettered powers, of the High Court under Article 226 of the Constitution of India will not desist or deter it to enter into the task of examining the serious issues in the case, but also render the true and absolute justice to the petitioners who are the victims of the unfair method of interpreting and implementing the settlements in question by the respondent bank, ft is also his apprehension genuinely expressed that driving the petitioners to such forums for such disputes would be nothing less than pushing the hapless and helpless prey into the greedy and hungry mouth of the wild life. It is also his contention that when the rights of the parties have solidified into the settlements which are not implemented by the respondent bank, which is a State, this Court, the highest next to the, Apex Court in the country under the Constitution will do well to put an end to the finality of such disputes as a deserving case and not allow such disputes to crop up again and again concerning so many workers belonging to socially and economically weaker sections of the society who have toiled hard for a longtime for the benefit of the bank even at the cost of less payment, uncertainities and the unfair treatment to them as against the privileged regular employees. He further contends that neither in law nor in the Constitution nor in the precedents, there is any bar for this Court to deal with such a dispute and to extend appropriate remedies to the petitioners. Mr. Manohar, the learned Advocate has resounded and tried to blow off such contentions with his assertive repetitive, expressions that notwithstanding such a power conceded to the High Court under Article 226 of the Constitution of India, it will not deal with such questions to be settled by the, appropriate authorities and the Labour Court and the Tribunals as a rule of propriety and consistency and any deviation may open up unnecessary litigation before this Court, as according to him, it is a simple case of

dispute relating to interpretation of settlements and the implementation, which should be interfered and adjudicated upon by such authorities and the Courts and the Tribunals under the provisions of the Act.

12. Creditably, the learned Counsel on both the sides have presented certain precedents to fortify their contentions. But this Court will deal with the questions on their worth and depth. It is too late in the day to fetter the powers of the High Court under Article 226 of the Constitution to deal with any matter before it and exercise powers without fetters or embargoes to do justice, within the four corners of the Constitution and sometimes even beyond when it concerns the basic structure of the Constitution, His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, . By evolving the basic structure theory, the powers of the Court to evolve the method of dispensing justice sometimes beyond Constitution, was conceded. The best illustration is the latest pronouncement of the Supreme Court confirming the Full Bench decision of this Court ignoring the bar on Courts in relation to matters entertainable by the Administrative Tribunals (Part IV-A, Article 232A and 323B of the L. Chandra Kumar Vs. Union of India and others, . A Full Bench of this Court in Hon''ble Secretary and Correspondent, Badruka College of Commerce and Arts (Day), Hyderabad Vs. State of Andhra Pradesh and others, , declared the powers of the High Court under Article 226 of the Constitution as follows :

"Before parting with the case we are to reiterate and impress that Article 226 of the Constitution is a storehouse of justice, equity and good conscience which are made for exercising within the discretionary power of the Court vested in that Article to do full and complete justice, the whole justice and nothing but the justice and such a forebay of all the contents may consist of any law, any rule of law, and the rule of human law, and human justice and none can restrict such a power."

Therefore, in the settled law by the Apex Court and this Court to put a fetter on the powers of this Court by the respondent bank, may tantamount to flouting the law of the land and the rule of law. However, it is for the Court to decide whether a particular case warrant exercise of such a power depending upon its own facts and circumstances and none else.

13. Notwithstanding the repugnancy of certain portions of the settlement between the parties in view of Section 23 of the Indian Contract Act to the extent of their repugnancy, both the sides depended upon the same settlements in support of their respective contentions. They also do not for a moment controvert about the binding nature of the settlement/s on them. Rightly the settled law that a settlement u/s 18 of the Act is binding on the Parties and in particular on all the workers when once they are represented by a Union is declared by the Supreme Court in Ram Pukar Singh and Others Vs. Heavy Engineering Corporation and Others, and further more in Fabrial Gasosa v. Labour Commissioner and others, ATR 1997 SC 954 it was declared that no oral agreement can be pleaded to vary, modify or supersede a

written settlement defined within the meaning of Section 2(p) of the Act. The rule therein is also borrowed from Sections 91 and 92 of the Evidence Act that when once the terms of any contract, grant or settlement, as are required by law to be reduced to the form of a document have been proved as per the provisions of Section 91 of the Evidence Act, no evidence of any oral agreement or settlement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms. The rule equally applies both to the petitioriers as well as the respondent bank. Therefore, this is not a case wherein the parties have controverted about the binding nature of the settlement/s. What Mr. Manohar, the learned Counsel for the respondent bank points out is that with such binding settlements the petitioners having alternative remedy u/s 18(3)(d) and Section 36(a) of the Act, cannot seek a remedy, by means of a writ petition under Article 226 of the Constitution of India. This is also one of the grounds on which the maintainability of the writ petitions is questioned. Several precedents dealing with the question have been presented by the learned Counsel in support of such a contention. In Workmen of Buchingam and Carnatic Mills and others v. State of Tamil Nadu, 1984 Supp. SCC 622 the Hon''ble Supreme Court while considering the question whether reference u/s 36A of the Act for interpretation and enforcement of the settlement between the workman and the Management ought to be made to the Industrial Tribunal, held that a reference should be made to the Tribunal. No law was laid down therein about any mandatory nature of reference of such a dispute to the Tribunal. In Biecco Lawrit Sramik Karmachari Union and others v. Biecco Lawrie Limited, 1988 LIC 1448, the High Court of Calcutta took a similar view in the context of holding that when the question of interpretation of settlement is involved, it was not for the High Court to see whether it was fit or unjustified and the parties can have recourse to either Section 10 or Section 36A of the Act and that a Writ was not maintainable. Similarly, the High Court of Punjab and Haryana in Rakesh Chander v. Union of India, 1992(1) LABIC 1161 was of the view that the settlement in conciliation proceedings u/s 18(3)(d) being binding on the parties, the remedy lies u/s 36A of the Act and not by way of a Writ Petition, that being an alternative remedy. In Herbertsons Ltd v. Workmen of Herbertsons Ltd, AIR 1977 SC 322, the issue whether the settlement was just, fair and binding on the workers, was sent for the decision of the Tribunal as it was not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. In none of the pronouncements, any law was laid that the High Court or the Supreme Court will never deal with such a settlement to render justice. They were only concerned that certain disputes of simple nature require interpretation of settlement and enforcement etc., which could have been adjudicated by the Tribunal by means of alternative remedy and not by the High Court or the Supreme Court and therefore they were even referred to the Tribunal for the purpose. The precedents are also distinguishable on facts between them and this case as strictly speaking no interpretation of the settlement/s is involved nor there is any dispute in regard to

