

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 7553 of 2003

Reserved on: November 11, 2011

Decision on: January 20, 2012

MOOLCHAND KHARAITI RAM HOSPITAL &
AYURVEDIC RESEARCH INSTITUTE Petitioner
Through Mr. Shanti Bhushan and Mr. Raj Birbal,
Senior Advocates with
Ms. Raavi Birbal, Advocate.

versus

MOOLCHAND KHARAITI RAM HOSPITAL KARAMCHARI
UNION & ORS. Respondents
Through Mr. Sanjay Parikh with
Ms. Mamta Saxena and Mr. Pranay
Raina, Advocates for R-1.
Mr. Kailash Vasdev, Senior Advocate
with Mr. Sanjay Shandilya, Ms. Ekta
Mehta and Ms. Joanee Pudussery,
Advocates for R-2.
Mr. Shyam Moorjani, Advocate for
Intervenors.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
20.01.2012

Introduction

1.1 The Petitioner, the management of the Moolchand Kharaiti Ram Hospital & Ayurvedic Research Institute ('Management'), challenges an Award dated 14th January 2003 passed by the Industrial Tribunal-II ('Tribunal') in Industrial Dispute No. 2 of 1999 as well as the subsequent order dated 18th August 2003 passed by the Tribunal in the same ID No. 2 of

1999 under Section 36-A of the Industrial Disputes Act, 1947 ('ID Act'). Apart from seeking a remand of the dispute to the Tribunal the Management seeks the quashing of the Reference Order dated 28th May 1998 issued by the Government of National Capital Territory of Delhi ('GNCTD'), Respondent No. 3, referring the dispute raised by the Moolchand Khairati Ram Hospital Karamchari Union ('Union') (Respondent No.1) as well as another set of workers (Respondent No. 2), for adjudication to the Tribunal.

1.2 While directing notice to issue in this petition on 18th November 2003 this Court recorded a statement on behalf of the Union that "no coercive steps will be taken to enforce the impugned Award in the present writ petition".

1.3 During the pendency of the petition attempts were made to settle the disputes through mediation. The Management entered into individual settlements with some of the employees and on that basis it filed an application CM No. 7977 of 2004 seeking to set aside the impugned Award. This application was dismissed on 10th April 2008 by this Court observing that "because of the settlement arrived at with some of the workers the Award cannot be set aside in respect of other workers who have not settled the disputes with the management."

1.4 The Management has in its written submissions filed in the present petition stated that it has, during the pendency of the present dispute, entered into individual settlements with 273 employees of the hospital. The Union has in its application CM 6899 of 2005 filed on 24th May 2005 in the present petition stated that although there were around 400 employees at the time of filing of the present writ petition, "the present strength of workmen who are

eligible for benefits from the present proceedings have shrunk to only 89.” Clearly therefore the present petition would cover only those employees/workers who have not entered into settlements with the Management.

The settlements of 1979 and 1994

2. The genesis of the present petition is a settlement dated 21st August 1977 entered into between the Management and the Union whereunder it was agreed, *inter alia*, that the pay scales as applicable to the central government hospital staff would apply to the Class III and Class IV staff of the hospital in question with effect from 1st October 1978.

3. With disputes arising out of the enforcement of the above settlement, the Union filed a statement of claim on 15th November 1978 before the Conciliation Officer (‘CO’). After negotiations and with the help of the CO, a settlement was arrived at between the Management and the Union on 17th May 1979. The relevant terms of settlement for the purposes of the present petition are as under:

“7 a. It is agreed that pay scales (including HRA and CCA) of Hospital Class III and Class IV employees will be revised on the expiry of six months from the date when the Central Government revises and enforces the pay scales in Central Government hospitals.

b. DA will be regulated in respect of rate and date of enforcement as per the rules applicable to Central Government hospitals.

c. No other demand will be raised by the Union till 1st April 1982.”

4. On 31st January 1994 another long-term settlement was entered into between the Management and the Union. Clauses 8, 14 and 15 of the said settlement read as under:

“8. Revision of Pay Scales

It was agreed that the revision of pay scales including HRA and CCA etc. will be given effect to from the same date the Government of India will revise the pay scales for its government hospitals as a result of recommendations of pay commission.

14. That in view of the settlement on the above mentioned terms and conditions, the employees and the Union expressly agree not to raise any demand involving any financial commitment by implication on the management of the hospital during the period of this settlement. The employees and union undertake to maintain discipline, harmony and peace and they will work whole heartedly, diligently and efficiently in order to serve the patients to their best. The Union and the employees also undertake not to resort to any act of indiscipline or to act in contravention of terms of spirit of the settlement.

15. It is agreed that this settlement shall remain in force for a period of three years with effect from 1st January 1994. It shall remain binding on the parties till it is validly terminated in accordance with law.”

5. According to the Management, the Union did not adhere to the terms of the above settlement and went on strike without notice from 11th February to 17th April 1995. The Management enforced a lock out from 11th February 1995. It is further alleged that on account of the violent disturbances caused by the workmen, two senior officers of the Management were grievously hurt and extensive damage caused to the property of the hospital. According to the Management another violent incident took place on 5th June 1995. These allegations are denied by the Union which states that outside criminal elements were deployed by the Management to terrorise the workers.

6. Respondent No. 3 GNCTD referred for adjudication by the Tribunal the question whether some of the workmen were entitled to wages for the lock out period with effect from 11th February 1995. This was challenged by the Management in W.P. (C) No. 1009 of 1995 in this Court. The said writ petition was allowed by an order dated 18th October 1996. The appeal filed by the Union against the said order was dismissed by a Division Bench of this Court on 2nd December 1996. The Union's Civil Appeal Nos. 681-682 of 1997 was disposed of by the Supreme Court by an order dated 19th September 2000 *inter alia* observing as under:

“In these appeals the contention put forth before us is that the order made by the government, making a reference to the Tribunal, is administrative in character and, therefore, the High Court should not have interfered with the same. Even if we proceed on the basis that the nature of the order, making reference, is administrative in character, it is certainly open to the High Court to examine whether relevant considerations making the reference had been taken note of or not. In view of the High Court relevant considerations have not been taken note of by the government and that finding cannot be seriously disputed.

In the circumstances, we think the view of the High Court is justified. However, that would not solve the problems of the parties. The proper course to be adopted is to direct the first Respondent to take appropriate steps to make a reference to the concerned Tribunal after considering all the relevant material on record in the case. Let such steps be taken within three months from today. The appeals stand disposed of accordingly”.

