

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA
APPELLATE SIDE

WRIT PETITION NO.199 OF 2008

GOA SHIP YARD LIMITED	]	
a Govt. of India Undertaking	]	
registered under the Companies Act, 1956	]	
through its Chairman and Managing Director	]	
having its office at Vaddem	]	... Petitioner/Original
Vasco-da-Gama, Goa	]	Opponent.

Versus

1]	Vishwas D Honavarkar,	]
		]
2]	Anant V. S. Salelkar	]
		]
3]	Anselmo Pereira	]
		]
4]	Santosh B. Dhargalkar	]
		]
5]	Savlo N. Madgaokar,	]
		]
6]	Ashok A. Bhatkal	]
		]
7]	Satpal Singh,	]
		]
8]	Lawoo P. Bhagat	]
		]
9]	Suresh Sawaikar,	]
		]
10]	Mohan P Gosavi	]
		]
11]	Shivaji T. Bichkar	]
		]
12]	Arvind Rao	]
		]
13]	Pundalik Bhosle	]

14]	Fermino Fernandes	]
15]	Vijaykumar C.T.	]
16]	Vilas Bandekar	]
17]	Harisingh Meena	]
18]	Anil Gaad	]
19]	A.M. Iyer	]
	Workmen represented by, Goa Shipyard	]
	Stores Staff Association, a registered	]
	association, having its Office at H.No.203	]
	Sharon Enclave, Vaddem, Vasco-da-Gama,	]
	through its Secretary, Vishwas D Honavarkar	]... Respondents/Original
	resident of Vaddem, Vasco-da-Gama, Goa	] Claimants.

Above addresses are registered addresses

ALONG WITH
WRIT PETITION NO.664 OF 2008

1]	Vishwas D Honavarkar,	]
2]	Anant V. S. Salelkar	]
3]	Anselmo Pereira	]
4]	Santosh B. Dhargalkar	]
5]	Savlo N. Madgaokar,	]
6]	Ashok A. Bhatkal	]
7]	Satpal Singh,	]
8]	Lawoo P. Bhagat	]
9]	Suresh Sawaikar,	]

10] Mohan P Gosavi]

11] Shivaji T. Bichkar]

12] Arvind Rao]

13] Pundalik Bhosle]

14] Fermino Fernandes]

15] Vijaykumar C.T.]

16] Vilas Bandekar]

17] Harisingh Meena]

18] Anil Gaad]

19] S.M. Iyer]

Workmen are also represented by, Goa Shipyard]

Stores Staff Association, a registered]

association, having its Office at H.No.203]

Sharon Enclave, Vaddem, Vasco-da-Gama,]

through its Secretary, Vishwas D Honavarkar]... Petitioners.

resident of Vaddem, Vasco-da-Gama, Goa]

Versus

Goa Shipyard Limited]

a Govt. of India Undertaking]

registered under the Companies Act, 1956]

through its Chairman and Managing Director]

having its office at Vaddem]... Respondent

Vasco-da-Gama, Goa]

(Above are the registered addresses of the parties)

Mr. Sudesh Usgaonkar with Ms. R Pereira for the Goa Shipyard Limited.

Mr. V A Lawande with Ms. P Kaur with Ms. M Pinto for the 19 Workmen.

CORAM : R. M. SAVANT, J.
Reserved on : 25th October 2013
Pronounced on : 24th December 2013

JUDGMENT :

1 The above Writ Petitions are cross Petitions. Writ Petition No.199 of 2008 is filed by Goa Shipyard Limited through its Chairman and Managing Director, and Writ Petition No.664 of 2008 is filed by 19 workmen employed (the 19 workmen for short) with the Goa Shipyard Limited through their association. Both the Petitions take exception to the Award of the Industrial Tribunal/Labour Court-I, Panaji Goa dated 26/10/2007. In so far as Writ Petition No.199 of 2008 is concerned, the challenge by the Goa Shipyard Limited (GSL for short) is to the Award to the extent it grants the benefits of the pay-scales recommended by the Justice Mohan Committee Report (JMCR for short) with effect from 01/01/2007, and in so far as Writ Petition No.664 of 2008 is concerned, the challenge by the 19 workmen is to the Award to the extent it denies the benefits of the pay-scale under the JMCR from the day they came into force i.e. 01/04/1998.

2 The factual matrix involved in the above Petitions can be stated thus:-

The reference in question being Reference IT/2/2007 was preceded by the Writ Petition being filed by the said 19 workmen being Writ Petition No.481 of 2005 in which Writ Petition a direction was sought that the employer i.e. Goa Shipyard Limited (GSL) should be directed to extend the benefits of the pay-scales of the the JMCR to the Petitioners therein i.e. 19 workmen. The said Petition was founded on the allegation of discrimination by the employer i.e. Goa Shipyard Limited vis-a-vis the said 19 workmen, as according to the Petitioners therein i.e. the 19 workmen, though there was a historical parity in pay-scales between the workmen who were granted the benefit of the said S1, S2 and S3 scales and the 19 workmen, the Respondent therein i.e. the GSL refused to extend the benefits of the S1, S2 and S3 to the 19 workmen. The said Petition came to be disposed of by this Court by order dated 06/06/2006 wherein this Court held that the dispute whether the members of the Petitioner-Association therein i.e. the 19 workmen who are store keepers are discriminated in the matter of extension of benefits of the JMCR and whether the acceptance of benefits of settlement dated 06/09/2002 bars the members of the Petitioner-Association from receiving benefits under the JMCR with effect from 01/04/1998 can be adjudicated and resolved by the Industrial Tribunal in a reference under Section 10 of the Industrial Disputes Act, 1947. In pursuance of the order dated 6/6/2006 the Association of the 19 workmen raised an industrial dispute on 27/7/2006 which dispute on the conciliation proceedings having been failed came to be referred by the

Government of Goa to the Industrial Tribunal by the order dated 06/10/2006 passed under Section 10(1)(d) of the Industrial Disputes Act. The terms of reference were inter-alia as follows :-

- 1.(a) Whether the acceptance of the benefits of settlement dated 06/09/2002, bars the workmen represented by the Goa Shipyard Store-keepers Association, Vasco-da-Gama, from receiving benefits under Justice Mohan Committee Report with effect from 01/04/1998?
- (b) Whether the workmen who are store keepers are discriminated in the matter of extension of benefits of the Justice Mohan Committee Report?
- 2 If the answer, to (a) above is in the negative and the answer to (b) above is in the affirmative then, to what relief the workmen are entitled?

3 It would be relevant at this stage to refer to the scope of the Justice Mohan Pay Committee. The Government of India had constituted the said Committee under the Hon'ble Mr. Justice Mohan in order to bring parity in pay structures and uniformity in pay scales in public sectors. The said Committee accordingly submitted its report where under it recommended revision of pay-scales to non-unionized supervisory staff. In the context of the present Petitions, the following pay scales are relevant :-

- | | |
|----|---------------|
| S1 | 5200-140-8000 |
| S2 | 5600-150-8600 |
| S3 | 6000-160-9200 |

It appears that after the said Committee submitted its report, the GSL herein had entered into a memorandum of settlement, under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 with the Shipyard Employees Union on 6/9/2002. The said settlement was to operate from the year 2002 to the year 2006. The 19 workmen who are involved in the present Petitions and their Association accepted the said settlement dated 6/9/2002 in their individual capacity and not as the members of the Shipyard Employees Union.