them between the parties. It is only the failure on the part of the respondent bank in implementing or flouting or discriminating in implementing or whether at all implemented etc., this Court is called upon to probe into such controversies. Only to know the implications of the settlement/s this Court is trying to understand the same to resolve the controversies about the realities as to the grievance of the petitioners and the failure of statutory duties if any on the part of the respondent as stated which is being examined. Therefore, even on the touchstone of the task of interpreting the settlement or as an alternative remedy to go before the Tribunal by the petitioners, this case does not present any difficulty to render true and full justice to the parties. A simple reading of the settlement/s including Clause 12 of the settlement dated 17-11-1987 with the office note referred to supra would clearly show that all the disputes between the parties in regard to the absorption or regularisation of the service of the petitioners and such workmen have become conclusive. As already pointed out, only the disputes pending between the Federation of the employees and the Bank and the disputes pending before the Tribunals, Labour Courts and Conciliation Officers etc., were deemed to have been withdrawn or to be withdrawn and settlement to be reported to the concerned authorities and the courts as the case may be. Mr. S. Ramachandra Rao, the learned Counsel for the petitioners, is totally right in contending that there is nothing left to be settled between the parties as to their respective rights and liabilities or duties as the case may be except to know whether they have been implemented or enforced. Therefore, it has become a question of fact whether the settlement has been implemented or flouted by the respondent bank in its true and real implications. Rightly presented in the principle, this is the second or third round of litigation of the nature wherein such a question is being considered. In fact, in WP.No.4194/97 wherein Temporary Employees Union of the bank rep resenting the employees like the petitioners, depending upon the same settlements, complained of non implementation and sought for absorption of such employees in the bank service on permanent basis before the date fixed for carrying out the term of the settlement. The Court held that though the members of the Union had been empanelled in the lists, they were not regularised and the time was going to run out in the near future and that the respondent bank and its officers cannot escape from the liability of enforcing the settlement which has been reached and therefore directed that the bank and the officers shall implement the settlement dated 17-11-1987 as amended from time to time before the expiry of 31-3-1997. Admittedly, such a decision has become final and conclusive between the parties and therefore, as rightly pointed out by Sri S.Ramachandra Rao, the learned Counsel for the petitioners, the simple question involved in these writ petitions in addition to other relevant questions, is whether such a settlement has been implemented according to its terms in addition to the directions of this Hon''ble Court in W.P.No.4194/97. However, it is pointed out by Sri Gopalakrishnamurthy, the learned Counsel for the respondent bank that this Court in W.P.No. 12964/96 had failed to give any remedy to the similar petitioners therein. Such a decision has become ineffective in view of the decision of this Court

in WP.No.4194/97, as it was filed by the Union of such workers and secondly it is not pleaded or proved that the petitioners in these batch of writ petitions were parties in the said writ proceedings. In fact, if the respondent bank, had not implemented the settlement as directed in W.P.No.4194/97, it was open for the petitioners therein to file a contempt petition. However, in the nature of the stand taken by the bank it is very dear that there is a definite plea of implementing the settlement as per the terms and directions of this Court in the writ proceedings supra within the deadline i.e., 31-3-1997. Therefore, the question has become far more simpler to examine whether the settlements are implemented or not and for that purpose we are trying to know as to what are the terms and conditions of the settlements to be implemented. That involves no interpretation much less enforcement. No Tribunal or Court has to determine the legality or propriety of the settlements in question muchless endeavour to implement them and therefore no such issue arises where there is a settlement and where it is capable of enforcement. In the result none of the contentions raised on behalf of the bank as above as to the maintainability of the writ petitions has any force. To conclude there is neither the question of interpretation of any settlement nor the question of alternative remedy for the petitioners particularly when the issue has been concluded in the order of this Court in W.P.No.4194/97 and the maintainability of the writ petitions on such grounds cannot arise.

14. Another anchor of the challenge to the maintainability of the writ petitions is the right of the petitioners to be absorbed regularly or appointed is no fundamental right which can be pleaded, established or accepted in a writ petition under Article 226 of the Constitution. It is true that right to employment is not a fundamental right. In State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, it was held that empanelling of candidates selected does not acquire indefeasible right to be appointed and the empandment would be only a condition of eligibility for appointment but does not create vested right of appointment. In A.V. Nachane and Others Vs. Union of India (UOI) and Another, it was held that a claim based on settlement is not a fundamental right and cannot be enforced under Article 226 of the Constitution. These precedents, bear no basis to consider the real issues in these batch of cases. The petitioners are not trying to enforce any right of appointment as a fundamental right on the ground of empanelment but they are complaining of the failure of the statutory duty of the respondent bank as a State in not implementing the concluded terms of the settlement inasmuch as the directions of this Court in W.P.No.4194/97 to implement it within a particular date. Therefore, fundamentally such precedents or principles are distinguishable on the facts and the scope of these writ petitions. On the other hand, the precedents are plenty that the Courts have interfered in such matters where there is an established right and the violation and the failure to exercise the statutory duty, by a State, and where there is discrimination based on certain matters among the persons equally placed and equally to be appointed or

absorbed. (Air India Statutory Authority v. United Labour Union and others 1997 (2) Supreme 165, D.K. Yadav v. J.M.A. Industries Limited 1993 (4) SCC 126 : 1993 (4) SLR 126, Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others, and Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, , which will be dealt within detail at the appropriate stage. But it would be appropriate to remind the legal thinking and the thinkers that the fundamental rights envisaged in Chapter III of the Constitution are not exhaustive and there may be many fundamental rights sprouting from the basic structure of the Constitution which are not defined in the Constitution so as to decipher and to ensure the same. In Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., the Supreme Court declared the law as a land mark and as a human right that it is not necessary that the right should be expressly stated as a fundamental right in Chapter III and new rights can be read into and inferred from the rights stated in Chapter III. It is also possible in the context of reading the fundamental rights and Directive Principles of State Policy as supplementary and complimentary to each other any new fundamental right as a basic structure of the Constitution can be made out and ensured. It was pointed out therein that any such interpretation must be done having due regard to the preamble and the Directive Principles of State Policy. There are some fundamental rights which flow from right to life within the meaning of Article 21 of the Constitution. We can still examine whether the right to absorb in the regular vacancy by virtue of the facts and circumstances of the case attracts Article 21 of the Constitution as in the present case, and could be a fundamental right as the basic structure of the Constitution. Or otherwise, the true intent of the Constitutional guarantees, particularly with reference to Article 21 in which night to live is implicit, would be a farce. Therefore, if the petitioners are able to make out such a fundamental right within Chapter III or in the basic structure of the Constitution having due regard to the facts and circumstances of this case, this Court may not have any reason to withhold to exercise its powers under Article 226 of the Constitution.

15. The slogan of alternative remedy as a bar for the relief under Article 226 of the Constitution depends upon the facts and circumstances of each case. As has been disclosed from some of the precedents, for a minor remedy or a simple remedy of an individual or a group of persons, any other forum for remedy should be approached and obviously the High Court will not interfere as a rule of propriety and wisdom and not as a rule of prohibition. The platter of the axil of the contention of the alternative remedies available and binding as a bar for a Writ Petition under Article 226 has been rejected by a Division Bench of this Court in Dr. Sr. Y. Philomena, Principal and Correspondent, St. Ann''s College for Women Vs. Government of A.P., Education and Others, confirmed by the Hon''ble Supreme Court. Even where number of litigations between the parties to the petition were pending in various Courts including criminal proceedings, this Court interfered and extended the remedy to the petitioner with the following positive statement of law:

"The mere, existence of an alternative remedy is not an absolute bar to the relief under Article 226 of the Constitution of India and it does not take away the jurisdiction of the Court to grant the relief in exceptional circumstances. The general rule that the adequate alternative efficacious remedy is sufficient to withhold the discretion of the Court under Article 226 of the Constitution of India, seeks an exception where a fundamental right has been infringed where some mandatory provision of the Constitution has been violated, where the alternative remedy is dilatory or difficult to give quick relief, where the authority against whom complaint is made has violated the rules of natural justice, where the order is a nullity for some reason, where there is some defect going, to the root of the jurisdiction or authority, where the alternative remedy is ineffective or entails such delay that the applicant would be irreparably prejudiced or subjected to lengthy proceedings or unnecessary harassment and where the other or action of the authority is tainted with malice or mala fides."