7. On 30th September 1997 the central government announced the adoption by it of the Fifth Pay Commission's ('FPC') recommendations by issuing a notification implementing the FPC's recommendations with effect from 1st January 1996. According to the Union, it raised a demand with the Management on 6th October 1997 for the grant of the FPC benefits in terms W.P. (C) No. 7553 of 2003

of the settlement dated 31st January 1994. The Management however denies having received such a demand.

Termination of the settlements

8. According to the Management, the tenure of the settlement dated 31st January 1994 came to an end on 31st December 1996 by efflux of time. On 10th October 1997 the Management issued a notice terminating all the settlements previously entered into by it with the Union and other workers' unions. The notice dated 10th October 1997 read as under:

“Date 10th October 1997

Notice

To all the workmen/employees

Sub: Termination of settlements dated 3rd July 1975, 21st August 1977, 6th November 1978, 17th May 1979, 10th October 1984, 26th April 1989 and 31st January 1994

The period of above mentioned bipartite settlements have expired as mentioned in the respective settlements.

These settlements are no longer binding on the parties. However, as an abundant caution we give notice of our intention to terminate all these settlements after expiry of 63 days from the date of this notice. These settlements shall not be binding on us after expiry of the period of prior notice given above. No further communication shall be necessary and the settlements mentioned above shall be terminated after the expiry of above mentioned notice period. However, present remuneration of the employees shall not be altered to their prejudice.”

9. A further notice was issued on 30th December 1997 in the following manner:

“Date: 30th December 1997

Notice

This has a reference to our letter/Notice dated 10th October 1997 regarding termination of settlements.

It is further confirmed that none of the settlements namely dated 3rd July 1975, 21st August 1977, 6th November 1978, 17th May 1979, 10th October 1984, 26th April 1989 and 31st January 1994 are binding on any of the parties that is workmen or employers.”

10. The Management alleges that from January 1998 onwards there were several instances whereby the members of the Union resorted to demonstrations, shouting of slogans, illegal strikes and other activities that disrupted the smooth functioning of the hospital. This is denied by the Union. It alleges that the Management filed false criminal cases against the workmen and in two of them there were acquittals. It also refers to the adverse observations against the Management in the Report of the Justice A.S. Quereshi Committee. However, for the purposes of the present dispute it is not necessary to examine these aspects.

Proceedings before the Tribunal

11. The dispute arising from the termination by the Management of the settlements was referred by Respondent No. 3 GNCTD for adjudication to the Tribunal. The GNTD's order dated 28th May 1998 contained the following term of reference: “whether the workmen (all categories) are entitled to the benefit of the V Pay Commission's recommendations and if so, what directions are necessary in this respect?”

12. Before the Tribunal the Union filed a statement of claim in which, *inter alia*, it was stated that the Management was employing more than 800

workmen, both para-medical and general workmen; the Management was making huge profits due to its private OPD services and other highly specialized services; in the past several settlements, the Management was giving the workmen all the benefits available to employees of the central government and that “the entire functioning of the hospital is modeled on the central government pattern.” After the Union raised a demand that the Management should adopt the recommendations of the FPC, the Management locked out the hospital with effect from 31st August 1998 and suspended or terminated more than 100 workers. It was stated that in accordance with directions from the High Court the Management paid the wages and the hospital was reopened on 7th December 1998. It was contended by the Union that the denial to the workmen of the benefits of the recommendations of the FPC by the Management was “malafide, vindictive, punitive and illegal”.

13. In its written statement before the Tribunal, the Management submitted that the FPC’s recommendations would not apply since it was a private hospital. It was contended that if the FPC benefits were granted to the workmen it would have wide and extraordinary financial implications. It would lead to the crippling of the hospital’s financial position resulting in the stoppage of its working. Further all the free and subsidized services offered by the Management would have to be withdrawn and this would be contrary to the character of the Trust which was running the hospital. As regards the settlements, it was contended by the Management that the settlement dated 31st January 1994 had been terminated by the first notice dated 10th October 1997 followed by a final notice dated 30th December 1997. Further, under Clause 8 of the settlement dated 31st January 1994 it was agreed that the revision of pay scales including HRA and CCA etc.

would be extended on the same 'date' the central government revised the pay scales and not that the benefits of the FPC recommendations would be extended to the workmen.

The impugned Award

14. The Tribunal, after considering the evidence led by both parties passed the impugned Award dated 14th January 2003. The Tribunal held that the Management had failed to show that the reference was made without jurisdiction. It was further held that the case of the workmen had been duly espoused. The objection of the Management as regards proper verification of the statement of claims of the workmen was negatived. The Management's contention that the hospital was not an 'industry' under Section 2 (j) ID Act was also decided against it. During the course of the hearing, the workmen did not press the issue concerning proper verification of the written statement of the Management.

15. The findings of the Tribunal in the impugned Award dated 14th January 2003 on merits could be summarised as under:

(a) The benefit of revision of pay scales in terms of the FPC's recommendations with effect from 1st January 1996 accrued within the period of the settlement dated 31st January 1994 which came to an end on 31st December 1996;

(b) It was only after the workmen demanded implementation of the FPC's recommendations that the management issued the first notice dated 10th October 1997 claiming that all the earlier settlements had been terminated. The notice, therefore, did not affect the right of the workmen since the notice itself mentioned that the "present

remuneration of the employees shall not be altered to their prejudice.” Further, the termination was to take effect after the expiry of 63 days from the date of issuance of notice;

(c) It was not shown that prior to 10th October 1997 the Management had any intention not to give the financial benefit of the FPC to the workmen on account of any financial difficulty. Therefore, the case of the Management of financial difficulty did not affect the right of workmen to revision of pay scale with effect from 1st January 1996 within the operational period of settlement dated 31st January 1994;

(d) The plea of the Management that the wages should be fixed on the basis of region-cum-industry was without any force since as far as the hospital in question was concerned from the very beginning the wages of the workmen were not determined on that basis. The settlements previous to the one dated 31st January 1994 also provided for granting to the employees the benefits of the pay commission recommendations. The settlement dated 31st January 1994 was on the basis of the acceptance by the Management that the workmen were to be given the benefits of the FPC.

(e) Class III and IV employees of the management were entitled for revision of pay scales corresponding to the FPC pay scales.

