IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
10.12.2015	17.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.29636 & 36311 of 2015

W.P.No.29636 of 2015
M/s.MRP Employees Union
Regn., No.3069,
Rep., by its General Secretary,
No.37, Pattinatharkoil Street,
Tiruvottiyur,
Chennai - 600 019. ... Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribunal,
High Court Campus,
Chennai - 600 001.

2.The Management of MRF Ltd.,
Rep., by its General Manager,
Post Box No.5285,
Tiruvottiyur High Road,
Chennai - 600 019. ... Respondents

W.P.No.36311 of 2015
The Management of MRF Ltd.,
Tiruvottiyur Chennai - 600 019.
Rep., by its Plant General Manager,
Simon A.Panicker ... Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribunal,
Chennai - 600 001.

2.MRF Labour Union
Rep., by its General Secretary,
No.37, Pattinatharkoil Street,
Thiruvottiyur,
Chennai - 600 019. ... Respondents

Prayer in W.P.No.29636 of 2015 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the first respondent in connection with its order pronounced in I.A.No.52 of 2014 in I.D.No.8/2014, on 12.08.2015, and quash the same in so far as the first respondent has denied interim relief as prayed for in the Interlocutory Application, namely interim relief of Rs.15,000/- per month with effect from 07.07.2013, in concerned and issue such further or other appropriate orders,

Prayer in W.P.No.36311 of 2015 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the first respondent in I.A.No.52 of 2014 in I.D.No.8/2014, on 12.08.2015, and quash its order dated 12.08.2015 and pass such further or other orders.

For petitioner .. Mr.V.Prakash Sr., Counsel
Party-in-person in W.P.No.29636/2015 & for R2 in W.P.No.36311 of 2015
For Respondents .. R1 - Court in both WPs

Mr.A.L.Somayaji, Sr., Counsel for Mr.Anand Gopalan

for M/s.T.S.Gopalan & Co., for R2 in W.P.No.29363 of 2015 & for Petitioner in W.P.No.36311 of 2015

COMMON ORDER

The Writ Petitions challenge the order dated 12.08.2015, passed by the Industrial Tribunal, Chennai, the first respondent in I.A.No.52 of 2014, in I.D.No.8 of 2014, raised by the Employees Union. The Management, petitioner in W.P.No.36311 of 2015 is aggrieved by the order passed by the Industrial Tribunal in its entirity and the Employees Union is aggrieved by the impugned order insofar as it did not grant the full relief sought for by them.

2. By consent of parties, W.P.No.36311 of 2015 filed by the Management was taken up for consideration first. In this order,

the Writ Petitioner in W.P.No.36311 of 2015, which is the second respondent in W.P.No.29363 of 2015, shall be referred to as the Management and the petitioner in W.P.No.29363 of 2015 and second respondent in W.P.No.36311 of 2015 shall be referred to as the Employees Union.

3. The facts which are necessary for disposal of the Writ Petition are as follows:-

The Management set up a plant at Tiruvottiyur during 1962 for manufacturing tyres. The Employees Union stated to be in existence and representing the Workmen from 1960 onwards. From 1969 till 2009, the Management and the Employees Union have entered into 11 settlements and the last of such settlement was on 07.07.2009, which was in force till 06.07.2013. On expiry of the settlement period, the Employees Union submitted a charter of demands to which the Management submitted their counter and the matter was under conciliation when the Employees Union filed a Writ Petition before this Court in W.P.No.28243 of 2013, praying for a Writ of Mandamus to direct the Joint Commissioner of Labour, Chennai and Assistant Commissioner of Labour (Conciliation), (ACL) Chennai to forthwith complete the conciliation proceedings in the Industrial Dispute raised by the Employees Union on 19.08.2013 and in the event of failure of conciliation, issue failure report and forward the same to the Government of Tamil Nadu within a time frame. In the said Writ Petition, the Management was not impleaded as a respondent. The said Writ Petition was disposed of by order dated 10.10.2013, observing that it would be appropriate to direct the Assistant Commissioner of Labour (Conciliation), to conclude the conciliation proceedings within a period of six weeks from the date of receipt of the order after issuing notice to the Management as well as the Employees Union. It was observed that though the Management is not a party to the Writ Petition taking into account the fact that no prejudice would be caused to the Management and infact, would be helpful to both parties, the order was passed.