In fact, it is pointed out therein that all the other remedies before other Courts including Civil Courts can never be always treated as alternative remedies although they may be additional remedies as laid down in S. V. Glass Works v. Union of India AIR 1994 SC 362. Therefore, this Court reiterates the declaration of law that any remedy under the provisions of the I.D. Act for the persons like the petitioners will be only an additional remedy, and need not always be an alternative remedy.

16. Notwithstanding certain precedents feeling that the interpretation of settlement and enforcement was to be referred to the Labour Court or Industnal Tribunal having due regard to the facts and circumstances of the cases before the Court none of them placed a bar on the Court under Article 226 of the Constitution even to interpret a settlement if an occasion warranted. Any incidental power to be exercised by the High Court therein including the discretion should be taken as a part of the exercise of the whole power to wreak justice in a given case. There cannot be delimitation of the part of the power in the exercise of the whole power. The unfettered power under the Article 226 in the High Court should be always taken to have been exercised as a whole of which any part of it is exercised to achieve the whole. In other words, the exercise of any or little power therein tantamounts to exercise of the whole power.

17. Therefore, now to conclude on the question of maintainability of these writ petitions, none of the grounds raised by the bank, can have any force. However, this Court will decide after examining the all and real controversies between the parties whether such a power is going to be exercised in this case to achieve absolute Justice.

18. As already pointed out, apparently there are five settlements commencing with 17-11-1987 ending with memo of understanding dated 27-2-1997. To read them together and from the admitted facts already noted, the true purport of them can be made out, in whatever name they were styled, the first settlement dated

17-11-1987 is certain that the bank had employed such temporary employees in the separate cadres in its brandies out of exigencies of circumstances and on account of urgent needs. The material produced by the petitioners and the bank show that they had served for 18 days extending to 18 years. However, some of them were working for longer periods and some of them were working for shorter periods, but still intermittently without allowing them to work continuously for the required statutory period to gain the right of employment. They belong to three categories, having due regard to their duration of service, with the bank after 1-7-1975, viz., Category A, those who have completed 240 days temporary service in 12 months or less after 1-7-1975, Category B, those who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975 and Category C those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975. Some of them were permanent part time employees and part time full time employees. Some of the temporary employees after termination of their initial appointment had acquired higher qualifications. The Federation had been pressing the bank to give a chance for absorption/permanent appointment to such employees in the bank. Negotiations were continued between the bank and the Federation to arrive at an agreement or a decision between them in categoric terms as follows :
"whereas the bank and the Federation have discussed the issue in all its aspects and in alt its details and have considered that it will be just, fair and reasonable having regard to various circumstances of the case and the interest of the concerned temporary employees settlement should be made as hereinafter appearing.... (emphasis applied)

The simple inference is that the question of absorption or permanent appointment to the petitioners and similar employees in the bank was dealt with in detail and in the interest of such employees it was found just fair and reasonable to enter into a settlement. The bank was really convinced that it was just fair and reasonable to settle their problems or disputes by means of the settlement.

19. Such employees would have been in banks temporary service any time during 1-7-1975 to 31-12-1987 or any other date determined by the bank and within 18-26 years of age on the date of initial temporary appointment besides fulfilling other prescribed eligibility criteria found in Para 4 regarding the age and the qualification etc., and it was also made obligatory that in future for the purpose of any type of recruitment appointment either on temporary or permanent capacity in the subordinate cadre, only those candidates who fulfil the eligibility criteria of educational qualification etc., will be considered. That is indicative of the stopping of further recruitment of such employees or any other employee except fulfilling such criteria and qualification criteria. Clause 6 also made it categoric that only those

candidates who fulfil the eligibility criteria and are found medically fit as per the banks guidelines will be appointed in permanent service- The other terms of appointment including reservation for SCs, STs and ex-servicemen were also regulated as per Clauses 8 and 9 of the settlement. The temporary employees who were not entitled to get such a chance for permanent has been regulated in Clauses 11(i) to (vi). Clause 12 of the settlement, as already noted supra, says that all the disputes either raised or pending between the employees and the bank shall no longer subsist and deemed to have been withdrawn and to be reported to the Industrial Tribunal, Labour Court, Conciliation Officer or other Courts, to further indicate that the settlement is final and conclusive. Clause 10 of the settlement in unequivocal terms reads :

"10. Henceforth, there will be no temporary appointments in the subordinate cadre. However, in the case of sweepers, where scavengers cannot be used as replacements or watch and ward staff temporary appointment could be resorted to on restrictive basis from amongst empanelled candidates as per existing guidelines of the bank."

This is only to mean that only the persons who were in such temporary service like the petitioners in the subordinate cadre were to be given a chance for absorption or appointment in the regular posts as per the terms of the settlement and no temporary appointments in the nature as existed on the date of the settlement was to be made. Clause 10 has a flood light of the declared right of the petitioners to be absorbed or appointed in the bank prohibiting any temporary appointments subsequent to the date of the settlement barring certain exceptions, even then to make such temporary appointments only from among the empanelled candidates as per the existing guidelines of the bank. Mr. S.Ramachandra Rao, the learned Counsel for the petitioners is totally right in contending that this means none else can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the petitioners and that should continue till they are absorbed. The note, Annexure B to the settlement refers to the circumstances under which the settlement was brought about setting out the policy to be followed in regard to the temporary appointments in future in the subordinate cadre and providing a chance (no further chance to be given) to the temporary employees in the subordinate cadre for permanent absorption in the bank''s service against existing vacancies or those likely to arise during the period 1988-91. The implication in these expressions is so dear that it was not only a final chance for permanent absorption of such employees but also could never be a precedent in future for similar situations.

20. Sri S.Ramchandra Rao, the learned Counsel for the Petitioners is right in pointing out from the settlement and the other subsequent circumstances that by adopting a specific method, the petitioners and similar employees were empanelled for being absorbed in the bank. An advertisement was given in the newspapers by means of a

notification calling for applications from such employees to which the petitioners and similar employees applied, they were selected by a Selection Committee by determining the suitability or unsuitability for permanent appointment in the bank, after an interview as per Clause 7, the repetition of which is inevitable and to repeat-

"7. Interviews will be conducted by Selection Committee to determine suitability unsuitability of temporary employees for permanent appointment in the bank. After completion of interviews, Interview Committee will finalise the panels for full time and part time appointments of suitable candidates for messengerial and non messengeriai posts.....

The illustrations are plenty in this regard including one of the petitioners. Mr 5. Anantha Reddy, who was already appointed as a temporary messenger thereafter in the order dated 1-9-1994, however for a particular period The other instances of one Ch. Suryanarayana, B. Venkateswarlu and P.Hussain Saheb who were empanelled as such in the order dateft 3-9-94, with a direction that their services be utilised on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category A to C. From Clause 3 of the settlement, it is clear that already one list was pending regarding the persons with 90 days temporary service as on 31-10-1984 who were already interviewed and waitlisted and therefore it was stipulated that vacancies will first be filled up from such unused panels for such temporary employees and only thereafter remaining vacancies, if any, will be thrown open for the Categories A to C temporary employees. Therefore, it can be understood that by the date of the settlement dated 17-11-1987, already panels of temporary employees as indicated were in existence and similar panels for three categories were prepared in accordance, with the terms of the settlement. There is no dispute that all the petitioners are in such panels having had all the eligibility and the qualification selected after an interview before empanelling. In the note appended to the settlement also the use of existing waiting lists are also indicated. It is mentioned at Col. VI of the note that such panels as on 31-10-1984 had not been exhausted and such list will continue to be valid for the year 1988 and initially vacancies arising in 1988 should be filled from such a panel.