16. In the operative portion of the impugned Award dated 14th January 2003, in para 29, the Tribunal held that the workmen were “by virtue of 4th Pay Commission”, entitled to the “corresponding scales.” This was an obvious mistake since in the earlier portion of the Award, the workmen had been

held entitled to revision in pay scales on the basis of the recommendations of the FPC. Resultantly, on 22nd July 2003 a further question was referred by the GNCTD to the Tribunal as under:

“In terms of para 29 of Award in ID No. 2 of 1999 dated 14th January 2003 whether Class III and Class IV employees of Mr. Mool Chand Khairati Lal Hospital are entitled to the benefits of IVth Pay Commission or Vth Pay Commission and if so from which date, what are the names of the workers (list) entitled for the benefits, and what directions are necessary in this regard?”

17. By an order dated 18th August 2003, the Tribunal clarified that it had in para 29 of the Award meant to refer to the FPC. It was clarified that Class III and IV employees of the hospital would be entitled to the “benefit of revision of pay scales of V Pay Commission with effect from 1st January 1996.” The Tribunal further opined that since the original dispute was in relation to the general demand of the workmen, no finding could be given mentioning the names of workmen entitled to the amount.

18. Aggrieved by the impugned Award dated 14th January 2003 and the subsequent order dated 18th August 2003 of the Tribunal, the Management filed the present writ petition in which, as already noted, a statement was made by the Union on 18th November 2003 that no coercive steps would be taken to enforce the impugned Award.

Submissions on behalf of the Management

19. Mr. Shanti Bhushan, learned Senior counsel appearing on behalf of the Management submitted that the Tribunal grievously erred in giving effect to the terms of settlement dated 31st January 1994 which had come to an end on 31st December 1996. There was no compulsion on the Management to grant to the workmen the benefit of the FPC recommendations in terms of Clause W.P. (C) No. 7553 of 2003

8 of the Settlement dated 31st January 1994 after 31st December 1996. Under Section 19 (2) of the ID Act the settlement period was finite. The settlement which had come to an end by efflux of time long before the disputes were referred to the Tribunal by the Order dated 28th May 1998 could not form the basis of the impugned Award. For determining the appropriate wage structure that would replace the 1994 settlement, the Tribunal was required to apply (i) the region-cum-industry formula; and (ii) in light of the paying capacity of the management. Mr. Bhushan placed reliance on the decisions in *Hindustan Times Ltd v. Their Workmen* (1962) 1 SCR 234, *Workmen of Hindustan Motors v. Hindustan Motors* (1962) 2 LLJ 352 (SC), *French Motor Car Co. Ltd. v. Workmen* (1963) (Supp) SCR 16, *M/s Unichem Laboratories Limited v. The Workmen* AIR 1972 SC 2332, *Express News Papers Pvt. Limited v. Union of India* (1959) SCR 13, *Ahmedabad Mill Owner's Association etc. v. The Textile Labour Association* (1966) 1 SCR 382 and *Glaxo Laboratories (India) Limited v. Presiding Officer, Labour Court* (1977) Lab IC 1523 (AP). In support of the proposition that under Section 19 ID Act once the settlement is terminated, no part of it is enforceable, Mr. Bhushan relied on the decisions in *Shukla Manseta Industries Private Limited v. The Workmen* 1977 Lab IC 1541 (SC).

20. Notwithstanding the above submissions, it was submitted by Mr. Bhushan that Clause 8 of the settlement dated 31st January 1994 did not become part of the wage structure. It was at best only a promise of a different wage structure in future. The FPC benefits had not accrued to the workmen at the time of the termination of the said settlement. He drew a distinction between the 1979 settlement which talked of rates of wages and the 1994 settlement which did not. Clause 8 of the 1994 settlement did not provide that the employees would get wages at the same rate as employees

of the central government. It only stated that as and when there was a revision of the pay scale by the Management, it would be applicable from the same 'date' when the revised pay scales for central government employees became effective. Moreover the workers themselves had violated the terms of the 1994 settlement and therefore were not entitled to any benefit in terms of Clause 8 thereof. There were other conditionalities for grant of the FPC benefits which the workers were not prepared to abide by and this included restructuring the size of the organisation and increasing the working days. Mr. Bhushan referred to a chart which showed that the wages paid by the Management were far higher in comparison with the wages paid by other private hospitals in Delhi.

21. Referring to the observations of the Supreme Court in ***Life Insurance Corporation of India v. D.J. Bahadur* 1981 (1) SCC 315** (hereinafter '***LIC v. DJ Bahadur***'), Mr. Bhushan submitted that the Tribunal could not have avoided deciding the dispute in relation to the wages to be fixed on the ground that there existed an industrial settlement particularly since the settlement had already come to an end. It was submitted by Mr. Bhushan that the operative portion of the Award was in fact confusing since it granted the workmen FPC pay scales and not the benefits of the FPC, which included the dearness allowance and CCA etc. It was submitted that if these other benefits, including dearness allowance are granted, the Management would have to close down the hospital. It was further submitted that it was possible for the Tribunal, after considering the above parameters, to come to the conclusion that given the financial capacity of the Management the workers were entitled to wages that were less than what they were entitled to under the previous settlements. In support of this submission Mr. Bhushan relied upon the decisions in ***M/s. Crown Aluminium Works v. Their***

Workmen 1958 SCR 651, Ahmedabad Mill Owner's Association v. The Textile Labour Association and Workmen represented by Secretary v. Reptakos Brett & Co. Ltd (1992) 1 SCC 290.

22. Mr. Bhushan, therefore, earnestly pleaded that the matter should be remanded to the Tribunal for a fresh adjudication. He submitted that the Tribunal would have to determine the appropriate wage structure applicable to the workmen irrespective of the settlement dated 31st January 1994. As regards the payment to be made in the interregnum, he submitted that consistent with the decision in ***LIC v. DJ Bahadur*** the pay last drawn at the time of the termination of the settlement dated 31st January 1994, would continue to be paid. Since the entitlement of the workmen to the FPC benefits was yet to be determined, they could not be extended the FPC pay scales. If the workmen in the fray in this petition were paid an amount higher than their last drawn pay, it would cause discontent among those workmen with whom individual settlements had been reached. This would lead to further labour unrest.

23. In the written submissions it is additionally contended that the hospital was not an industry under Section 2 (j) of the ID Act. It is stated in ***State of Uttar Pradesh v. Jai Bir Singh (2005) 5 SCC 1*** a three-judge bench of the Supreme Court has referred the said question to a larger bench which would also consider the correctness of the decision in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978) 2 SCC 213***. However, on this aspect the impugned Award calls for no interference by this Court since it is consistent with the law as it presently stands.