4 After the reference of the dispute was made to the Industrial Tribunal, the Petitioners in Writ Petition No.664 of 2008 i.e. the 19 workmen filed their statement of claim. It was averred by them in the said statement of claim that the Respondent i.e. the GSL which was Party No.II is the Government of India Undertaking and is a Public Limited Company established under the Indian Companies Act, 1956, that the 19 workmen are represented by Party No.I which is a registered Association registered under the Societies Registration Act, 1860 and was working as store-keepers Grade I in the establishment of the GSL i.e. Party No.II. A reference was made to the Justice Mohan Pay Committee and the pay recommendations contained therein and especially the pay scales S1, S2 and S3. It was further averred in the said statement of claim that the technical staff working in the GSL had filed Writ Petition No.272 of 2002 before the High Court Bench at Goa for getting

benefits of the SI, S2, and S3 pay scales recommended by the said Committee. It was further averred that the reference bearing No.IT/67/2003 at the instance of Administrative Staff of the GSL was pending in the Industrial Tribunal. In the said Writ Petition No.272 of 2002 as well as in the reference bearing No. IT/67/2003 it was the stand of the GSL that the said employees are not supervisors and therefore the revision in pay scales extended to non-unionized supervisory staff in terms of the JMCR cannot be extended to them. It is further averred that in spite of the said stand taken, the GSL extended benefits of S1, S2, S3 pay scales to the technical and administrative staff who were getting pay scale of 2725-70-3075-80-3895, pay scale of 2630-55-2905-70-3605 and pay scale of 2570-50-2820-60-3420 by orders dated 26/6/2003 and 2/4/2005 respectively. Hence the three old pay-scales were the revised pay-scales at Sr.Nos.7, 8 and 9 under the wage settlement dated 18/4/1994 which was covering all categories of employees. It is the case of the 19 workmen that thereafter the said employees made representations on 13/11/2003, 18/3/2005 and lastly on 15/5/2005 to the management asking it to review their pay scales and to extend to them the benefits of S1, S2 and S3 pay scales on par with the technical staff and administrative staff. The GSL by its letter dated 12/7/2005 turned down the said representations on the ground that they have accepted the settlement dated 6/9/2002 and that they are not entitled to get the benefit of S1, S2 and S3 pay scales during the validity of the settlement dated 6/9/2002. The 19 workmen have thereafter averred that

since the recommendations of the JMCR have got statutory force, they would prevail upon the settlement dated 6/9/2002, since the same is in the realm of private contract. It was further averred that acceptance of benefits under the settlement dated 6/9/2002 does not bar them from receiving benefits available under the JMCR. It was their case that there was historical parity in the pay scales between the technical staff and administrative staff and the staff working in store section. The GSL by refusing to extend the benefits of S1, S2 and S3 pay scales has discriminated against them in the matter of extension of the benefits available under the JMCR. It is averred by them that it is in the said background that they had filed Writ Petition being No.481 of 2005 which came to be disposed of by the High Court of Bombay at Goa by the order dated 6/6/2006 by observing that the disputes can be adjudicated upon and resolved by the Industrial Tribunal in a reference under Section 10 of the Industrial Disputes Act. The 19 workmen in the said statement of claim have claimed that a direction be issued to the GSL to extend to them the S1, S2 and S3 pay scales which have been extended to the supervisory staff in the technical and administrative wings of the GSL along with other benefits including arrears of wages recommended by the JMCR on par with the technical and administrative staff.

5 The Respondent Management i.e. the Goa Shipyard Limited filed its Written Statement and dealt with the case of the 19 workmen. It was the

case of the GSL that the 19 workmen represented by the Association have accepted the settlement dated 6/9/2002 which took place between the workmen represented by the Shipyard Employees Union and the GSL. It was contended that in view of clause 14.4 of the said settlement, the employees are estopped from claiming or raising any demand involving additional financial expenditure/implication. The GSL also questioned the maintainability of the reference. It was its case that the dispute raised by the 19 workmen out of 1056 since not raised by the Union or by a substantive number of workmen working in the establishment of the GSL, the said dispute could not be said to be an Industrial Dispute. A question was also raised as regards whether the Association could espouse the cause of the 19 workmen, as it was not a registered trade union. It was therefore sought to be contended that the Association is incompetent to raise or to make any demand for and on behalf of the workmen. The entitlement of the Association to the benefits under the JMCR was also raised by contending that the pay-scales under the JMCR are applicable to executives at Board level, below Board level and to non-unionized supervisory staff. The employees being the workmen as defined under the Industrial Dispute Act cannot claim the benefits under the JMCR. In the Written Statement it has been stated that before implementation of the report submitted by Justice Mohan Committee in respect of the pay-scales to non-unionized supervisory staff, employees working in establishment of the GSL, were classified in 7 categories. It was stated that the said classification was on

the basis of qualification entry level, promotional avenues, pay-scales and job specifications as per recruitment and promotion policy. It was stated that there were two structures of pay-scales viz. one for Industrial workmen and another for office and subordinate staff. The said pay-scales were being reproduced under two Heads i.e. Previous Pay-scales and Revised Pay-scales as per the 1994 settlement. It was stated that the store-keepers i.e. the employees in question are placed under Class III(c). It was further stated that the employees coming under class III were reaching the pay-scale at Serial Nos. 8 and 9 after a period of 13 years and 17 years of service respectively in that category subject to fulfillment of the eligibility criteria set out in the Recruitment and Promotion Policy. It was stated that the employees working in the Planning and Design Section and Yard Supervisors are getting identical pay-scales at entry level as well as as after service of two years and of five years. It was further stated that there was no parity of pay-scales of store-keepers at entry level. It was stated that the parity of pay-scales between store-keepers and employees working in Planning and Design Section and Yard Supervisors arises only on account of promotional avenues available to store-keepers as per Recruitment and Promotion Rules in force. It was therefore stated that the employees in question are not enjoying similar benefits especially pay-scales in comparison to employees working in Planning and Design Section, Yard Supervisor, Administrative Class and as such they cannot claim equality in pay with the employees working in Planning and Design Section, Yard Supervisors

and Administrative Staff. It was contended by the GSL that there was a settlement arrived at between the Goa Shipyard Limited and the Shipyard Employees Union on 27/1/1994. By the said settlement the then prevailing pay-scales came to be revised for Assistant Store-keepers at Rs.2350-28-2490-32-2810 with effect from 1/4/1993. It was stated that this revision of pay-scales was for the period from 1/4/1993 till 31/3/1998. It was stated that the employees were the members of the Shipyard Union at the relevant time and had accepted the terms and conditions of the settlement dated 27/1/1994 in toto. It was stated that the pay-scales which were revised for Assistant Store-keepers were different from those which were made applicable to the Yard Supervisors and the employees working in Planning and Design Section. It was stated that duties of the store-keepers vis-a-vis the Yard Supervisor, Design and Planning Staff and Administrative Staff are different from each other. It was stated that the Ministry of Defence recommended to make applicable supervisory pay-scales prescribed under the report of the said Committee to the non-unionized supervisory class of employees. It is on the said basis that the pay-scale of Yard Supervisors, Design and Planning Staff and Administrative and Ministerial Staff came to be revised to S1, S2 and S3 pay-scales which applied to the non-unionized supervisory staff under the JMCR. It was stated that the same was done in view of the option exercised by the Yard Supervisors, Design and Planning Staff and Administrative Staff and on their submitting irrevocable undertakings declaring themselves to be non-unionized

supervisors. It was the case of the GSL that accordingly the pay-scales of S1, S2 and S3 were made applicable to the said staff with effect from 1/4/1998 and while granting these pay-scales, their designations were also revised. It was stated that the said employees/staff had not accepted the settlement dated 6/9/2002. It was lastly contended that employees in question are not discriminated by the GSL in the matter of extension of the benefits of the pay-scales recommended under the JMCR. It was further contended that the employees are not from non-unionized supervisory staff and they are therefore not entitled to claim parity in the pay-scales made applicable to the non-unionized supervisors as per the recommendations of the said Committee.