21. Admittedly, the first settlement dated 17-11-1987 was not implemented before the valid date. There was a subsequent agreement dated 16-10-1988, 27-10-1988 followed by another agreement dated 26-4-1991. The third settlement refers to the earlier settlements supra mentioning that the settlement dated 17-11-1987 is modified by the subsequent agreement dated 16-7-1988 and it was intended to give a chance for being considered for permanent employment of all eligible temporary employees. Such exercise had already been completed in most of the circles and panels had been finalised. (This is the opening and the preamble portion of the

settlement dated 26-4-1991). This supports the plea of the petitioners that the settlements were intended to permanently appoint them as long as they were eligible temporary employees regarding which the exercise had been completed in most of the circles and panels had been finalised. Tins also throws light that in most of the circles, all the temporary employees in the panels had been absorbed The third settlement had enlarged the existing panels by giving chance to those daily wagers who are not eligible for such a chance as per the first settlement dated 17-11-1987 and therefore such an agreement was modified and one more settlement was brought about on 27-10-1988 to include daily wagers also to consider their absorption against the vacancies likely to arise in the years 1995-96. This also refers to another settlement dated 9-1-1991 between the Federation and the Bank further referring to previous settlements. The reasons for enlarging the scope of the existing panels and the intention to absorb such persons in such panels has been disclosed in the stipulation B(ii) of the settlement dated 26-4-1991 which reads :

(ii) Keeping in view (a) enormity of the problem and (b) extension of currency period of panels of temporary employees upto 1984, eligible temporary employees, who have not been empanelled or who could not appear in the interviews held in pursuance of the agreement of the 17th November, 1987 and have been pursuing their cases thereafter, will be given another chance to appear for interview, so that the existing panels can be enlarged by way of supplementary panels; the latter panels will be used only after the earlier panels of temporary employees has been exhausted (emphasis applied)

(iii) original panels and supplementary panels of temporary employees will be used for filling vacancies in subordinate cadre arising upto 1984; panels of daily wagers will be used for filling vacancies arising in 1995 and 1996"

This is to mean that there were panels including the persons like the petitioners by the date of the settlement dated 26-4-1991 and supplementary panels were prepared with a condition that the latter panels will be used only after the earlier panels were exhausted and original panels and the supplementary panels will be used for filling up vacancies in subordinate cadre arising upto 1994 and panels of daily wagers for filling up the vacancies arising in 1995 and 1996. The purpose of referring to this is to emphasise that all the existing panels prepared were kept in force to be used for absorbing such temporary employees, however, with priorities. Therefore, the contention of some of the petitioners that no person from the subsequent panels should be considered for absorption till the earlier panels in which they are empanelled are exhausted by absorption is well sounded with all the merit.

22. Mr. Manohar, the learned Counsel for the respondent bank has tried to project a serious defence that the life of the panels were restricted in the settlements to come to an end on 31-3-1997. Mr. S. Ramachandra Rao, the learned Counsel for the

petitioners with equal vehemence has tried to repel it in view of the real implications of the settlements and the totality of the circumstances. It is true that as already pointed out, the first settlement in Clause 7 used the expressions that the panels will be valid upto December, 1991. The currency of the waiting list in Col. IX of the note annexed to the settlement also mentions that the waiting lists would be valid upto 31-12-1991. In the draft advertisement also in the selection procedure the same thing was repeated. But in the subsequent settlement dated 16-7-1988, 27-10-1988, 26-4-1991 the validity of the panels were extended for absorbing the persons not only in the existing panels but also in the supplementary panels prepared enlarging the earlier panels, with the categoric expression that the vacancies arising in 1995 and 1996 will be considered for absorption. It is also admitted that the validity of such panels were extended till 31-3-1997. From a reading of all the relevant papers; as to settlements and the note appended etc., it is certain that all the panels continued atleast till 31-3-1997. There is not even a scrap of paper either as an agreement or from the circumstance that the validity of the existing panels were to come to an end by 31-3-1997 except the impugned instructions dated 25-3-1997 that the DGM, Zonal Office, had advised the bank that the panels of such temporary employees of 1989 and casual labour and daily wagers of 1992 will lapse by 31-3-1997 and not to make any temporary appointments in the messenger capacity from 1-4-1997. Therefore, it appears that the petitioners or any such employee who were working as on 31-3-1997 were orally asked not to come to duty from 1-4-1997. In Para 3 of the proceedings dated 27-3-1997 it is stated that the panels of temporary employees and daily wagers/casual labour maintained by Zonal Offices stand lapsed by 31-3-1997 and it reads :

"3. The panels of temporary employees and daily wagers/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f. 1-4-1997. Consequent on absorption of temporary employees in permanent case, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail."

The impugned proceedings lack propriety, legality or the purpose. "There is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so called DGM is not stated to be the competent authority. A bipartite settlement is an agreement enforceable in law and binds the parties as already pointed out. The parties are to act in terms of the settlement and not beyond that. Any party acting beyond the terms of the settlement cannot bind the other party. Furthermore, there is no indication in any of the settlements that any panel will lapse after a particular date. The expression "validity" used in the first settlement or the subsequent settlements has been misunderstood by the authorities of the bank if not misused,

which will also be examined ultimately. When the first settlement fixed the validity of the panels till 31-12-1991, never used the word that it is going to be lapsed on 1-1-1992. Similarly when the validity was extended in the subsequent settlements to be operated atleast till 31-3-1997, sometimes even without the extension and in the absence of any expression that the panels would lapse after 31-3-1997, it is strange as to how the so called competent authority or the authorities of the bank thought or decided to lapse them from 1-4-1997. In feet for making such panels valid upto 31-3-1997, there is no specific settlement as the last settlement between the parties is dated 26-4-91. Thereafter, no settlement was actually brought about between the Federation and the Bank either to validate the panels beyond a particular date or to lapse it. But the parties to the settlements kept the panels pending or operative till the impugned proceedings were issued by the DGM and as indicated already many branches have completed the process of absorption even while the supplementary panels were prepared. When the settlements stipulated as to how the panels were to be prepared and as to how the empanelled candidates are going to be absorbed on priority basis, nothing was indicated that notwithstanding the absorption of some of the empanelled persons the panels would lapse. Therefore, the expression in the impugned proceedings that the panels were lapsed was totally misconceived,

23. There are so many circumstances both on facts and in law to hold that such panels were never intended to be lapsed and were agreed totally to be kept alive till all the persons empanelled were absorbed as a whole time or one time measure. In that context the expression in the first settlement or elsewhere about the validity of the panels should be understood. The question would be whether validity meant the period of the operation till implemented. When all the pending disputes or anticipated disputes between the Federation and the Bank in relation to such employees came to an end including the disputes before the Tribunals, Labour Courts, Courts etc., the validity of the panels meant the validation till implemented. In law there is no difference between an award u/s 2(b) and the settlement u/s 2(p) of the Act for the purpose of validation or implementation. The Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , declared the law on this aspect in Para 26 therein as follows

"It will be apparent that the ID Act substantially equates an award with a settlement from the point of view of their legal force. No distinction in regard to the nature and period of their effect can be discerned, especially when we read Sections 19(2) and(6).....