Submissions on behalf of the Workmen

24. On behalf of the Union, Mr. Sanjay Parikh, learned Advocate referred to the decision in ***LIC v. DJ Bahadur*** and submitted that the settlement dated 31st January 1994 continued to be binding even after its termination. In law, it would continue till substituted by a fresh settlement or Award. He submitted that a settlement was on a higher footing than an Award as it was voluntary and assured lasting industrial peace. He referred to the decisions in ***Sirsilk v. Govt. of Andhra Pradesh AIR 1964 SC 160***, ***KSRTC v. KSRTC Staff Workers Federation 1999 (2) SCC 687*** and ***Gujarat Agricultural University v. All Gujarat Kamdar Karamchari Union 2009 (15) SCC 335***. He pointed out that the workmen could not have possibly raised a dispute during the continuance of the previous settlement. He referred to the decisions in ***Management of Bangalore Woolen, Cotton and Silk Mills Company Ltd. v. The Workmen AIR 1968 SC 585*** and ***M/s Shukla Manseta Industries Pvt. Ltd. v. The Workmen 1977 (4) SCC 31***.

25. Mr. Parikh submitted that the Settlements dated 17th May 1979 and 31st January 1994 showed that the Management and the workers' Union agreed to have the 'pay-structure' revised on the basis of the recommendations of the Pay Commissions from time to time. The 4th Pay Commission benefits were given. Benefit of the FPC also accrued with effect from 1st January 1996. For nearly twenty years from 1977 to 1997 this understanding continued. He pointed out that the upward revision of pay scales and benefits as determined by the Pay Commissions was the basis of these settlements. He submitted that when a notice intimating termination of an award or settlement was issued, the legal import was merely that the stage was set for fresh negotiations or for industrial adjudication. Till such time a fresh settlement was arrived at or an Award passed, the previous settlement would

continue. He pointed out that during the currency of the Settlement dated 31st January 1994 the FPC's recommendations became effective. The Management could not avoid the liability of granting the workmen the FPC benefits till the said settlement was substituted by another settlement or Award.

26. Mr. Parikh submitted that with the Management not raising any dispute regarding the entitlement of the workmen to the FPC benefits, the question of applying the 'industry-cum-region' formula or considering the financial capacity of the Management did not arise. The scope of the reference before the Tribunal was confined to the entitlement of the workmen to the FPC benefits and the Tribunal had rightly answered the said reference in favour of the workmen. Reliance was placed on the decisions in ***Cox and Kings Ltd. v. Their Workmen 1992 (2) SCC 705*** and ***The Calcutta Electric Supply Corp. Ltd. v. Its Workers AIR 1959 SC 1191***. It is submitted that the paying capacity argument was raised by the Management only with a view to avoiding its liability under the 1994 settlement. The Management was aware of its burden much before the dispute was raised. Once the Management opted to follow the Pay Commission's recommendations, it could not revert to the industry-cum-region principle. Also, the benefits available to the workmen under the 1994 settlement could not be reduced in a reference by the workmen. The settlement being voluntary in nature had to be given due weight in terms of maintaining its continuity and ensuring industrial peace. Reliance is placed on the judgment in ***Burn and Co. v. Their Employees AIR 1957 SC 38***.

27. It was submitted by Mr. Parikh that if the matter were to be remanded to the Tribunal, then the workmen had to be paid the last drawn wages which

would include the benefit of the FPC recommendations which had already accrued to them under the 1994 settlement with effect from 1st January 1996. It is submitted that the Management was, in fact, now making profits and all fresh appointments were being made on contractual basis. There were a sufficient number of paying patients. It is denied that the Management would have to shut down the hospital if it were to grant the FPC benefits to the workmen with whom no settlement has been reached. Mr. Parikh also referred to a compilation to show that the Management had resorted to unfair labour practices.

28. Mr. Shyam Moorjani, learned counsel appearing for another set of workmen submitted that the workmen could have in any event got the benefit of FPC recommendations in terms of the settlement notwithstanding its purported termination by the Management. He submitted that the Management had illegally and unilaterally withdrawn the benefits of the recommendations of the FPC. Referring to the total list of employees in the hospital it was submitted that out of 720 employees, 419 had either resigned or settled their disputes with the management, fourteen had died during the pendency of these proceedings, forty-eight had retired. Further, in respect of twenty-nine dismissed workers, the adjudication concerning the legality of their dismissal was pending. Fifty workmen had been dismissed and in respect of sixty-six, the service conditions had been changed. There were only ninety-four who remained on duty with their service conditions unchanged.

Interpretation of Clause 8 of the 1994 Settlement

29. The central issue that was referred to the Tribunal for decision concerned the interpretation of Clause 8 of the 1994 Settlement and whether in terms

thereof the workmen were entitled to the benefits of the FPC recommendations.

30. The 1994 settlement had to be interpreted in the background of the previous settlements of which it was a continuation. It was not as if the workmen were being granted central government pay scales for the first time under the 1994 settlement. Under the settlement dated 21st August 1977 it was agreed that “the government pay-scales as prevailing on 1st October 1978 will be introduced for all employees falling in the category of Class III and IV from that date.” It was clearly stated that the said pay scales would be given “as soon as the government pay scales are introduced for class III and IV employees with effect from 1st October 1978, house rent and other facilities at present prevailing will be regulated as per government rules.”

31. In the settlement dated 17th May 1979 again the agreement was that the pay scales of Grade-III and Grade-IV employees of the hospital in question will be equivalent to the same grade employees of government hospitals by 1st October 1978. The time-period from which it would be applicable was postponed by six months under the following clause:

“7. It was also agreed that that whenever central government will increase the pay scale of their employees, the management here will also provide the pay scale at the same rate to its employees inclusive of house rent, CCA etc. But on the condition that it will be applicable after six months from the day central government revises the pay scale of its employees”.

32. However, the DA would be given to the employees “at the same rate and from the same date as central government hospitals employees are given”.