6 The reference proceeded to trial and the parties adduced oral as well as documentary evidence in support of their respective cases. The Industrial Tribunal whilst adjudicating upon the said reference framed the following issues for consideration in the said reference :-

- 1 Whether the Goa Shipyard Store-keepers Association, Vasco da Gama, Goa is competent to raise dispute for and on behalf of the workmen ?
- 2 Whether the dispute raised by the said Association in the industrial dispute within meaning of Section 2(k) of the Industrial Disputes Act, 1947 ?
- 3 Whether the acceptance of benefits of settlement dated 6/9/2002 bars the workmen represented by the Goa Shipyard Store-keepers Association Vasco-da-Gama, from receiving benefits under the Justice Mohan Committee Report w.e.f. 1/4/1998 ?

- 4 Whether the workmen who are Store-keepers are discriminated in the matter of extension of benefits of the Justice Mohan Committee Report ?
- 5 Whether the workmen are entitled to the reliefs as prayed for ?
- 6 What Award ?

In so far as Issue Nos. 1 and 2 are concerned, the Industrial Tribunal answered the said Issues in the affirmative. In so far as Issue No.3 is concerned, the same was answered in the affirmative, but was qualified by the Industrial Court by stating that the bar would apply only during the validity period of the settlement i.e. till 31/12/2006. In so far as Issue No.4 is concerned, it was answered in the negative. In so far as Issue No.5 is concerned, it was answered by holding that the workmen were entitled to the benefits of S2 and S3 pay-scales with consequential benefits. Hence the Industrial Tribunal held that the workmen were barred from claiming the benefits of the JMCR during pendency of the settlement dated 6/9/2002 i.e. till 31/12/2006. However, it has held that the said workmen would be entitled to S2 and S3 pay-scales from 1/1/2007 with consequential benefits recommended under the JMCR if they make a declaration in writing declaring themselves as non-unionized supervisors. The Industrial Tribunal held that the Association was entitled to espouse the cause of the said 19 workmen. The Industrial Tribunal thereafter held that the dispute raised by the 19 workmen was an industrial dispute. This was in the teeth of the objection raised on

behalf of the GSL that the said 19 workmen being a miniscule component of the employees working with the GSL, the dispute raised by them cannot be termed as an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act. The Industrial Tribunal adverted to the affidavit in reply filed in Writ Petition No.481 of 2005 wherein the GSL had contended that the members of the Petitioner-Association are a class by themselves and since the dispute was raised on behalf of all its members by the Association, it could not be said that the dispute which has been referred to adjudication is not raised by an appreciable or by a substantial body of workmen. In so far as the case of the Association that the said 19 workmen have been discriminated in the matter of grant of S1, S2 and S3 pay-scales under JMCR is concerned, as the employees of the Design and Technical Division as well as the Administrative Staff were granted the said benefits, the Industrial Tribunal held that there was no discrimination vis-a-vis the said 19 workmen as the employees of Design and Technical Division as well as the Administrative Staff had not accepted the settlement dated 6/9/2002 and therefore, their case stood apart from the case of the said 19 employees. The Industrial Tribunal held that in view of the Petitioner-Association having accepted the settlement individually by signing the undertaking in that behalf and in view of Clause 14.4 of the said settlement, the said 19 workmen would not be entitled to the benefits of the JMCR. The Industrial Tribunal held that it was not a case where the settlement has been terminated between the parties and the workmen are

claiming the benefits of the JMCR on the said basis. The Industrial Tribunal held that the benefits of the JMCR were sought on the basis that the said benefits were granted to the Design and Technical Staff as well as to the Administrative Staff. The Industrial Tribunal took into consideration the law in that regard where the settlement is in operation and better benefits are claimed by the workmen. The Industrial Tribunal however held that in view of the reference made, it was entitled to modulate the reliefs which were claimed by the 19 workmen and accordingly deemed it fit to grant the benefits of the JMCR i.e. S2 and S3 pay-scales to the 19 workmen after the period of settlement dated 6/9/2002 came to an end i.e. after 31/12/2006. As indicated above, the Industrial Tribunal has held that the benefits of S2 and S3 pay-scales to the 19 workmen would be available after 31/12/2006. It is the said Award of the Industrial Tribunal which is taken exception to by way of the above Petitions.

7 **SUBMISSIONS ON BEHALF OF THE GOA SHIPYARD LIMITED (GSL) BY SHRI SUDESH USGAONKAR IN BOTH THE PETITIONS.**

i] That the Industrial Tribunal erred in not upholding the objection raised on behalf of the GSL as regards maintainability of the reference since the dispute was raised only by 19 workers from out of 1056 workers. Since the dispute was not raised by substantial number of workmen, same was not an "industrial dispute". The learned counsel placed reliance on the judgment of

the Apex Court reported in (1975) 4 SCC 838 in the matter of State of Punjab v/s. Gandhara Transport Company (P) Ltd & ors.

ii] That the concept of appreciable or substantial body of workmen has to be considered in the context of the number of workmen employed in the establishment. In the instant case, the dispute was raised by 19 workmen out of 1056 workers, though the cause of some can be espoused by many. Such was not the instant case as cause was espoused by 19 workmen themselves. The Industrial Tribunal therefore erred in proceeding on the basis that the said 19 workers were a class by themselves relying upon the reply filed by the GSL in Writ Petition No.481 of 2005.

iii] That any Court or Tribunal has inherent jurisdiction to decide the issue of its own jurisdiction. The Tribunal had therefore rightly held that the objection to the maintainability of the dispute can be decided by it. Reliance was placed on the judgment of the Apex court reported in AIR 1967 SC 469 in the matter of The Delhi Cloth and General Mills Co. Ltd. v/s. The Workmen and ors.

iv] That the reliance placed by the 19 workmen on the judgments of the Apex Court reported in National Engineering Ltd v/s. State of Rajasthan and the State of Rajasthan and ors v/s. Harischandra Sharma is misplaced

as the Apex Court in the said case was concerned with the point of validity of the reference and was not concerned with the maintainability of the reference.

v] That the contention of the 19 workmen that the GSL cannot raise the issue about maintainability of the reference before the Industrial Tribunal as the reference was preceded by the order passed by this Court in Writ Petition No.481 of 2005 filed by them wherein such an issue was not raised and secondly the Tribunal has no jurisdiction to decide the issue of jurisdiction is misfounded.

vi] That the Industrial Tribunal in deciding the said reference has gone beyond the scope of the reference whilst granting the relief to the 19 workmen beyond the period of settlement.

vii] The reference before the Industrial Court was whether the acceptance of benefits of the settlement dated 06/09/2002 bars the workmen from receiving the benefits under the JMCR from 1/4/1998. The reference was therefore not as regards whether in the absence of the settlement, they could have got the said benefits.