The law declared therein is also certain that settlements were operative till replaced by fresh settlements. In other words, unless the earlier settlements are altered by fresh settlements, award or valid legislation, the same would continue to be in force (Para 49,59,75 and 83 of the precedent). Therefore, particularly in the present case, unless the settlements themselves provided for lapsing such panels after a particular date or period, the validity should be presumed to be continuous or

consistent till implemented. To repeat again, when the whole dispute between the parties ended up with the settlements to solve all the problems pending or anticipated, the panels will be valid till exhausted or implemented. Even the intention of the parties, as already indicated, from their very conduct also, in addition to subsequent settlements, show that the validity of the panels was extended in fact by express conduct and with necessary implication till 31-3-1997 without any blot or block, barring the so called decision of the so called competent authority under the impugned proceedings.

24. Mr. Manohar, the learned Counsel for the respondent made a very vain attempt to contend that the validity of the settlements cannot be extended beyond 31-3-1997 without further settlements between the Federation and the Bank regarding which this Court is impressed to the least. From the facts, it was a total myth that the settlements were in operation only for a particular period and lapsed automatically thereafter and in particular lapsed immediately after 31-3-1997.

25. There is one more very strong circumstance that the settlements were intended to be implemented wholly at any cost and for any length of time and could never be lapsed. Although the first settlement is silent as to the number of such employees to be empanelled to be absorbed within a particular period of validity, in the note, Annexure B elaborating the meaning of the stipulation of the settlement and the settlement dated 26-4-1991, there is a dear indication in regard to the same. As already pointed out the absorption of such empanelled persons were to be made in the vacancies which arose each year atleast till 31-3-1997. At any rate, all the persons in the panels were considered to be absorbed during that period. Mr. Manobar, the learned Counsel for the Bank has envisaged as per the stand of the bank that such persons in the panels would be considered for absorption only during that period and any person not being absorbed within the particular period will lose the chance of being absorbed after the expiry of such period. Not even a scrap of paper is produced in this regard by the bank. As already pointed out barring the impugned proceedings dated 27-3-1997 that a competent authority decided not to extend the period of the panel and allowed it to lapse, there is not even a reference of any supporting document like the resolution of the Board or of the highest hierarchy of the bank or the Government that the process of absorption of such employees would to be made only within such period and if vacancies were not sufficient to absorb all such candidates in the panels within the period the persons not getting a chance being absorbed for want of vacancy or otherwise will lose the chance once and for all. Such a theory appears to be totally fallacious in view of the dear method of preparing the waiting lists depending upon the number of vacancies and the candidates during a particular period explained in Annexure B appended to the first settlement as follows :

"The waiting lists should ordinarily consist of the same number of candidates as are the number of projected vacancies for the period 1988-1991 (if existing panels/

waiting lists have not been exhausted suitable adjustment should be made therefor). In addition, the selection committee may include names of suitable candidates upto 10% of the number of aforesaid vacancies in the waiting lists with a view to taking care of the replacements to be provided against candidates who may not join bank''s service for any reason."

In other words, the number of candidates to be empanelled would be directly proportionate to the number of vacancies arising during the particular period or beyond for absorption in addition to 10% more to take care of the replacements to be provided against the candidates who may not join the bank''s service for any reason. The wisdom behind such a method need not be emphasised,. Among some of the candidates empanelled although given a chance to be absorbed, may not be in a position to join for various reasons including volition, becoming ineligible for any reason subsequently, death, getting employment elsewhere etc., including rejection due to the fraud practised by suppression of facts etc., in entering the panel. Therefore, if the persons in the empanelled lists are absorbed during a particular period or the year depending upon the number of vacancies arising therein, the balance of unabsorbed candidates cannot be more than 10% of the total empanelled candidates, as for illustration, if the lists were intended to be lapsed by 31-3-1997 for any reason, for non implementation, the balance of unabsorbed candidates cannot be at any rate more than 10%, Therefore, unless the bank is able to demonstrate that the balance of unabsorbed candidates as on 31-3-1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. Ultimately it can be shown that out of 6932 empanelled candidates, 3178 were not absorbed and it should not have been more than 693 (10% of 6932). If for any reason, the settlement was not implemented within a particular period as contended would never fit into such an expression as above as the purpose of the settlement really intended that the empanelled candidates should in such a number as are the vacancies available during a particular period for absorption. There is one more circumstance which adds probability to this interpretation. Although an empanelled list was pending for absorption of such candidates on the date of the first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the settlement which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the fast settlement dated 26-4-1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the candidates in the panels which were in existence as on 26-4-1991 so that supplementary panels can be taken up for absorption by subsequent priority. Or otherwise, there was no meaning for creating supplementary panels of such employees if either the earlier panels were not intended to be fully exhausted or that there were no vacancies to absorb such

candidates or that the candidates in the existing panels were incapable of being absorbed. The impugned proceedings fail to give any explanation as to these implications of absorption or non absorption of the persons in the existing panels and supplementary panels by31-3-1997. Read in this context Mr. S.Ramachandra Rao, the learned Counsel for the Petitioners is totally right in contending that all the panels were intended to be exhausted by implementing the settlements without reference to the period of the panels which were only stated for a particular purpose to see that all the empanelled candidates were absorbed.

26. The valediction of all the above circumstances is to be found in the further strongest circumstances to be seen in the instructions issued by the Central Government in the proceedings dated 16-8-1990. An approach paper which is mentioned in these proceedings is also annexed to the instructions. Such instructions are in the nature of directions and issued by the Ministry of Finance, Department of Economic Affairs (Banking Division) of Government of India. Mr. Manohar, the learned Counsel for the Bank was repeatedly questioned whether such instructions or directions were binding on the bank regarding which no negative answer could begot. Even in the counter affidavits filed by the officers of the bank more than once, no such deviation from such directions is mentioned to be meant or attempted. Significantly enough even in the impugned proceedings, there was no reference to such instructions of the Government either for interpretation or for any other clarification or further directions of the Government for interpretation within the contention of the Bank as above. The temptation to repeat the whole instructions supra cannot be resisted to serve very useful guidance and a glow of truth situation to snub the carnasitry, equivocation, sophistracy or spuriousness of the theories of the bank and to repeat -

"The problem of temporary employees in the Public Sector Banks has been engaging the attention of the Government for quite sometime. After due consideration of all relevant facts and in consultation with the Ministry of Labour an approach paper has been worked out to deal with the problem. A copy of the approach paper is enclosed for information and necessary action. I am accordingly directed to say that all the Public Sector Banks may follow the provisions laid down in the approach paper both in the matter of recruitment as well as absorptions of temporary employees.

Attention of banks is specifically invited to Para 6(1) which lays down that the recruitment of all temporary employees in the clerical/subordinate cadres shall be stopped forthwith. For the staff which is presently on the rolls of the banks, their services will be regularised in terms of the Approach Paper. For the current recruitments, bank may utilise their existing panel of temporary employees and in case these employees were not taken from the Employment Exchanges, the banks would be required to approach the DGET directly seeking exemptions. Until the problem of existing temporary employees is fully resolved, no bank will be

permitted to make any temporary appointments. For future requirements, banks would have to approach the Government and would have to go by such modalities as would be laid down by the Government."