33. The wording of Clause 8 of the settlement dated 31st January 1994, when

read in the above background, indicates that the revision of pay scales “will be given effect from the same date the Government of India will revise the pay scales for its government hospitals as a result of recommendations of pay commission.” The heading of Clause 8 reads “Revision of Pay scales”. The intention clearly was to give the workmen the benefit of the FPC pay scales and not merely indicate the date from which the revision in pay scales as proposed by the Management would become effective. Also, in terms of Clause 8 the intention was not to merely give pay scales but “HRA & CCA etc.” as well. In other words, Clause 8 was meant to provide Class III and IV employees of the hospital in question, the revised pay scales as granted to the government employees in terms of the FPC recommendations and this was to be effective from the same date the FPC pay scale was made available to the government hospital employees.

Validity of the termination of the 1994 settlement

34. The period and operation of settlements and awards is indicated in Section 19 of the ID Act. Sub-sections (1) and (2) thereof which are relevant for the present case read as under:

19. Period of operation of settlements and awards.—(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

35. Under Section 19 (2) ID Act even where the settlement indicates the period during which it is to continue, it does not automatically come to an end on the expiry of the period. It continues “until expiry of a period of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.”

36. In the present case, there is no difficulty in holding that there was a valid termination of the 1994 settlement by the Management since the requirement of a notice of intention to terminate followed by the effective termination 63 days after the notice was complied with. Also the spirit of Section 19 (2) was reiterated in the notice dated 10th October 1997 which stated that: “However, present remuneration of the employees shall not be altered to their prejudice.” In terms of Section 19 (2) ID Act read with the notice dated 10th October 1997, it is plain that even according to the Management the operation of the 1994 settlement did not come to an end, as claimed by it, with the efflux of time on 31st December 1996. It continued till at least two months after 10th October 1997. This is important for the next question that arises, viz., what is the effect of the termination of the 1994 settlement?

Effect of termination of the 1994 settlement

37.1 The effect of termination of settlements in terms of Section 19 (2) ID Act was exhaustively considered by the Supreme Court in ***LIC v. DJ Bahadur***. It was held by a majority of 2:1 that a settlement continues to remain operative till such time it is replaced by a fresh settlement or Award. In his lead opinion Krishna Iyer, J. relying on ***Indian Oil Corporation Ltd. v. Workmen (1976) 1 SCC 63***, which in turn referred to ***South Indian Bank Ltd. v. AR Chacko AIR 1964 SC 1522*** concluded that (SCC, p. 346)

“unilateral variation by the management is an exercise in futility and an award or settlement must take the place of the contract sought to be varied”. Observing that there is no significant difference between an award and a settlement in this context, Krishna Iyer, J. relied on a Division Bench judgment of the Bombay High Court where Tarkunde, J., in the context of a notice to terminate a settlement under Section 19(2) in ***Maruti Mahipati Mullick v. Polson Ltd.*** 1970 Lab IC 308 (Bom), held as under (at p. 310) :

“Even if a notice of its intention to terminate the settlement was given by either party, the settlement did not automatically cease to be operative on the expiry of two months from the date of the notice. The legal position is that the terms of a settlement continue to govern the relations between the parties after the notice of termination and the expiry of two months thereafter, until the settlement is replaced by a valid contract or award between the parties. This was laid down by the Supreme Court in *South Indian Bank Ltd. v. Chacko*, while dealing with the binding effect of an award under the provisions contained in Sub-section (6) of Section 19 of the Industrial Disputes Act.’ The Authority in the present case was, therefore, not justified in rejecting the workmen's application on the ground that the settlement on which the workmen relied had ceased to be operative.”

37.2. Krishna Iyer, J. proceeded to hold (SCC, pp 347-349):

“46. It is inconceivable that any other alternative subsists. For instance, imagine a case where for 30 years an award or settlement might have given various benefits to employees and at the end of 30 years a notice terminating the settlement were given by the employer. Does industrial law absurdly condemn the parties to a reversion to what prevailed between them 30 years ago? If the employees were given Rs 100 as salary in 1947 and, thereafter, by awards and settlements the salary scale was raised to Rs 1000 could it be the management might, by unilateral yet disastrous action give notice under Section 19(2) or (6) terminating the settlement or award, tell the workers that they would be paid Rs 100 which was the original contract although in law that contract had been extinguished totally by

a later contract of settlement or by force of an award? The horrendous consequences of such an interpretation may best be left to imagination. Moreover, if industrial peace is the signature tune of industrial law, industrial violence would be the vicious shower of consequences if parties were relegated either to an ancient and obsolete contract or to a state of lawless hiatus. No canon of interpretation of statutes can compel the court to construe a statutory provision in this manner. We have, no doubt, that the precedents on the point, the principles of industrial law, the constitutional sympathy of Part IV and the sound rules of statutory construction converge to the same point that when a notice intimating termination of an award or settlement is issued the legal import is merely that the stage is set for fresh negotiations or industrial adjudication and until either effort ripens into a fresh set of conditions of service the previous award or settlement does regulate the relations between the employer and the employees. The court never holds justice as hostage with law as janitor! Law, if at all, liberates justice through the judicial process. Fundamental error can be avoided only by remembering fundamental values.

47. At this stage I may record my firm conclusion that for the reasons already given the settlement under the ID Act does not suffer death merely because of the notice issued under Section 19(2). All that is done is a notice “intimating its intention to terminate the award”. The award even if it ceases to be operative qua award, continues qua contract. Therefore, if the ID Act regulates the jural relations between the LIC and its employees — an “If” we will presently scan — then the rights under the settlements of 1974 remain until replaced by a later award or settlement.”

37.3 In his concurring opinion in *LIC v. DJ Bahadur*, Pathak, J. (as he then was) held (SCC, pp 360-362):

77. It is desirable to appreciate what is a settlement as understood in the Industrial Disputes Act. In essence, it is a contract between the employer and the workmen prescribing new terms and conditions of service. These constitute a variation of existing terms and conditions. As soon as the settlement is concluded and becomes operative, the contract embodied in it takes effect and the existing terms and conditions of the workmen are modified accordingly. Unless there is something to the contrary in a particular term or condition of the

settlement the embodied contract endures indefinitely, continuing to govern the relation between the parties in the future, subject of course to subsequent alteration through a fresh settlement, award or valid legislation. I have said that the transaction is a contract. But it is also something more. Conceptually, it is a “settlement”. It concludes or “settles” a dispute. Differences which had arisen and were threatening industrial peace and harmony stand resolved in terms of a new contract. In order that the new contract be afforded a chance of being effectively worked out, a mandate obliging the parties to unreservedly comply with it for a period of time is desirable. It was made “binding” by the statute for such period. Section 19(2) was enacted. The spirit of conciliation, the foundation of the settlement, was required by law to bind the parties for the time prescribed. Immediate reagitation in respect of matters covered by the settlement was banned. Section 23(c) prohibited strikes by the workmen in breach of the contract and lock-outs by the employer in respect of such matters. A breach of any term was made punishable by Section 29. **Certainty in industrial relations is essential to industry, and a period of such certainty is ensured by Section 19(2). On the expiry of the period prescribed in the sub-section, the conceptual quality of the transaction as a “settlement” comes to an end. The ban lifts. The parties are no longer bound to maintain the industrial status quo in respect of matters covered by the settlement. They are at liberty to seek an alteration of the contract. But until altered, the contract continues to govern the relations between the parties in respect of the terms and conditions of service.**” (emphasis supplied)