viii] That the terms of the reference were restricted to the point on which the reference was made by the State, hence neither the parties by

their pleadings nor the Tribunal during the adjudication can expand the scope of reference. It was contended that there was clear jurisdictional error committed by the Industrial Tribunal. Reliance was placed on the judgments of the Apex Court reported in (1) *AIR 1967 SC 469* in the matter of *The Delhi Cloth and General Mills Co. Ltd. v/s. The Workmen and ors.* (2) *(1978) 3 SCC 119* in the matter of *Workmen of Cochin Port Trust v/s. Board of Trustees of the Cochin Port Trust & Anr.* (3) *(2006) 5 SCC 123* in the matter of *State Bank of Bikaner & Jaipur V/s. Om Prakash Sharma.*

ix] That the benefits under the JMCR were applicable for the period from 01/01/1997 till 31/12/2006. Hence beyond 31/12/2006, the JMCR was not available, and the recommendation of the Committee headed by Justice Janardhana Rao were applicable. The Industrial Tribunal had therefore erred in allowing the reference to the extent of granting 19 workmen the benefits after 31/12/2006 i.e. after the period of the applicability of the JMCR had come to an end.

x] That the 19 workmen were not entitled to the benefits of the JMCR in view of the fact that they had signed the settlement dated 6/9/2002 and in view thereof the applicability of the recommendations of the JMCR were barred in so far as the 19 workmen are concerned.

xi] That the 19 workmen were not entitled to the benefits of the JMCR in view of the fact that their qualifications at entry level, the nature of duties, promotional avenues and scale of pay are different from the category of workmen to whom the said benefits were extended. The Industrial Tribunal however has held the 19 workmen dis-entitled to the benefits only on the basis of the first ground and it has refused to consider the second ground by erroneously placing reliance on the judgment of the Apex Court in the case of reported in (1978) 1 SCC 405 in the matter of Mohinder Singh Gill and another v/s. The Chief Election Commissioner, New Delhi and others.

xii] That there was no historical parity of pay-scales with the class of Yard Supervisors, Planning and Design Assistants and Ministerial Administrative Staff. That merely because the benefits under the JMCR was extended to the said 3 classes, as they were on the pay-scales namely 7, 8, 9, 13 and 14, and merely because the 19 workmen were also on scale 8 and 9 at that time, they could not be extended the said benefits.

xiii] That the Industrial Tribunal erred in holding that the 19 workmen were entitled to the benefits under the JMCR as they were also on pay-scales (8) and (9) on which scale the Yard Supervisors, Planning and Design, Assistants and Ministerial Administrative Staff were placed at the time when the benefits of the JMCR were granted to them. The Industrial Tribunal ought

to have considered that there was a difference in the scales between the Store-keepers on one hand and the Planning and Design, Yard Supervisors and Administrative Staff on the other hand which was eloquently demonstrated in the Written Statement.

xiv] That parity could be claimed if two classes have the same entry level pay-scale and the similarity in the pay-scales is still the last promotional avenue which is not there in the present case.

xv] That the Technical staff, Administrative staff, Yard Supervisors, were extended the supervisory pay-scales because they were on the pay-scales of (8) and (9) at the relevant time. It was based on qualification, entry level, promotional avenues, nature of duties and scale of pay. The Industrial Tribunal wrongly did not consider the said ground, as according to it, the only reason stated in the letter dated 12/7/2005 of the GSL could be considered.

xvi] That the disparity in pay-scales between the Store-keepers, Yard Supervisors, Planning and Design staff and the Administrative staff had continued right from the settlements which are from the 1985 to the year 1993 and hence there was no historical parity in the pay-scales of the 3 categories.

xvii] That the parity cannot be claimed on the basis of similarity in pay-

scales when workmen belong to different categories. In support of the said contention, the learned counsel sought to place reliance on the judgment of the Apex Court reported in AIR 2010 SC 3446 in the matter of Rameshwar Dayal v/s. Indian Railway Construction Co. Ltd. & ors.

xviii] That the principle of equal pay for equal work postulates total equality in all respects. Equal pay for equal work involves similarity and identical nature of duties, responsibilities, intellectual inputs, total and completed identity between the two categories of workmen. Reliance was placed on the judgments of the Apex Court reported in 2009 I CLR 690 in the matter of U.P. State Electricity Board & Anr. v/s. Aziz Ahmad, reported in 2008 I CLR 207 in the matter of State of Punjab & ors. v/s. Surinder Singh & Anr., and reported in (1988) 2 SCC 91 in the matter of Federation of All India Customs and Central Excise Stenographer (recognized) & ors. v/s. Union of India and ors.

xix] That the 19 workmen cannot claim discrimination as the 19 workmen themselves have admitted that they are not equal either to the staff of Yard Supervisors, Design & Planning or Administrative Staff in terms of the nature of duties, promotional avenues, qualification at entry level etc.

xx] That the claim of the 19 workmen based on the fact that the Yard

Supervisors, Design & Planning or Administrative Staff had signed the settlement dated 6/9/2002 and therefore they were similarly placed was erroneous as the said staff had not signed any settlement before they were given the benefits of the JMCR.

8 SUBMISSIONS ON BEHALF OF THE 19 WORKMEN BY SHRI V.A. Lawande IN BOTH THE PETITIONS.

A] That this Court in Writ Petition No.481 of 2005 having relegated the parties in respect of the dispute raised for adjudication by the Industrial Tribunal under the provisions of the Industrial Disputes Act, it was not open for the GSL to question the maintainability of the dispute.

B] That the GSL ought to have taken an objection to the maintainability of the dispute on the ground that the dispute raised by 19 workmen would not qualify to be an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act in the said Writ Petition No.481 of 2005. Having not raised the said objection at the time of hearing of the said Writ Petition, the GSL is now estopped from raising the said objection.

C] That the dispute in respect of the 19 workmen is connected with the employment of the said 19 workmen and since it is raised by the Association of the said 19 workmen, the said dispute is an industrial dispute

within the meaning of Section 2(k) of the said Act.

D] That the reliance placed by the GSL on the judgment of the Apex Court in *Gandhara Transport Company's* case (supra) is misfounded, as the said judgment is not applicable to the facts of the present case. That the judgment would have no application after introduction of Section 2A of the Industrial Disputes Act in the year 1965 by which dismissal, retrenchment etc of an individual workman was deemed to be an industrial dispute notwithstanding that no other workmen or any union of workmen was party to the dispute. Since the said amendment in the said Act is carried out precisely to remove the hardship which was suffered by the workmen who were dismissed, the espousal of whose cause could only be done by the union or other workmen prior to introduction of Section 2A of the Industrial Disputes Act.

E] That the maintainability of the dispute cannot be raised before the Industrial Tribunal finds support in the judgments of the Apex Court reported in 2000(1) SCC 371 in the matter of National Engineering Industries v/s. State of Rajasthan and anr. and reported in 2007(110) FLR 968 in the matter of State of Rajasthan and ors. v/s. Harischandra Sharma.

F] That the conduct of the GSL in the context of the benefits of the

JMCR in the matter of S2 and S3 pay-scales being extended to the Yard Supervisors, Planning & Design/Technical staff or Administrative staff is required to be seriously deprecated. In support of the said contention, reliance is placed on the judgment of the Apex Court reported in (1983) 4 SCC 214 in the matter of S K Verma v/s Mahesh Chandra and anr.

G] That the contention of the GSL that the Industrial Tribunal in extending the benefits of the JMCR to the 19 workmen from 31/12/2006 has gone beyond the terms of the reference cannot be accepted, in the teeth of the fact that the GSL was very well aware about the demand of the 19 workmen which is evidenced by pleadings in the said Writ Petition No.481 of 2005, and that the said case has also been dealt with by the GSL in Writ Petition No.272 of 2002 and I.T. Reference No.67 of 2003.

H] That in the instant reference also an application was made for interim relief claiming the benefits of the JMCR pending the Reference, however, the Industrial Tribunal by order dated 14/8/2007 held that since the main Reference is being expedited, the issue will be dealt with along with the main matter. Hence the GSL was very much aware as to on what point the parties were litigating.