Uncontrovertedly, these directions were in regard to the workers/employees like the petitioners. The problem of existing temporary employees mentioned therein should necessarily refer to them, ft also meant that the problem of existing temporary employees has to be fully resolved and till then Banks will not be permitted to take up any temporary appointments. As already pointed out, an approach paper has explained the meaning of ''temporary employee'' which is already found to include the employees like the petitioners. It has also explained the implications of non absorbing of such employees regarding which disputes were pending. Certain periods were fixed for absorbing such persons regarding which there were disputes. Item 4(d) of the approach paper clearly mentions that in all the cases which are pending adjudication before the Industrial Tribunals, Labour Courts, High Court and Supreme Court, an opportunity referred to above will be provided irrespective of the cut off date for settling the said matters once and for all. Then, where is the question of any validated period for such absorptions whether it was the period mentioned in the first settlement or till 31-3-1997 as indicated in the impugned proceedings. While examining the effect of Section 25H of the I.D.Act, in item No.5 of the Approach Paper, it is indicated that the stand of the Ministry of Labour is that all cases of temporary employees irrespective of the minimum number of days worked are covered u/s 25H of the I.D.Act and they need to be referred to the Industrial Tribunal for adjudication and such cases were-on the increase. Furthermore, it was indicated that even where the temporary employees or workers who had put in less than 240 days'' service were discontinued before 1S-S-1994, a settlement can be avoided and an opportunity for re-employment can be provided subject to certain conditions even by the administrative action of the Management Item No. 6(c) of the Approach Paper unequivocally declared that the banks will provide one time opportunity to all the temporary employees by taking 1-1-1982 as the cut off date i.e-., all those who were engaged as temporary employees by the bank on or after 1-1-1982 may be considered for re-employment in terms of the scheme being discussed by the employees. Item No. 6(k) of the Approach Paper concluded as follows:-

"This will be one time exercise in full and final settlement of all the claims and disputes for the past period in respect of temporary workmen covered by the settlements and/or administrative exercise relating to their termination and other benefits under the provisions of the Industrial Law, if any. This fact will also be made dear in the advertisement proposed to be published under para 6(e) above."

Therefore all the banks were directed that recruitment of all temporary employees in the clerical/subordinate cadres shall be stopped forthwith. It was in pursuance of such directions, an advertisement was issued in the local newspapers as per the

settlements and based upon that panels were prepared after an interview and the eligibility in terms of the settlement. Two salient features of the instructions of the Government in the form of directions can be noted viz., that there must be one time and whole time settlement to consider the absorption of such temporary employees in the existing panels as a problem is pending and till then no bank will be permitted to make any temporary appointment and such absorptions to implement such settlements should be resorted even by administrative action of the Management. As already indicated in regard to such problem, the Central Government expected the banks to approach the Government for future requirements and would go by such modalities as would be laid down by the Government. The respondent/ bank has conveniently ignored such directions or omitted to mention any other direction if issued nor referred to the same in the impugned proceedings that the bank had approached the Government for terminating the panels by 31-3-1997 and thereby directly and indirectly terminated all such temporary employees including the petitioners with the decision of the so called competent authority to lapse the panels. Spread sheet III shows the number of persons empanelled, absorbed and not absorbed as per the materials produced by the bank. It discloses that in all 6001 persons were empanelled, 3447 out of them were absorbed and the balance of 2554 are yet to be absorbed. It is also clear that while 1989 panels are yet to be exhausted, subsequent panels have been taken up for absorption and some of the panels are yet to be taken up for absorption and in one of the panels in C category more persons were absorbed than the number of persons in the panel without any explanation. The lists of persons empanelled and absorbed also do not indicate either the seniority to be followed for absorption or that there was any reason for not following the seniority. Apparently and admittedly, the petitioners who are in the panels were not absorbed on 31-3-1997. The only ground on which they are not absorbed is that the panels lapsed by 31-3-1997 by virtue of the impugned proceedings of the DGM which are found to be improper, illegal and inappropriate and without the authority of any law. Thus, the inference is that the settlements are not implemented either according to the stipulations or as per the directions of this Court in W.P.No. 4194/97 dated 5-3-1997.

27. Although nothing of the kind was brought out in the beginning when more than one counter affidavit was filed by Sri A. Suryanarayana Rao on behalf of the bank, at the fag end the so called memorandum of understanding dated 27-2-1997 was produced to show that the Federation, of which the petitioners are members, had agreed to lapse the panels by31-3-1997. This Court doubts the genuineness and the truth of such a memorandum of understanding, whether it was to the knowledge of the petitioners, whether it came out in the normal course of events or with manipulations. When the whole issue of absorption of such empanelled workers was to be solved by their absorption at any cost, from the totality of the circumstances indicated above, particularly in the background of the directions of the Central Government supra, it is highly improbable that either the petitioners

would have agreed for such a stipulation or that the Federation would have agreed for the same. It is highly improbable that when the settlements were intended only for absorption of such workers at any cost and any length of time as is indicated above, whether such persons who are going to be affected would really agree for lapsing the panels for having worked since a long time. Even assuming that there is any such memorandum of understanding or settlement it may be read in the light of the other settlements that they were to be implemented by absorbing such workers and not to lapse them to result in not absorbing them. The law has also indicated that such a settlement will not lapse unless substituted by another settlement. Even assuming that such a settlement has come into effect intending to lapse the panels, it is repugnant to Section 23 of the Indian Contract Act and also the directions of this Court supra and cannot be given effect to. It also violates the legitimate expectation of the petitioners to be absorbed as rightly pointed out by Sri S.Ramacharidra Rao, the learned Advocate for the petitioners and therefore should be totally ignored except to continue the implications of the earlier settlements to absorb the petitioners. More than all, on the face of it the document is styled as memorandum of understanding as against the expression ''settlement'' in all previous five settlements. The subject of conciliation was also in relation to absorption of empanelled candidates in the earlier settlements. By then several Writ petitions were pending (WP.No. 28068/96 and WP No.28046/97 in which interim orders were issued). W.P.No.4194/97 was filed on 21-2-1997 by the Union of the same workers for implementation of the settlements by absorption and the said writ petition was disposed of on 5-3-1997 directing absorption. If the so called memorandum of understanding dated 27-2-1997 thought of lapsing the settlement by 31-3-1997, it should be ridiculous or improbable. It must have meant to implement them at any cost by 31-3-1997. At any cost, it should be taken as merged in other previous settlements and the order of this Court in W.P.No.4194/97 dated 5-3-1997 was only to absorb all the empanelled candidates on or before 31-3-1997 and not to lapse them by non implementation.

28. Therefore, at no time till the impugned proceedings were issued, the settlements were meant to be lapsed nor the absorption of the petitioners or similar employees in regular vacancies or by appointment was to be given up by lapsing the panels and on the other hand all the panels were to be kept pending till they were exhausted.

29. Mr. Manohar, the learned Counsel for the respondent appears to be thinking the expression that the panels were valid for a particular period i.e., upto December, 1991 etc., meant that it was invalid beyond that date. The very settlements rejected such a meaning as even without specific stipulation in the subsequent stipulations, the validity of the panels were extended to be in force even as on 31.3.1997. Mr.S.Ramachandra Rao, the learned Counsel for the Petitioners was right in contending that the settlements to bring about the panels were for absorption of the persons in the panels and not for their termination or non absorption. The

implications already discussed above bringing out such a meaning cannot purport the meaning of the panel to be valid to lapse after that period. When it was meant for absorption of the empanelled employees, the validity for implementation was the eligibility of the employees, the duty of the employer to absorb them and the implementation of the settlements to be achieved as a scheme and policy. No other meaning can be attributed to the validity of the panels till a particular period except to mean a time frame within which the settlements were to be implemented. That is how this Court in W.P.No.4914/97 practically gave an ultimatum to the bank that the settlements were to be implemented on or before 31-3-1997. The bank interpreting it as to lapse them after 31-3-1997 even without implementation id not implement them. The absurdity in the meaning of the validity of the panels allowed to be lapsed after a particular time by the conduct of the bank could have also happened due to the failure to implement which cannot be the true purport of the implementation muchless direction of this Court in the writ proceedings referred supra. Since several panels were pending since 1987, their validity were kept intact till a particular time for implementation expeditiously and not to postpone beyond that period. The bank thinking of lapsing the panels after 31-3-1997 has only shown that either it had no mind to implement them or deliberately allowed them to lapse beyond the terms of the settlements. Such a conduct of the bank cannot make the settlements invalid for operation or implementation beyond 31 -3-1997 or any time perennially till they are implemented.