“78. The position seems comparable with what happens in the case of an award. Section 19(3) and Section 19(6) contain similar provisions. In the case of an award this Court has laid down in *South Indian Bank Limited v. A.R. Chacko* that after the period of operation of an award has expired, the award does not cease to be effective. It continues to be binding on the parties, by virtue of Section 19(6), until notice has been given by one of the parties of the intention to terminate it and two months have elapsed from the date of such notice. Thereafter,—

“it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract ... the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that

even though the period of operation of the award and the period for which it remains binding on the parties may elapse — in respect of both of which special provisions have been made under Sections 23 and 29 respectively — may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract”.

Later in *Md. Qasim Larry, Factory Manager, Sasamusa Sugar Works v. Muhammad Samsuddin* (1964) 7 SCR 419 the court held that when an award was made and it prescribed a new wage structure, in law the old contractual wage structure became inoperative and its place was taken by the wage structure prescribed by the award. The court said:

“In a sense, the latter wage structure must be deemed to be a contract between the parties, because that, in substance, is the effect of industrial adjudication. The true legal position is that when industrial disputes are decided by industrial adjudication and awards are made, the said awards supplant contractual terms in respect of matters covered by them and are substituted for them.”

38. To recapitulate the facts in the present case, Clause 15 of the settlement dated 31st January 1994 stated that it “shall remain binding on the parties till it is validly terminated in accordance with law”. The Management complied with the requirements of Section 19(2) of the ID Act when it issued the notice dated 10th October 1997. The wording of the said notification acknowledged that: (a) the actual from which the termination would take effect would be “after the expiry of 63 days from the date of this notice dated 10th October 1997” and (b) the remuneration of the employees as on the effective date of termination shall not be altered to their prejudice. These factors by themselves underscore that the 1994 settlement did not cease to be operational on 31st December 1996. Further, as explained in ***LIC v. DJ Bahadur***, the 1994 settlement continues till replaced either by a fresh

settlement or by an Award.

39. It is significant that even according to the Management, the formal termination of the 1994 settlement in terms of Section 19 (2) ID Act became effective only 63 days after 10th October 1997, i.e. after 10th December 1997. This meant that even according to the Management, the 1994 settlement was operative as on 9th September 1997, the “date” when the FPC recommendations were made applicable to central government employees, with effect from 1st January 1996. It follows that the entitlement of the workmen to the revision of pay scales in terms of the FPC recommendations in terms of Clause 8 of the 1994 settlement accrued to the workmen even while the 1994 settlement was operational.

40. The plea of the Management that in view of the alleged breach of Clause 14 of the 1994 settlement by the workmen, they were disentitled to any benefit of Clause 8 appears to be an afterthought. In the first place, a plain reading of Clause 14 of the 1994 settlement nowhere indicates that it is a condition precedent to the workmen continuing to get the benefits of the 1994 settlement. Secondly, whether each of the workmen or only some of them, if at all, indulged in acts of indiscipline would be a disputed question of fact. The Management did not raise an industrial dispute on that aspect. This was only offered as a defence for not granting the workmen the benefit of the FPC recommendations. Thirdly, for acts of indiscipline it was open to the Management to take other remedial action against such of those workmen who indulged in them. The Management resorted to the filing of FIRs in respect of some of the incidents. However, it is also true, that the Management has subsequently entered into individual settlements with many workmen. This showed that Clause 14 did not control Clause 8. Fourthly,

and as pointed out by the Tribunal the Management reaffirmed the continuation of the 1994 settlement for at least a period of two months after 10th October 1997 when it announced its intention of terminating the 1994 settlement by a notice of that date. Far from withholding the benefits on account of any alleged acts of indiscipline, the said notice stated that the remuneration of the employees shall not be altered to their prejudice.

41. The impugned Award of the Tribunal, to the extent it held that the workmen became entitled to revision of pay scales as per the FPC recommendations in terms of Clause 8 of the 1994 settlement, cannot be faulted. However, this does not fully answer the reference made to the Tribunal. It only indicates what the workmen were entitled to till such time the 1994 settlement which was validly terminated by the Management by the notice dated 10th October 1997 stood replaced by another settlement or Award. The Tribunal was in fact required to answer that larger question, which is discussed hereafter.

The scope of the proceedings before the Tribunal

42. The Tribunal was required to decide whether the workmen were entitled to the “benefits” of the FPC recommendations? This question was required to be understood in the background of the fact that by the time the reference was made of the said dispute to the Tribunal, the 1994 settlement stood validly terminated although it continued to remain operative till substituted by a fresh settlement or Award. However, the Tribunal in the impugned Award appears to have overlooked this important factor and erred in posing to itself the question: “whether the workmen were entitled to the benefits of the FPC recommendations in light of the Clause 8 of the 1994 settlement?” If that were the question, then perhaps it could be easily answered in the

affirmative. But that was not the correct question to pose. The question that was required to be answered was: “whether the workmen were entitled to the benefits of the FPC recommendations, notwithstanding the valid termination of the 1994 settlement?” In other words, the Tribunal was required to examine if the workmen’s demand for benefit of the FPC recommendation was legally tenable *de hors* the 1994 settlement.

43. This aspect requires further elaboration. While the 1994 settlement continued to be operative even beyond the formal date of its termination, as explained in **LIC v. DJ Bahadur**, it by no means implied that the 1994 settlement could either not be terminated or could continue indefinitely. The whole point of the reference before the Tribunal was to find out what should replace the 1994 settlement? Should that be, as claimed by the workmen the FPC benefits (equal, plus or minus), or should it, as contended by the Management, be even less than what the workmen were getting under the 1994 settlement? Then again, there were two answers possible. One possibility was to answer the question in favour of the workmen. The other possibility was to answer it against them. In the latter eventuality, the Tribunal could not have stopped at that but would have to answer the further question: “If the workmen were not entitled to the benefit of the FPC recommendations, what wages were they entitled to?” Was it to be as contended by the Management even less than the wages under the 1994 settlement or something else? Thereafter, as contemplated by the latter part of the reference the Tribunal was expected to issue consequential directions.