I] That the previous settlements i.e. the settlement dated 11/9/1985;

settlement dated 17/4/1990 and the settlement dated 18/4/1994 covered all the categories of employees and the category was if a person has reached a particular pay-scale prior to the revision of pay-scale, his existing scale gets revised to a revised scale as per the settlement and was entitled to draw the benefit of the wage revision without any distinction.

J] That there is mis-representation on the part of the GSL; inasmuch as it was represented to the 19 workmen that the GSL in terms of clause 14.4 of the settlement would not take any additional financial burden or implication during the currency of the settlement dated 6/9/2002. In respect of the Technical staff Association which had filed Writ Petition No.272 of 2002 the stand taken by the GSL in the Affidavit in Reply filed in the said Writ Petition was that the technical staff by nature of their duties are not working in non-supervisory categories from the date of their joining and therefore merely changing the nomenclature from supervisory equivalent to non-supervisory does not mean any changes in their service conditions. Similar stand was taken in respect of the Administrative staff, however, suddenly on 26/6/2003 the technical staff having the pay-scales 7, 8 and 9 were extended the pay-scales of S1, S2 and S3 under the JMCR from 1/4/1998. Hence on the ground of discrimination and mis-representation the 19 workmen are entitled to the benefits of the JMCR from 1/4/1998.

K] That the GSL has discriminated against the 19 workmen in so far as the grant of the benefits of the JMCR is concerned. Though a stand was taken by the GSL in the Writ Petition No.272 of 2002 filed by the technical and design staff as also in the reference, which had arisen on account of the demands raised by the Administrative staff, that they are not entitled to the benefits of the JMCR, the said benefits were extended to them, but similar treatment was not extended to the 19 workmen.

L] That there is no requirement of formal notice terminating the settlement and such termination can be inferred from the correspondence exchanged between the Association and the GSL. In support of the said contention, reliance was placed on the judgment of the Apex Court reported in AIR 1990 SC 2047 in the matter of Karnani properties Ltd. v/s. State of West Bengal.

M] That the GSL cannot insist upon the employees to sign any declaration as prescribed under the settlement so as to extend them the legitimate benefits under the settlement, so as to be bound by such settlement. Reliance was placed on the judgment of the Apex Court reported in (2005) 5 Bom CR 33 in the matter of Bennett Coleman and Company Ltd. v/s. Narayan Atmaram Sawant and ors.

N] That in the facts and circumstances of the case, this Court should not disturb the Award passed by the Industrial Tribunal on hyper technical grounds as made out by the GSL. In support of the said contention, reliance was placed on the judgment of the Apex Court reported in 1988 (Supp) SCC. 768 in the matter of Calcutta Port Shramik Union v/s. Calcutta River Transport Association & ors.

O] That the conduct of the GSL can be seen from the facts that during the interregnum though the subsequent settlement has been brought into force the benefits of the revised pay-scale under the subsequent settlement have not been extended to the 19 workmen as they are agitating the issue relating to the JMCR before this Court, and hence the GSL by its conduct is dis-entitled to invoke the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

CONSIDERATION :-

9 Having heard the learned counsel for the parties, I have considered the rival contentions.

10 Since the maintainability of the dispute is questioned on behalf of the GSL, it would be necessary to address the said issue at the outset. Before

the Industrial Tribunal the maintainability of the dispute was questioned on two fold grounds viz. the dispute raised on behalf of the 19 workmen was sought to be espoused by the Association which is not a Trade Union, and secondly that the dispute raised by only 19 workmen would not be an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act. However, during the course of hearing of the above Petitions, the learned counsel appearing on behalf of the GSL Shri Sudesh Usgaonkar fairly conceded that the GSL would not press the issue in so far as the maintainability on the ground of the dispute being raised by the Association is concerned, and would accept the findings of the Industrial Tribunal in that regard. In view of the said statement made by Shri Sudesh Usgaonkar the learned counsel appearing on behalf of the GSL, it is not necessary to consider the maintainability of the dispute from the said angle. Hence what remains for consideration is the maintainability of the dispute on the ground that it involved only 19 workmen. In the light of the said issue, it would be apposite to refer to Section 2(k) of the Industrial Disputes Act which is reproduced herein under for ready reference:-

“2(k) “Industrial Dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person”

11 Raising the issue of the maintainability of the reference on the ground which is now sought to be raised is objected to on behalf of the 19 workmen by the learned counsel Shri Lawande by contending that the maintainability of the reference on the said ground was not questioned in Writ Petition No.481 of 2005 and therefore the GSL cannot expand the scope of reference, and is therefore estopped from raising the said plea. In support of the said contention, reliance was placed by the learned counsel Shri Lawande on *National Engineering Ltd's* case (supra) and *M/s. India Tourism Development Corporation's* case (supra). In so far as *National Engineering Ltd* (supra) is concerned, the issue before the Apex Court was about the validity of the reference in the facts of the said case and not its maintainability. So is the case in the *State of Rajasthan* (supra) on which also reliance was placed on behalf of the 19 workmen. In so far as *M/s. India Tourism Development Corporation* (supra) is concerned, it is held by the Apex Court in the said case that the Industrial Tribunal constituted under the said Act is not vested with any inherent power of jurisdiction which exercises such jurisdiction and power only upon the reference being made. It therefore cannot travel beyond the terms of reference except for ancillary matters. So is the judgment of the Apex Court in *The Delhi Cloth and General Mills Co. Ltd* (supra) wherein the Apex Court has held that the Industrial Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned. Hence from reading of the aforesaid

judgments there can be no gain saying of the fact that the Industrial Tribunal under the terms of the reference cannot enlarge the scope of the reference, however, it can certainly deal with the ancillary matters while deciding the reference. Dealing with the ancillary matters in my view would not amount to enlarging the scope of the reference. The contention of the learned counsel for the 19 workmen that since the issue was not raised before the Division Bench of this Court in the Writ Petition No.481 of 2005 cannot be accepted as it is not possible to anticipate the issues that may arise in a proceeding. The order of this Court cannot be construed so as to mean that the challenges are restricted. It was therefore permissible for the GSL to contend that the dispute referred to adjudication of the Industrial Tribunal is not an industrial dispute.

12 The plea raised by the GSL that the dispute raised by the 19 workmen is not an industrial dispute is an ancillary matter which is required to be dealt with while deciding the terms of reference. To buttress the contention that the dispute raised by the 19 workmen is not an industrial dispute on the ground that the said 19 workmen do not constitute a substantial figure, the GSL sought to place reliance on *Gandhara Transport (P) Ltd's* case (supra). In so far as the said contention is concerned, if one were to take the total number of workmen into consideration the said submission appears to be attractive. However, the same would have to be considered in the background of the fact that all along it was the case of the GSL that the said 19 workmen who are

storekeepers stood apart from the other workmen who have been given benefits under the JMCR . In fact in Writ Petition No.481 of 2005 in the affidavit in reply the GSL has taken a stand that the 19 workmen are a Class by themselves. Since the dispute is raised on behalf of the 19 workmen who are a Class by themselves it cannot be said that the present reference is not raised by appreciable and substantial body of workmen. The matter is required to be looked at from the another angle as *Gandhara Transport (P) Ltd's* case (supra) was decided when section 2A of the Industrial Disputes Act was not on the statute book. By introduction of section 2A a different dimension is now given and even a dispute concerning one workman can be said to be an industrial dispute. It would therefore be a travesty to hold that the dispute raised on behalf of the 19 workmen is not an industrial dispute. Hence the contention raised by the learned counsel Shri Sudesh Usgaonkar appearing on behalf of the GSL in respect of the maintainability of the dispute on the ground that it is raised by only 19 workmen cannot be accepted.