30. Mr. Manohar, the learned Counsel for the respondent/Bank is projecting the helplessness of the bank to implement the settlements to absorb all the empanelled workers including the petitioners for want of vacancies arising before 31-3-1997. Already it is indicated that the bank could not have prepared panels without reference to the vacancies arising plus 10% for the purpose of preparation of the panels. Moreover, when the persons in the panels were to be absorbed as a full and final settlement between the Federation and the Bank, pleading inability on such grounds will not absolve the bank. The alternative to retrench or terminate such employees like the petitioners beyond 31-3-1997 by not implementing the settlements would be illegal and would be definitely unfair labour practice within the meaning of Section 2(ra) of the ID Act which cannot be allowed to be perpetrated. Mr. Manohar, theleamed Counsel relying upon Ashok Kutmr''s case (16 supra) contended that in view of the equal opportunity, any appointment to vacancies arising subsequently without notifying the same just because the wait listed persons were there would be violative of Article 14 of the Constitution of India. In that case, the same respondent bank (SBI) and other Nationalised Banks in Eastern region of India gave a requisition for recruitment of certain vacancies. In the year 1983, the Recruitment Board for SBI has prepared a select list of 3100 candidates to be appointed by the State Bank of India and since the vacancies had arisen to the extent of 6700, the Nationalised Banks had made a mess of the recruitment of the candidates in excess of the notified vacancies. In that background

it was stated that Articles 14 and 16 of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a post under the State and the appointment of the persons kept in the waiting list by the respective recruitment boards to the vacancies that had arisen subsequently without notifying them for recruitment is unconstitutional. The facts presented therein are totally different from the facts of this case. There was no question of any settlement between the employees or the Federation and the Bank for implementation. There was no settlement not to recruit further till empanelled candidates have been absorbed as in the present case. In no way Ashok Kumar''s case supra and the present case bear similarity to draw the principle. This case involving the settlements, almost the awards, were to be implemented in any manner according to the terms thereunder as a wholetime exercise without leaving any other remedy to them except the one covered by the awards. The obligation of the State like the bank to absorb such candidates either within the scope of the settlements or otherwise would be a legal and constitutional requirement. In Jacob M. Puthuparambil''s case (supra) it was held that where appointment of employees by way of stop gap arrangement till regular appointments are made is resorted to and continued for more than two years, and possessing requisite qualifications, they are entitled to be regularised. In that case also appointments were made and intended to serve emergent situations which could not brook delay and that such appointments were intended to serve the stated purpose and not long term ones that the rule was not intended to till a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules, but once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualification for the post. Even according to the bank herein such appointments were made as stop gap due to emergency and when they were allowed to work for long period in such vacancies, they were bound to be regularised as long as they possess the requisite qualifications. Possibly with that spirit, die settlements in question were brought about. In Air India Statutory Authority Corporation case (supra), the Supreme Court while dealing with Section 10 of Contract Labour (Regulation and Abolition) Act, 1970 held that when the conditions of work which is perennial in nature as envisaged in subsection (2) of Section 10 are satisfied and when continuance of contract labour stands prohibited and abolished, the consequence would be that the principal employer is under statutory obligation to absorb the contract labour and they will be treated as regular employees from the date on which contract labour system in establishment gets abolished. It is also held therein that where there is violation of such a principle, there is a right of judicial review under Article 226 of the Constitution which is recognised now as a basic structure of the Constitution. On analogy in principle the same rule applies to the present case also wherein the petitioners whose services had been taken for long periods although intermittently although assured of one time consideration for absorption under the settlements and when the bank thought of grudging it to implement, the petitioners were justified in seeking

judicial review of their rights under the settlements which should be accepted to be a basic structure of the Constitution.

This Court as a sentinal in the qui vive is to mete out the justice in the facts of this case as its arm is long enough to reach injustice wherever it is found as has been found in this case also. Therefore, if the bank has failed to implement the sacred intention in the settlements, the failure will reach the long arms of this Court under Article 226 of the Constitution to force implementation.

31. Sri S. Ramachandra Rao, the learned Counsel for the Petitioners is right in contending that the. discontinuance of most of the petitioners after 31-3-1997 to serve in the bank in any capacity amounts to retrenchment which could not have been done without notice against the principles of natural justice and violative of Section 25F of the ID Act. As already pointed out, both in the settlement and the instructions of the Central Government, the services of the petitioners like the petitioners were practically treated as one u/s 25F etc, regarding which disputes were pending and resolved under the settlements and therefore shall be taken as void. Although many a time they may not satisfy the meaning of ''continuous service'' u/s 25B of the Act due to the intermittent stop and re-employment, when they were categorised as A, B, and C for the purpose of continuous service and for absorption, they were definitely treated to be in continuous service for that purpose to attract Section 25B and 25F of the Act. Therefore, what the Dy. General Manager, the so called competent authority did under the impugned proceedings amounted to retrenchment of the petitioners, the workmen of the bank without one month''s notice or payment in lieu of such notice, wages for the period of notice. Thus, the impugned proceedings are issued in colourable exercise of power, without jurisdiction arbitrary, illegal and are therefore liable to be quashed. This is only examined as an implication of the settlement to preserve their rights for absorption and not for termination amounting to retrenchment.

32. In answer to the specific directions of this Court calling for certain particulars, Mr. A. Suryanarayma Rao, the AGM, of the bank has pointed out that there are 805 branches in the Zones of Hyderabad, Vijayawada, Tirupati and Vishakapatnam commercial network 37 branches were opened during the years 1991-1992, upto 1996-97 number of vacancies which arose due to death, retirement, resignation, termination etc., for the said period were about 171. Healso shown the norms for sanctioning the posts of messengers etc., for each branch, with reference to officer cum clerical at 1:4 and for 116-130 in the ratio of 16 and as a whole the ratio is 1:8. Certain branches were also proposed to be opened regarding which the matter is being examined. It is also pointed out that as on 31-3-1997 after absorbing certain empanelled candidates, there was no vacancy to be filled up except future vacancies in view of the stay orders passed by the Court in tie Writ Petitions and therefore it is contended that it would be impossible to empanel all the candidates and it becomes a perennial problem. The contention has no force at all. Inspite of certain particulars

given by the bank, the total number of vacancies of the subordinate staff is not to be found. Secondly, the number of such vacancies in each branch for 805 branches are not given. Even if the number of vacancies arising due to death, retirement, etc., are to be taken into consideration at the rate of one or two per branch, almost 1500 vacancies are bound to occur and within the maximum period of two years with normal vacancies occurring as such, all the unabsorbed candidates in the panels can be absorbed. To repeat again, while the panels were prepared such a state of affairs must have been taken into consideration in enlisting so many candidates in the panels as are member of vacancies were existing or arose each year plus ten percent. Therefore, the officers of the bank and in particular Mr. A. Suryanarayana Rao, Mr.Vinod Kumar Malhotra and Mr Agarwal, must be blowing hot and cold and appear to have even suppressed facts. This Court has tried its best to scan through number of material papers filed on behalf of the bank but not satisfied that they projected the true and full information required to decide the contentions.