4. The Management not being a party to the said Writ Petition filed a third party Review Application to review the order dated 10.10.2012 in Rev.A.S.R.No.12827 of 2013. The Management contended that six weeks time is required to conciliate before the ACL. The submission was opposed by the Employees Union stating that in terms of the provisions of the Industrial Disputes Act (I.D.Act), it has to be completed within 14 days. The Court took note of the submissions and that the Management was not a party to the Writ Petition, three weeks time was granted to the ACL and upon failure of conciliation, the ACL was directed to send his report to the Government within a period of two weeks thereafter. As the Government was not a party to the Review Petition or the Writ Petition, it was suo-moto impleaded as the fourth respondent. With the above order and direction, the Review Application was disposed of at the

S.R.stage by order dated 29.11.2013. The Management preferred W.A.No.81 of 2014, against the order passed in Review Application S.R.No.128271 of 2013, the Writ Appeal was dismissed holding that the order passed by the learned Single Judge protects the interest of both parties and the learned Single Judge had only directed the Government to pass appropriate orders and it was for the Government to consider the same. There upon, the Government by G.O.(D).No.108, Labour and Employment Department, dated 21.03.2014, referred the dispute for adjudication before the Industrial Tribunal. In the said Government Order, 30 issues were referred for adjudication. Prior to issuance of the Government Order, the Employees Union filed Contempt Petition No.1080 of 2014 against the Government, alleging wilful disobedience of the order passed in the Review Application. By the time, the Contempt Petition was heard, the order of reference having been made, the same was taken note of by the Court while closing the Contempt Petition by order dated 03.04.2014. The Employees Union prayed for an interim relief pending adjudication of the dispute by the Industrial Tribunal and the Court placed on record the submission of the learned Senior counsel appearing (in person) for the Employees Union would move the Industrial Tribunal. Giving the said liberty, the Contempt Petition was closed. The reference was entertained by the Tribunal in I.D.No.8 of 2014, and the Employees Union filed their claim statement on 17.06.2014. Along with said claim statement, I.A.No.52 of 2014 was filed for an interim direction to direct the Management to pay Rs.15,000/- per month as interim relief from the date of expiry of the settlement namely 06.07.2013. This application was filed under Section 10 (4) of the I.D.Act.

5. The Management resisted the application by filing a counter questioning the maintainability of such application as well as on merits. It appears that there were other interim applications filed before the Tribunal, which are not germane to the present controversy. In the said Interlocutory Application in I.A.No.52 of 2014, both parties lead oral and documentary evidence and the Tribunal by order dated 12.08.2015 allowed the application in part and directed the Management to pay a sum of Rs.4000/- per month, per worker, from the date of the order till the disposal of the main dispute and one time lumpsum payment of Rs.10,000/- to each worker and the amount to be adjusted in the award if any to be passed in the main Dispute. This order dated 12.08.2015, is impugned in this Writ Petitions.

6. The Employees Union were to first approach this Court challenging the order passed by the Tribunal insofar it granted only a partial relief as the Tribunal had directed payment of Rs.4000/-, when the Employees Union sought for Rs.15,000/-. Thereafter, the Management filed their Writ Petition challenging the order in its entirity. The Employees Union filed a Miscellaneous Petition to direct the Management to provisionally

pay a sum of Rs.10,000/- per month with effect from 17.06.2014, the date on which the application was filed before the Tribunal. This Court passed an interim order on 06.11.2015, directing the Management to pay each workman a sum of Rs.8,500/-, making it clear that the same shall not be referred to as payment against any one of the components as ordered by the Tribunal. The parties were directed to complete the pleadings as it was agreed that the Writ Petition itself would be heard. This is how these Writ Petitions were listed before this Court and were heard finally.