13 The next issue is as regards whether the Industrial Tribunal has enlarged the scope of the reference in granting the benefits of the JMCR after 31/12/2006 i.e. after the validity of the settlement dated 6/9/2002 has come to an end. In so far as the said contention is concerned, it is required to be noted that the parties were aware as to what they were litigating at, viz. whether the 19 workmen were entitled to the benefits of the JMCR. The Writ

Petition filed by the Association being Writ Petition No.481 of 2005 was precisely for the said reason. It is required to be noted that in the instant reference also an application for interim relief had been made by the Association on behalf of the said 19 workmen whereby they had claimed the benefits of the JMCR, pending the reference. It was therefore clear that the parties were aware of each other's cases and it is in the said context that the said issue would have to be viewed. In so far as the 19 workmen are concerned, they placed reliance on the judgment of the Apex Court reported in 2008 (12) SCC 275 in the case of ONGC v/s. Contractual Workers Union wherein it has been held by the Apex Court that although the reference may be loosely worded however when both the parties were aware of the issues involved in the light of the protracted litigation, it was open to the Industrial Tribunal to lift the veil so as to determine the nature of the employment and the dispute between the parties and for that purpose to look into the pleadings and the evidence produced before it. Paragraph 25 of the said judgment is material and is reproduced herein under :-

25. The pleadings in the present matter would show that the core issue before the Tribunal was with regard to the status of the employees as employees of the ONGC or of the contractor and that it was this issue simpliciter on which the parties went to trial. Mr. Dave's argument with regard to the decision of the Tribunal being beyond the reference, is to our mind, and in the circumstances, hyper technical. In this background, we feel that the judgments cited by Mr. Dave pertaining to regularization of contract labour are not applicable to the facts of the case.

The 19 workmen have also placed reliance on the judgment of the Division Bench of this Court reported in 2005-III-LLJ (Bom) 434 in the case of *DBH International Ltd. v/s Their Workmen represented by Transport and Dock Workers Union* wherein the Division Bench of this Court has held that the Tribunal was justified in entering into the question of legality of the retrenchment and it could not be said to have enlarged the scope of reference. When the question of legality of retrenchment was raised in the statement of claim by the Union, the management cannot later claim that they were taken by surprise and that they did not get an opportunity to meet the question of legality. The management could not later challenge the question of legality of retrenchment contending that the Tribunal cannot enlarge the scope of reference and it was binding on the Tribunal to decide only as to whether the action of retrenchment was justified

14 On behalf of the GSL reliance was placed on the the judgment of the Apex Court in the *State Bank of Bikaner and Jaipur's* case (supra) wherein the issue which was referred was whether there was any violation of Section 25H of the Act. The Labour Court in the said reference arrived at a finding that Section 25H was not violated however since no seniority list was maintained as required under Rule 77 of the ID Rules. The Labour court further held that in the light of the fact that no seniority list was maintained, the workman was entitled to reinstatement with back-wages. It is in the said

context that the Apex Court held that the Labour Court had gone beyond the scope of reference as the reinstatement on the basis of non compliance of Rule 77 was not even incidental to the issue under reference. Paragraphs 8 and 12 of the said judgment are material and are reproduced herein under :-

“8 The Industrial Court, it is well settled, derives its jurisdiction from the reference. {[See Mukand Ltd. vs. Mukand Staff & Officers' Association](#), [(2004) 10 SCC 460].} The reference made to the CGIT specifically refers to only one question, i.e., "Whether any illegality was committed by the management in giving appointment to one Vijay Kumar in place of the respondent in violation of Section 25H of ID Act, 1947?" Non-maintenance of any register in terms of Rule 77 of the ID Rules was, thus, not in issue. Before the Industrial Court, the parties adduced evidence. An attempt was made by the respondent herein to show that one Vijay Singh was appointed, although the name of one Vijay Kumar appeared in the reference. An attempt was also made by the respondent to show that Vijay Kumar and Vijay Singh are one and the same person. In fact, one voucher was produced which was allegedly issued in the name of one Vijay Sharma. The said contentions of the respondent were denied and disputed by the appellant herein.

12 The specific issue which was, therefore, referred for determination by the Labour Court, related to the dispute as regards violation of Section 25H of the Act. If the said provisions had not been found to be violated, the question of setting aside the order of termination by the Labour Court did not and could not arise. The learned Single Judge proceeded on the premise that the High Court, in exercise of its writ jurisdiction, cannot sit in appeal over the Award of the Labour Court. The learned Single Judge was right, but then, only because the jurisdiction of the High Court, while exercising of its power of judicial review was

limited, it would not mean that even a jurisdictional error could not have been corrected. The provisions of Article 226 and 227 of the Constitution of India would be attracted if the inferior Tribunal has, inter alia, committed a jurisdictional error. What would be the ground for judicial review, in regard to the orders passed by an inferior Tribunal is no longer a *res integra*. “

The next judgment cited on behalf of the GSL is the judgment of the Apex Court reported in 1981(3) SCC 451 in the case of *Firestone Tyre and Rubber Company of India v/s. Workmen Employer represented by the Firestone Tyre Employees Union* wherein the reference made to the Tribunal was as regards the dismissal of the workmen in question. The Labour Court had set aside the order of dismissal of the 12 workmen who were concerned therein stating that 76 were reinstated on a permanent basis and the remaining 25 were denied the same treatment and therefore, the management was guilty of discriminating and unfair labour practice. In the said context, the Apex Court held that the subsequent reinstatement was not relevant for deciding the earlier dismissal of workmen and the Tribunal therefore went completely beyond the scope of reference.

Reliance was also placed on the judgment of the Apex Court in *Workmen of Cochin Port Trust's* case (supra). The issue which was referred to in the said reference was whether the demand for changing the “roster of” system was justified. The Tribunal did not find any discrimination by the

roster of system. Yet the Tribunal went beyond the reference to grant entirely a different relief that the workmen should be given extra half day wages which was a matter not at all incidental to the issue under reference.

The GSL also placed reliance on the judgment of the Apex Court reported in AIR 1979 SC 1356 in the case of Pottery Mazddor Panchayat v/s. The Prefect Pottery Co. Ltd. wherein the issue which was referred to was whether the closure of business was justified. The Labour Court went beyond the scope of reference to decide whether there was actual closure of business which was not a matter incidental thereto.

Hence in so far as the judgments cited by the learned counsel appearing on behalf of the GSL are concerned, the facts of the said cases can be said to stand apart from the facts of the instant case. In the instant case as indicated above the parties were aware of what they were litigating at. The terms of reference included the issue as to whether the 19 workmen were entitled to the benefits under the JMCR. Hence the relief which was granted to them viz. they would be entitled to the benefits after the period of settlement dated 6/9/2002 comes to an end, can be said to be a relief arising of an issue incidental to the main issue which was referred to the Industrial Tribunal. Hence it cannot be said that the Industrial Tribunal had travelled beyond the scope of the reference in the instant case. Accepting the contention

of the learned counsel appearing on behalf of the GSL would in my view result in taking a hyper technical view of the matter, more so in a case which concerns the right of the workmen to get revised wages. In the said context the judgment of the Apex Court reported in 1988 (Supp) SCC 768 in the matter of Calcutta Port Shramik Union v/s. Calcutta River Transport Association and ors and especially Paragraph 10 thereof is eloquent and is therefore reproduced herein under :-

“10. The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.”