44. In order to answer the above questions, it was necessary for the Tribunal to apply the known parameters as explained in several decisions of the

Supreme Court. The Tribunal was required to apply the region-cum-industry formula and also consider the paying capacity of the Management in order to determine what could be the appropriate wages to be paid to the workmen,

45. In *Hindustan Times Ltd. v. Workmen*, (1962) 1 SCR 234 the Supreme Court explained (SCR, pp 239-241):

“5. The fixation of wage structure is among the most difficult tasks that industrial adjudication has to tackle. On the one hand not only the demands of social justice but also the claims of national economy require that attempts should be made to secure to workmen a fair share of the national income which they help to produce, on the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the source of the national income itself. On the one hand, better living conditions for workmen that can only be possible by giving them a “living wage” will tend to increase the nation's wealth and income, on the other hand, unreasonable inroads on the profits of the capitalists might have a tendency to drive capital away from fruitful employment and even to affect prejudicially capital formation itself. The rise in prices that often results from the rise of the workmen's wages may in its turn affect other members of the community and may even affect prejudicially the living conditions of the workmen themselves. The effect of such a rise in price on the country's international trade cannot also be always ignored. Thus numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind. Nor does the process of valuation of the numerous factors remain static. While international movements in the cause of labour have for many years influenced thinking — and sometimes even is judicial thinking — In such matters, in this country, the emergence of an independent democratic India has influenced the matter even more profoundly. Gajendragadkar, J. speaking for the Court in *Standard Vacuum Refining Co., of India v. Workmen* 1961 SCR 536 has observed (SCR, p. 543):

“In constructing a wage structure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and

impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement, collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilised and progressive society also come to be recognised.”

6. In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is “adequate to cover the normal needs of the average employee regarded as a human being in a civilised society.” Above the fair wage is the “living wage”— wage “which will maintain the workmen in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen”. (Cited with approval by Justice Gajendragadkar in *Standard Vacuum Company case* from *The Living Wage* by Phillip Snowden).

7. While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage economic considerations make that only a dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay.”

46. In *Unichem Laboratories Ltd. v. Workmen*, (1972) 3 SCC 552, the Supreme Court reiterated as under (SCC, p. 571):

“76. From the decisions, referred to above, it follows that two principal factors which must weigh while fixing or revising wage-scales and grades are: (1) how the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and (2) what wage-scales the establishment in question can pay without any undue strain on its financial resources. The same principles substantially apply when fixing or revising the dearness allowance.”

47. The Tribunal in the impugned Award brushed aside the plea of the Management for applying the industry-cum-region formula by stating that in view of the earlier settlements the Management had committed itself to applying the recommendations of the Pay Commissions. As regards the plea of the Management’s paying capacity, the Tribunal ejected it by holding that this had not been raised earlier. This approach of the Tribunal was not in conformity with the requirement of the law explained by the Supreme Court in the above decisions. The Tribunal had to necessarily consider the above pleas of the Management in deciding the dispute referred to it for adjudication. After examining the plea concerning the application of the above formulae, the Tribunal may decide any which way: either accept the plea of the workmen or of the Management or decide on any other appropriate wage structure. The Tribunal could well conclude that the wages to which the workmen are entitled would be less than what they were entitled to under the 1994 settlement. Or, the Tribunal could decide that the workmen were entitled to the FPC benefits or something even higher. In other words, while the earlier settlements may be relevant for ascertaining what the past pattern of the wage structure was, they do not, as contended by

the learned counsel for the workmen, constitute *res judicata* in the context of a determination of the appropriate wage structure for the future. The issue before the Tribunal is at large. This position becomes clear in light of the decisions that are discussed below.

48. In ***Ahmedabad Millowners' Association v. Textile Labour Association***, (1966) 1 SCR 382 the Supreme Court observed (SCR, p. 420-421):

“The last question to consider is whether the Industrial Court was right in coming to the conclusion that the additional burden which its award would impose upon the appellants would not be beyond their financial capacity. In dealing with this question, there are two general considerations which cannot be ignored. The first consideration is that the task of constructing a wage structure of industrial employees is a very responsible task and it presents several difficult and delicate problems. The claim of the employees for a fair and higher wage is undoubtedly based on the concept of social justice, and it inevitably plays a major part in the construction of a wage structure. There can be little doubt that if the employees are paid a better wage which would enable them to live in fair comfort and discharge their obligations to the members of their families in a reasonable way, they would be encouraged to work whole-heartedly and their work would show appreciable increase in efficiency.”

“On the other hand, in trying to recognise and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation against the ever-increasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden. The problem of constructing a wage structure must be tackled on the basis that such wage structure should not be changed from time to time. It is a long-range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the industry in future; has the industry been making profits; and if yes, what is the extent of profits; what is the nature of demand which the

industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face? These and similar other considerations have to be carefully weighed before a proper wage structure can be reasonably constructed by industrial adjudication, vide *Express Newspapers (Private) Ltd., v. Union of India* (1961) 1 LLJ 339. Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play a major role in the calculations which industrial adjudication would make in regard to the construction of a wage structure. A broad and overall view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it; and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit. In this connection, it may also be permissible to take into account the extent of the rise in price structure which may result from the fixation of a wage structure, and the reasonableness of the additional burden which may thereby be imposed upon the consumer. That is one aspect of the matter which is relevant.

71. The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication, and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should, revise the wage structure, though such revision may result in the reduction of the wages paid to the employees. It is true that normally, once a wage structure is fixed, employees are reluctant to face a reduction in the content of their wage packet; but like all major problems associated with industrial adjudication, the decision of this problem must also be based on the major consideration that the conflicting claims of labour and capital must be harmonised on a reasonable basis; and so, if it appears that the employer cannot really bear the burden of the increasing wage bill, industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfied that if such relief is not given, the employer may have to close down his business. It is unlikely that such situation would frequently arise; but, on principle, if such situations arise, a claim by

the employer for the reduction of the wage structure cannot be rejected summarily.”