7. Before the Tribunal, the Employees Union contended that it is matter of common knowledge that prices of essential commodities have increased and the wage revision contemplated under the settlement, dated 07.07.2009, does not meet the challenge of huge price rise that has occurred in four years time. That the workers had to borrow money to meet the deficit in the cost of living and the wage receipt. It was further contended that Managerial cadre, Supervisor cadre, Directors etc., of the Management have received considerable increased remuneration during the aforesaid period. That at the expiry of settlement i.e, in July 2013, the average wage of the Workmen was about Rs.19,000/- whereas the increase in remuneration for supervisory staff was multi-fold as a Supervisor, who was receiving remuneration of Rs.30,000/- in 2009, are now earning about Rs.50,000/- and the Managers are earning about Rs.1,00,000/- when their remuneration was Rs.50,000/- in 2009. Similar figures were given in respect of the other Managerial cadre/ Directors etc. Further it was submitted that the dividend to the shareholders during 2010, was declared as at 500% and the face value of the share of the Management was Rs.10/-, was listed in the stock exchange at Rs.22,900/-. Therefore, it was contended that the company is prosperous and the Managerial staff are paid well, while the workers are struggling to make both ends meet. Statistics regarding the increase in price of essential commodities were placed before the Tribunal. It was further submitted that the wage level of the industries in the region were much higher as the employees of Ashok Leyland were paid Rs.46,170/-, per month, Enfield India were paid Rs.36,197/, per month, Hinduja Foundaries Ltd about Rs.30,000/- per month. Thus, it was submitted that there is a prima facie case for a wage increase of Rs.20,000/- as referred in demand No.4 and the principles of “Region-cum-Industry” and equal distribution of financial resources of the employer supports, the wage increase to a tune of not less than Rs.20,000/- per month. Therefore, it was submitted that the balance of convenience is in favour of the workers and they are entitled for an interim relief of atleast Rs.15,000/- per month. With the above pleadings, the Employees Union sought for an interim relief of Rs.15,000/- per month from 06.07.2013, the date of expiry of the settlement. As stated above, this

petition was filed under Section 10(4) of the I.D.Act.

8. The Management filed their counter contending that the Government while referring to the dispute for adjudication did not refer the demand for interim relief for the consideration of the Tribunal and while that being so, a petition praying for an interim award in respect of an issue not referred by the Government is not maintainable and it is neither a demand/dispute or a matter connected or relevant to the dispute. Hence, the Tribunal would have no jurisdiction to deal with the application for interim relief. It was submitted that the present wage and allowances of the workmen were periodically determined by settlement and the workmen were given wage increase under each settlement and the increase in monthly wage in the settlement, dated 07.07.2009, was Rs.3680/-. It was further submitted that the settlement dated 07.07.2009, provided that the Management can withdraw the benefits of the settlement, if the workmen did not honour their commitments. It was stated that the workmen committed breach of the terms and conditions of the settlement and there is no justification for claim of interim relief. Further, it was contended that the Employees Union cannot compare the Management with other Managements like Ashok Leyland, etc., as they are Engineering Industries and in any event, these matters have to be gone into only in the course of adjudication of the main dispute. Further, it was submitted that the present rate of Dearness Allowance neutralises 100%, the rise in prices and therefore, referring to increase in prices, the Employees Union cannot sustain the demand for interim relief. Further, it is submitted that the reference to the emoluments paid to the Managing Director, Director and other Officers may not have any immediate reference, as it may have a bearing if at all a case is made out for grant of increase in wages by the application of "Region-cum-Industry" principle, to measure the extent to which the increase in wages can be considered. Therefore, it was submitted that the emoluments of the Senior Executives cannot be the basis to consider the workmen for wage increase or interim relief. Further, it was submitted that the Management has three plants in Tamil Nadu, one in Puducherry and one in Kerala, one in Goa and two in Telungana and the performance at the Tiruvottiyur plant (subject plant), is the lowest and the workmen should not be considered for any relief unless there are called upon to show improvement in productivity and agree for optimum utilisation of available machinery capacity, optimisation of the available man power on day today basis and higher level of labour productivity. It was further submitted that between July 2009 and May 2014, there were 1155 work stoppages resulting in estimated production value loss of Rs.293.70 crores. Further, it was contended that the present leadership of the Employees Union wants to derail the process of negotiated settlement, subvert the process of collective

bargaining which was prevailing with the parties for nearly 50 years and sustain the hostility of the workmen against the Management. The Management sought to lead oral evidence and also cross examined the deponent of the affidavit filed by the Employees Union.

9. The Industrial Tribunal framed two points for consideration namely (i) whether the petition for interim relief was maintainable; (ii) whether the Employees Union/Workmen are entitled to seek Rs.15,000/- per month as interim relief from 06.07.2013 till the disposal of the main I.D.

10. On the first issue, the Industrial Tribunal after taking into consideration the decision of the Hon'ble Supreme Court in the case of Management of Hotel Imperial, New Delhi & Ors., vs. Hotel Worker's Union, reported in 1959-2-LLJ-544 and the decision of this Court in the case of E.I.D.Parry (India) Ltd., & Anr., vs. The Presiding Officer, Industrial Tribunal Madras & Anr., reported in 1992-MLJ page 382 and the decision of the Hon'ble Supreme Court in the case of Goa MRF Employees Union vs. MRF Limited reported in (2014) 4 SCC 483, held that in the absence of any relief being granted by the Government under Section 10B of the ID Act, in a matter of incidental nature, the Tribunal is empowered to give interim relief under Section 10(4) of the I.D.Act. That the claim for interim relief is only incidental to the claim under reference which relates to wage revision and other related issues. Further, it was pointed out that in Contempt Petition No.1080 of 2014, leave was given to the Employees Union to raise the issue of interim relief before the Tribunal. On the above findings, it was held that the petition for interim relief was maintainable and point No.1 was answered in favour of the Employees Union.