15 The next issue is whether the 19 workmen are entitled to the benefits of the JMCR during validity of the settlement. The said issue can be approached from different angles. It is required to be noted that the settlement dated 6/9/2002 during subsistence of which the 19 workmen are claiming benefits of the JMCR is a settlement arrived at under Section 2(p) read with Section 18(1) of the said Act. The said settlement was therefore arrived at

otherwise in the course of the conciliation proceedings and therefore binds the parties to the settlement. Each of the 19 workmen has subscribed to the said settlement by signing the declaration in that regard. In so far as the said settlement is concerned, Clause 14.4 of the said settlement provides that during the currency of the said settlement the GSL would not bear any additional financial burden. It is the contention of the learned counsel appearing on behalf of the 19 workmen that though such a representation was made, the GSL has discriminated against the 19 workmen in the matter of granting the benefits of the JMCR when the Technical and Design and Administrative Staff has been granted such benefits. The case of misrepresentation of the 19 workmen which was urged by the learned counsel Shri Lawande was founded on the fact that it was represented to the 19 workmen that the benefits of the JMCR would not be given to others. However, according to the learned counsel, the benefits of the JMCR have been given both to the Technical and Design staff and the Ministerial staff though it was represented both in the Writ Petition filed by the Technical and Design staff as also in the Reference before the Industrial Tribunal which was arose on account of the dispute raised by the Administrative staff, that the benefits of the JMCR cannot be given to the said staff in view of the fact that they were non-supervisors and doing clerical job. In the context of the case of misrepresentation it was urged on behalf of the GSL that the Technical and Design staff and the Administrative staff have not signed the settlement dated

6/9/2002. The learned counsel appearing for the 19 workmen sought to draw this Court's attention as to how a farce of signing the settlement and thereafter giving benefits of the JMCR was sought to be put up when in fact it was decided to give benefits of the JMCR to the Administrative staff by a decision which was taken in earlier point of time. In my view, the said fact would not aid the 19 workmen's case in any manner in so far as their allegation of misrepresentation is concerned, as the fact remains that the benefits under the settlement dated 6/9/2002 were not extended to the said staff as they did not sign the settlement.

16 The next aspect is of discrimination. The said ground is sought to be urged on the basis that the 19 workmen were similarly situated as the technical design and the administrative staff in the matter of pay scales, as well as the said five categories were drawing identical scales except some minor differences and that though the stand taken by the GSL earlier as regard the said staff was similar as the one taken in respect of the 19 workmen, namely that they were not working in supervisory category, the said technical design and administrative staff was granted the benefits of the JMCR. If the point of discrimination is considered or viewed from the perspective of the 19 workmen it undoubtedly gives an impression that there is discrimination, however what tilts the scale in favour of the GSL is the fact that the said technical and design and administrative staff are not signatories to the settlement dated 6/9/2002

and were therefore not given the benefits of the said settlement, it therefore cannot be said that the GSL had discriminated against the 19 workmen.

The contention urged on behalf of the 19 workmen that since there was a change in service conditions viz. that the benefits of the JMCR were given to the Technical and Design staff and Administrative staff but not the 19 workmen, they were entitled to claim the benefits of the JMCR notwithstanding the fact that they were signatories to the settlement dated 6/9/2002. In so far as the said contention is concerned, it cannot be said that there was a change in the working conditions as there is no direct reference to the 19 workmen or the Association in the the JMCR and the said 19 workmen having signed the said settlement, they are rightly held not entitled to the benefits of the JMCR during the validity of the said settlement. It is required to be noted that the Writ Petition filed by the 19 workmen i.e. Writ Petition No.644 of 2008 is founded on the case of discrimination and as to whether during the currency of the settlement the said 19 workmen are entitled to the benefits of the JMCR.

17 Then comes the issue of historical parity in the pay-scales of the Technical and Design staff and the 19 workmen who are the store-keepers. The benefits of the JMCR are claimed by the 19 workmen founded on the fact that there was historical parity of pay-scales between the Technical and Design staff

and the Administrative staff, and since the said staff has been given benefits of the JMCR, the 19 workmen who are store-keepers should also be extended the said benefits. In support of the said contention, reliance was placed on the judgment of the Apex Court reported in 1993 Supp (2) SCC 368 in the matter of State of Bihar & ors. v/s. Bihar State Workshop Superintendent Federation & ors wherein the Apex Court held that the Workshop Superintendents were entitled to the pay-scale of the Associate Professor in view of the historical background and the terms and conditions of the service remaining applicable to the Superintendents for a considerable long period of time. Paragraph No.8 of the said judgment is material and is reproduced herein under :-

8. We have taken note of the peculiar facts and circumstances of the cases of the respondents. It is an admitted position that they are working as Workshop Superintendents for the last several decades on the basis of the terms and conditions and pay-scales in vogue for all this period. It cannot be denied that the All India Council for Technical Education as well as all the other authorities were treating the posts of Workshop Superintendents as teaching posts and had fixed them in the pay-scale equivalent to Associate Professors. So far as educational qualifications are concerned, diploma holders with 8 years' experience as well as degree holders with five years' experience were eligible for such posts. So far as this category of respondents is concerned, it is a dying cadre and even if in terms, they are not entitled to the grant of U.G.C. scale which can only be made applicable in case of teaching staff serving in the colleges run by the university, we find no justification so far as the respondents are concerned not to allow them the

benefit of the pay-scales at least equivalent to the post of Assistant Professors. In view of the historical background and the terms and conditions of the service and pay-scales remaining applicable to the respondents for a considerable long period of time, we hold that in order to do complete justice, the respondents are entitled to the revised pay-scales allowed to the Assistant Professors (Senior Scale) i.e. 3000-100-3500-125-5000.

Reliance was also placed by the 19 workmen on the judgment of the Apex reported in 2008(6) All Maharashtra Reporter (SC) 929 in the matter of Kunnashada Muthukoya v/s. Administrator, U.T. Of Lakshadweep & Anr. wherein the Apex Court held that the revision of pay-scales should not be with reference to the post held but to the existing pay scale. Though the said Judgment has been rendered in the context of the rule in contention in the said case, however, the fact remains that it is not in all cases that the post can be the criteria for the revised pay scales but in a given case the pay scale can be the defining aspect.

18 The said claim of historical parity of the 19 workmen is sought to be countered by the GSL on the ground that there is no historical parity because the recruitment rules, promotion policy, job performance and scale at entry level pertaining to the three categories i.e. store-keepers, technical and design staff and administrative staff is different. It is further the case of the GSL that apart from this, there is no parity in the pay-scales of the employees working in these categories. In so far as the grounds which have been urged in

the Written Statement are concerned, the Industrial Tribunal has refused to take the same into consideration as the same were not appearing in the letter dated 12/7/2005 which was the reply given by the GSL to the demand letter addressed on behalf of the 19 workmen. The Industrial Tribunal relied upon the judgment of the Apex Court in *Mohinder Singh Gill's* case (supra), wherein the Apex Court held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Hence though the Industrial Tribunal may have wrongly placed reliance on the judgment of the Apex Court in *Mohinder Singh Gill's* case (supra), the fact remains that the grounds which are sought to be urged in the Written Statement were not part of any correspondence prior to the same being taken in the Written Statement. The GSL also does not seem to have led any evidence in respect of the said grounds. Hence the Industrial Tribunal has rightly refused to take the said grounds into consideration.