49. In *Workmen v. Reptakos Brett. & Co. Ltd. (1992) 1 SCC 290*, it was explained (SCC, p. 301):

“28. The ratio which emerges from the judgments of this Court is that the management can revise the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage. But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all, is permissible not even on the ground of financial stringency. It is, therefore, for the management which is seeking restructuring of DA scheme to the disadvantage of the workmen to prove to the satisfaction of the tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure.”

Scope of the remand

50. The position that emerges from the above decisions is that the scope of the proceedings before the Tribunal in the instant case was not limited to examining the question referred only in light of the 1994 settlement. The Tribunal had to determine the appropriate wage structure by not only accounting for the past practice, including the 1994 settlement, but the industry-cum-region formula and the paying capacity of the Management as well. To this extent the impugned Award of the Tribunal is held to be erroneous in law. The remaining part of the Award is upheld.

51. The consequence of the above conclusion is that the appropriate wage structure that should replace the 1994 settlement has necessarily to be determined if the reference has to be answered. The Management placed documents on record to show how the wages being paid in the hospital in

question is much higher when compared to other private hospitals in Delhi. It also provided details of the financial position of the hospital in question. The Union contested these figures and sought to place further material in this regard. The exercise of determining an appropriate wage structure will be a matter for evidence. This Court cannot possibly undertake that exercise in these proceedings. The question of the appropriate wage structure to replace the 1994 settlement will be for the Tribunal to determine afresh in light of the evidence that the Management seeks to produce, after giving an opportunity to the workmen to produce any evidence to the contrary and in light of the law explained in the decisions of the Supreme Court. The impugned Award on this aspect has therefore to necessarily be set aside and the matter remanded to the Tribunal for a fresh determination.

52. Consequently, this Court refrains from expressing any view on the merits of the contentions of the parties concerning the appropriate wage structure that should replace the 1994 settlement. The Tribunal will determine the question afresh uninfluenced by the impugned Award or any observation in this order touching on the question of the appropriate wage structure to replace the 1994 settlement. It also needs to be clarified that this order will not affect the individual settlements that have been entered into with some of the workmen. Consistent with the law explained in **LIC v. DJ Bahadur**, the said individual settlements have already replaced the 1994 settlement as far as those workmen are concerned and there is therefore no pending dispute concerning them on the question of the appropriate wage structure. It is only those workmen who have not entered into a settlement with the Management after the termination of the 1994 settlement who will be governed by the Award to be passed afresh by the Tribunal.

The arrangement in the interregnum

53. There were extensive arguments addressed on what should be the arrangement as regards payment of wages till the Tribunal decides the reference afresh. While it was contended on behalf of the Management that it would have to be the wages last drawn under the 1994 settlement, and not the revised pay scales in terms of the FPC, the workmen contended that the benefits of the FPC recommendations had already accrued and that should be paid to them.

54. It requires to be reiterated that in terms of the law explained by the Supreme Court in ***LIC v. DJ Bahadur***, the 1994 settlement continues to operate till replaced by a fresh settlement or Award. Further as already held, the entitlement of the workmen to the revised pay scales in terms of the FPC recommendations had already accrued during the subsistence of the 1994 settlement. In this context it is important to note that the Tribunal in the impugned award granted to the workmen not the 'benefits' of the FPC recommendations but only the revised pay scales corresponding to the FPC pay scales. This was reiterated by the Tribunal in the order dated 18th August 2003. This part of the Award dated 14th January 2003 and the order dated 18th August 2003 has not been challenged by the workmen. Resultantly, the pay which the workmen were entitled to under the 1994 settlement at the time of its termination would be the revised pay scale in terms of the FPC recommendations. This however is to continue only till the 1994 settlement is replaced by the fresh settlement or Award.

55. Consequently it is directed that till such time the Tribunal determines, pursuant to the remand of the matter to it in terms of this order, the appropriate wage structure that should replace the 1994 settlement, the

workmen (whether part of the Union i.e. Respondent No.1 or Respondent No.2) who have not entered into any settlement with the Management after the termination of the 1994 settlement will be paid the revised pay scales as per the FPC recommendations. As already clarified this will be limited to those workmen who remain in the fray, i.e. who are still in service in the hospital in question as of today and who have not entered into any individual settlement with the Management after the termination of the 1994 settlement. The arrears constituting the difference in monetary terms in the pay scales given to the workmen and the revised pay scale as per the FPC recommendations with effect from 1st January 1996 shall be paid by the Management to the aforementioned workmen in four equal instalments within a period of twelve weeks from today. In the event of a failure by the Management to comply with this part of the order it will be open to the workmen concerned to seek appropriate remedies in accordance with law.

Time frame for disposal of the matter by the Tribunal on remand

56. This Court further issues the following directions:

- (i) The impugned Award dated 14th January 2003 of the Tribunal is set aside to the extent it holds that the workmen would be entitled to the revised pay scales as per the FPC recommendations notwithstanding the termination of the settlement dated 31st January 1994. The Award as regards other issues is affirmed.
- (ii) The matter is remanded to the Tribunal for a fresh decision on whether the workmen are entitled to the benefits of the FPC recommendations notwithstanding the valid termination of the settlement dated 31st January 1994. If not, what should be the appropriate wage structure to replace the one under the 1994 settlement and what should the consequential directions be?

(iii) For deciding the above issue the Tribunal will permit the parties to file further affidavits and documents by way of evidence within a period of four weeks from the date the matter is placed before it on remand. If the Tribunal decides to permit further cross-examination of the deponents of the additional affidavits it will lay down a strict time schedule for the purpose and ensure that it is completed within a further period of six weeks thereafter. The Tribunal will hear arguments and pass a fresh Award on the above limited aspect within a period of six months from the date it resumes hearing the case pursuant to this remand.

(iv) The Tribunal will not be influenced by the earlier Award dated 14th January 2003, the order dated 18th August 2003 or this order to the extent there are any observations in it on the merits of the said issue.

(v) The Registry of this Court will forthwith send a certified copy of this judgment along with the records of the Tribunal to the Judge-in-charge of the Karkardooma Courts Complex, who will assign the matter to the Tribunal/Labour Court of competent jurisdiction before which the matter will be listed on 6th February 2012 for further proceedings in accordance with this judgment. The parties will appear before the concerned Tribunal/Labour Court on that day.

57. The petition is disposed of in terms of the above directions with no order as to costs.

S. MURALIDHAR, J

January 20, 2012

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