33. There appears to be deliberate withholding of the available materials by the bank and some of them are produced when reminded of the consequences if not produced. The question is not how the bank is going to implement the settlements, but the question is whether they are going to implement them at all as indicated in the settlements themselves and the directions of the Central Government in addition to the guidelines in the approach paper. It is for the authorities of the bank and the officers to implement them as expected and as already directed by this Court in W.P.No. 4194/97. It may be oven possible to create some supernumerary posts in anticipation of the creation of the new branches so that the settlements may be fully implemented. The officers of the bank also cannot escape the consequences of their conduct amounting to contempt. Any other conduct to deal with the workers when they failed to fulfil the constitutional obligations by practicing unfair labour practice in not implementing the settlements, amounts to playing fraud on the constitution and further more in concealing the necessary particulars and the materials required by the court till compelled to produce very few of them, they cannot be but nearer committing fraud on the court also in addition to the workers who have toiled number of years not to get their due share inspite of moving from pillar to post and therefore they must take the consequences of prosecution for any offence which may be ultimately found to have been establi shed after a probe.

34. In conclusion, it is certain that the settlements between the parties were intended to absorb all the candidates empanelled and to be kept in force or extended till all of them are. absorbed, the bank has failed to implement them within the implications of the settlements inspite of the directions of this Court, in W.P.No.4194/97 dated 5-3-1997, that the bank and its officers have tried to avoid the duty and the responsibility to implement them and to give effect to the true implications by adopting the (levious and dubious methods including disrespectful attitude to this Court not only in flouting the directions of this Court in the above

said Writ Petition but also in not assisting this Court by producing all the materials till they were compelled sometimes even at the cost of cautioning the coercive stops, regarding which the orders in the proceedings sheets bear testimony, that there has been an unfair labour practice committed by them in orally terminating the services of the persons who are on duty on 31-3-1997 without due course to known procedure and process of law and acting in excess of powers and jurisdiction by the concerned authorities which cannot bind the petitioners or similar employees and practically they have played fraud on this Court, on the Constitution of India, rule of law and as a whole against the labour community of the Indian society to which the petitioners belong. Therefore, this is a case wherein the conduct of the bank and its officers has caused irreparable damage, and extreme injustice to the petitioners and similar empanelled workers to invoke the extraordinary powers of this Court under Article 226 of the Constitution of India to render absolute justice by granting appropnate reliefs in accordance with law and equity.

35. In view of the complexities involved and the apprehensions expressed on behalf of the petitioners whether they would get their due share of their justice if either the bank or any other Court of Tribunal is entrusted with the task of implementing the settlements, this Court feels that a Commissioner of the cadre of a District Judge is to be appointed to fulfil the objective of the reliefs which are going to be granted by this Court ultimately and in the situation it is for the bank to meet all such expenses having been guilty of the consequences of injustice. A time frame is also necessary to implement the order of this Court in view of the deliberate and adamant attitude of Mr. A.Suryanarayana, the Assistant General Manager and Mr. Vinod Kumar Malhotra, the Chief General Manager of the Bank and other persons concerned with it in flouting the orders of this Court in addition to not assisting this Court by producing all the relevant materials and in view of the calculated fraud deliberately planned and perpetrated at various stages regarding the implementation of the settlements, this is also a fit case to initiate contempt proceedings against such persons or authorities in addition to prosecuting them, however, after identifying them and fixing the responsibility through the Commissioner.

36. In the result, the Writ Petitions are allowed and disposed of in the following terms : It is declared that the settlements in question were to be fully implemented till all the workers like the petitioners empanelled were absorbed. It is further declared that the settlements in question are not implemented in their true implications in the light of the observations made in the Judgment and that the respondent/ bank is bound to implement them by absorbing all the empanelled candidates in accordance with the settlements. Any action taken by the bank as pleaded on and after 31-3-1997 is violauve of the implications of the settlements in question. The impugned proceedings of the Deputy General Manager dated 25-3-1997, 27-3-1997 and 31-3-1997 are illegal, arbitrary, improper and without jurisdiction and totally violative of die terms of the settlements and not binding on the petitioners and similar workers muchless the Federation of which the petitioners

are the members and consequently they are hereby quashed. It is also declared that the respondent/bank has not carried out the directions of this Court in WP.No.4194/97 dated 5-3-1997 to implement the settlements and on the other hand by issuing the impugned proceedings, the concerned authorities of the bank have disobeyed such directions which may amount to contempt of Court regarding which suo motu contempt proceedings shall be initiated against all the officers and officials of the Bank and in particular Sri A.Suryanarayana, the Assistant General Manager, Sri Vinod Kumar Malhotra, the Chief General Manager and Mr Agarwal, who have filed counter affidavits and material papers. The respondent/bank is hereby directed to absorb all the petitioners in the respective vacancies of the Bank by issuing appropriate orders of appointment within six months from today and they shall be entitled to have all the benefits of such employment since the date from which they were entitled to be absorbed in terms ofthe settlements. The bank is hereby prohibited from recruiting anybody for such posts till the settlements are fully implemented, which has to be recorded by the Court ultimately. However, the bank shall be at liberty to recruit any such person only from among the persons in the panels according to the seniority and priority basis. If the bank fails to implement the settlements within the stipulated period of six months orthe extended time, the petitioners and all such employees shall be deemed to be on duty from 31-3-1997 and shall be entitled to all the rights and emoluments to the posts for which they were entitled to be absorbed, till they are absorbed. The petitioners/employees who were on duty as on 31-3-1997 shall he deemed to be on duty and shall be entitled to all the benefits of such a post and they shall be immediately appointed if any posts are available or by creating some numery posts within three months from today failing which the bank shall pay them all the benefits to which they were entitled as on that date, till they are absorbed.

37. In order to identify such persons and to implement the settlements, Sri S.Chandra Rao, Registrar (Vigilance), High Court of Andhra Pradesh, Hyderabad is appointed as the Commissioner for the following purposes ;

1. To identify all the workers like the petitioners who were empanelled in accordance with the terms of the settlement or otherwise.

2. To prepare a common seniority list of such workers in each category including the reservations.

3. To identify such persons who are absorbed or appointed out of such panels and to identify such workers who are not yet absorbed or appointed.

4. To prepare a list of such workers who are entitled to be absorbed from a particular date depending upon the number of vacancies which were available or arose at each interval.

5. To prepare a list of such workers appointed or absorbed without following the seniority rule as per the terms of the settlement and to readjust the seniority and to

indicate the persons who were entitled to be absorbed or appointed to a particular vacancy by seniority.

6. To suggest ways and means to implement the settlements for absorption of such workers with the existing panels as on 31-3-1997 and to create some more vacancies in each zone, bank or branch as the case may be.

7. To identify the persons who are responsible for not implementing the settlements since the date of the first settlement upto date and fix the responsibility for not implementing the settlements in terms thereof and in accordance with the directions of this Court in W.P.No.4194/97 dated 5-3-1997 and to suggest any action to be taken against such officers including the prosecution in addition to contempt proceedings apart from the contempt proceedings already directed to be initiated.

8. To submit interim reports once in a month and final report to the Court within six months from the date of assuming charge or within the extended time by the Court.

9. The Commissioner shall be paid the emoluments to which he is entitled in the capacity he is holding at present minus any such emoluments he has received from the Government, in addition to special allowance of 50% of the gross salary and also all the reasonable expenses for the office, staff, transport etc., and all the expenses of the Commissioner shall be met by the Bank.

10. The, Commissioner shall assume office within one week from the date of communication of a copy of this order.