19 It is required to be noted that the Goa Shipyard Technical Staff Association had instituted a Writ Petition being Writ Petition No.272 of 2002 against the Goa Shipyard Limited and the Union of India in this Court. Amongst the prayers made was a direction to be issued to the GSL to extend the pay-scales of S1, S2 and S3 under the JMCR to the members of the Association. A contention was taken in the said Writ Petition by the GSL that

the Technical Staff Association is not entitled to S1, S2 and S3 pay-scales because the said staff was not performing duties of a supervisory nature and was also not a non-unionized supervisory staff and therefore the said S1, S2 and S3 pay-scales could not be extended.

20 It is further required to be noted that Reference IT No./67/2003 which arose out of the demand made by the Goa Shipyard Administrative Staff was referred to the Industrial Tribunal for adjudication. An Award came to be passed in the said reference which Award was in pursuance of the settlement dated 31/3/2005 entered into between the parties to the reference. The GSL thereafter under Memo No.31 dated 2/4/2005 extended S1, S2 and S3 pay-scales to the Administrative staff. The record discloses that Memo No.82 dated 30/11/2001 (Exhibit 126) and Memo No.41 dated 26/6/2003 (Exhibit 122) where under the GSL extended the benefits of S3, S2 and S1 pay-scales to the non-unionized supervisory staff which includes, Planning, Design, Repairs and Administrative staff with effect from 1/4/1998 and makes it clear that existing pay-scales were revised by corresponding scales S3, S2 and S1 i.e.

<u>Existing Pay-scales</u>		<u>Corresponding Scales.</u>
(1)	2725-70-3075-80-3895 (9) –	6000-160-9200 (S3)
(2)	2630-55-2905-70-3605 (8) –	5600-150-8600 (S2)
(3)	2570-50-2820-60-3420 (7) –	5200-140-8000 (S1)

The aforesaid table therefore shows that the new pay-scales S3, S2, and S1 which are extended to the non-unionized supervisory staff are also extended to the Technical staff who were getting the said existing pay-scales of Code 9, 8 and 7 and that the said scales were extended in spite of the stand taken in Writ Petition No.472 of 2002 that the Technical staff cannot be extended S1, S2 and S3 pay-scales. In so far as the Administrative staff is concerned, the said staff was getting existing pay-scales bearing Pay Code Nos. (14) and (13) which are substantially similar to the pay-scales of Code Nos. (9) and (8) which were the existing pay-scales of non-unionized supervisory staff and of the technical staff. In so far as the 19 workmen are concerned, admittedly, they are placed in the pay-scales of Sr.Nos.(8) and (9) under the settlement dated 6/9/2002. The pay-scale of Sr.No.(8) is Rs. 2630-55-2905-70-3605 and the pay-scale of Sr.No. (9) is 2725-70-3075-80-3895. The said pay-scales are therefore substantially similar to the existing pay-scales under Pay Code bearing Nos. (9) and (8) which the non-unionized supervisory staff and technical staff were getting at the time when the benefits of S1, S2 and S3 pay-scales were extended to them. This therefore leads to a conclusion that excepts some minor differences there was parity in pay-scales of non-unionized supervisory staff, technical staff and the administrative staff, ministerial staff though their pay-scales are substantially similar to that of the non-unionized supervisory staff, and even though their duties are different from those of the non-unionized supervisory staff. In fact the GSL does not seem to have led any evidence to show that in

the earlier agreements the benefits were given as per the nature of job, the mode of recruitment or qualifications and not as per the existing pay scale. Hence though the pay scale cannot be said to be the indicia to claim parity in the facts of the present case, the contention raised on behalf of the 19 workmen that the corresponding pay scale to the existing scale was given to all the workmen without any pre-conditions would have to be accepted. In my view, therefore, the Industrial Tribunal was right in observing that there is no reason to keep away the 19 workmen, who are the store-keepers, from the benefits of S2 and S3 pay-scales recommended by the JMCR for the non-unionized supervisory staff. In my view, the Industrial Tribunal was right in extending S2 and S3 benefits to the said 19 workmen with consequential benefits but only with effect from 1/1/2007 i.e. after the validity of settlement dated 6/9/2002 comes to an end on 31/12/2006.

21 It was sought to be urged on behalf of the GSL that the claim to the benefits of the JMCR is made by the 19 workmen on the basis of the principle of equal pay for equal work. In support of the said contention, the learned counsel Shri Usgaonkar appearing for the GSL sought to rely upon the judgments of the Apex Court in the cases of *Federation of all India Customs & Central Excise Stenographers; Surinder Singh; Aziz Ahmad* and *Rameshwar Dayal* (supra). The aforesaid judgments (supra) lay down the conditions which are required to be satisfied to claim parity on the basis of

equal pay for equal work. It is the contention of the learned counsel that to claim parity on the basis of equal pay for equal work, there is no material placed on record by the 19 workmen, and therefore, the said 19 workmen cannot claim parity in the pay-scales on the said basis. In my view, it is not necessary to consider the said submission, as in the present case, the claim of the 19 workmen is not based upon equal pay for equal work. The 19 workmen are claiming their entitlement to the revised pay-scales corresponding to the existing pay-scales according to the historical background of the pay-scales. Hence the judgments (supra) on equal pay for equal work would have no application. The Industrial Tribunal having found that the 19 workmen are entitled to the said S2 and S3 pay-scales under the JMCR, the question is whether this Court should exercise its writ jurisdiction. The instant case is not a case where the view taken by the Industrial Tribunal cannot be said to be a plausible view in the facts and circumstances of the case. The ultimate endeavour, in so far as industrial adjudication is concerned, is to bring about industrial peace and to meet out justice to the workmen. If viewed from the said angle, the Award passed by the Industrial Tribunal does not merit any interference at the hands of this Court in its Writ Jurisdiction.

The conduct of the GSL was sought to be highlighted by the 19 Workmen that though the settlement dated 6/9/2002 has expired on 31-12-2006, and though the revision of pay-scales has also taken place, the benefits

of the said revision has not been given; the hardships faced by the said 19 workmen on account of the same were sought to be pointed out. It is pointed out that some of the of the 19 workmen have retired in the interregnum without getting the benefits either of the Award or the new settlement. This Court therefore hopes and trusts that the GSL would conduct itself in a manner befitting its status as a “State” within the meaning of Article 12 of the Constitution of India.

CONCLUSION

22 It would have to be concluded that acceptance of the benefits of the settlement dated 6/9/2002 bars the 19 workmen represented by the Association from receiving benefits under the JMCR during the currency of the said settlement i.e. till 31/12/2006. It is directed that the 19 workmen are entitled to the benefits of the JMCR with effect from 01/01/2007 i.e. to the benefits of S2 and S3 pay-scales with consequential benefits. The said benefits would be made available to the 19 workmen if they comply with the directions which are in the impugned Award. Since the recommendations of the JMCR have come to an end on 31/12/2006, the direction would be that the said 19 workmen would be notionally fixed in the pay-scales of S2 and S3 from 01/01/2007 and would be given benefits of the revised pay-scales on the said basis. The Award passed by the Industrial Tribunal impugned in the present

Petitions is confirmed, subject to the directions as aforesaid. Both the above Writ Petitions are accordingly dismissed. Rule discharged in both the Petitions with no order as to costs.

[R M SAVANT, J]

After Pronouncement of Judgment :-

At this stage the learned counsel appearing on behalf of the GSL applies for continuation of the interim order dated 23rd July 2012 passed in Writ Petition No.199 of 2008. In the facts and circumstances of the present case, the interim order dated 23rd July 2012 passed in Writ Petition No.199 of 2008 is continued on the same terms and conditions as contained in the said order for a period of four weeks from date.

[R M SAVANT, J]