11. With regard to Point No.2, i.e., the quantum in which they are entitled to an interim relief. The Tribunal after perusing the oral and documentary evidence, and the contention raised on either side, observed that admittedly, the price index shows increased cost of living and according to the Employees Union, the Workers are unable to meet their monthly liability and they have produced loan details of the workers, school and college fee receipts etc. Further, the Tribunal took note of the Exhibit P.22, the balance sheet and other documents, which were produced by the Employees Union to show the financial capacity of the Management. After taking note of the submission of the Management that the workmen failed to fulfil the obligations as per the earlier wage settlement and indulged in 1155 work stoppages pointed out that the balance sheet and other documents show increase in profit margin of the respondent and with regard to the aspect of modernisation of the plant etc., observed that the Management has not been able to establish at the interim stage about non-fulfilment of the obligations by the

workmen and the same can be considered on the basis of available evidence at the time of disposal of the main industrial dispute. The Tribunal further observed that it is admitted by both parties that there is no other establishment of similar nature (manufacturing tyres) in the region and by taking note of the decision in the case of Greaves Cotton & Co., Ltd., and others vs. Their Workmen reported in 1964 (1) LLJ page 342, held that in the absence of similar nature of industries other industries available in the region can be taken into consideration for wage fixation. After taking note of the wage details of the other industries, which were marked as Exhibits P.23 to P26, P31 and wage slips of workers in those industries, Exhibits P.28 to P30 and Exhibit P44, a wage settlement in respect of other industries in the region, Exhibit P32, held that the claim of the Employees Union that the workmen were getting lesser salary compared to the workers in the other industries in the region is to be accepted. Further, the Tribunal took note of Exhibit P14 & P34, the salary details of the workers working in the Goa and Kottayam plants of the Management, are being paid higher salary.

12. With regard to the allegation that the workers are not properly working during the last hour of every shift, the Tribunal refused to accept such contention as the Management has received an award called the Champion of Champion award, Exhibit P-42. Further, the cost of shares as shown in Exhibit P.46 was pointed out to be on the higher side and in terms of Exhibit P.22, the annual profit of the Management increased during the financial year.

13. With regard to the plea of the workmen that they are entitled to seek payment of fair wages, the Tribunal examined the issue as to the capacity of the Management to pay higher wages and took note of the balance sheet, Exhibit P.22; the profit and loss statement, Exhibit P.47 and the evidence of PW-1 with regard to the salary of the Managerial staff and the dividend which was declared to the shareholders, and the increase of salary inclusive of incentives at Rs.3,680/-, in terms of the wage settlement, Exhibit P.6 and also the submissions made on behalf of the Management that if the Tribunal decides to give some relief instead of granting monthly interim relief, which will amount to deciding the issue raised in the main I.D., itself, can grant adhoc payment of Rs.30,000/- to each worker. With the above reasoning, the Tribunal concluded that it would be appropriate at this stage to give interim relief of Rs.4,000/- per month and lumpsum payment of Rs.10,000/- to each worker. On the issue as to from what date such interim relief should be granted, the Tribunal after referring to the decision of the Hon'ble Supreme Court in the case of Lipton & Co., vs. Their Employees, reported in AIR 1959 SC 676, held that it would be appropriate to direct the Management to pay interim relief prospectively. Accordingly,

the point No.2 was decided partially in favour of the Workmen.

14. Mr.A.L.Somayaji, learned Senior counsel assisted by Mr.Anand Gopalan, learned counsel appearing for the Management contended that the Tribunal applied all that should have been applied to be considered at the time of trial of the main dispute and there is nothing more to be decided by the Tribunal at the time of final adjudication as under the guise of granting interim relief, the Tribunal has finally adjudicated the dispute. Further, it is submitted that the Tribunal failed to consider the aspect with regard to balance of convenience when the workmen were guilty of not fulfilling the obligations under the earlier settlement. In this regard, reference was made to Exhibit M.21 and Exhibit M.8 series. Further, it is contended that in the charter of demands, the workmen sought for an interim relief, but the Government did not refer the same for adjudication and the Tribunal was not justified in entertaining such an application. In this regard, the charter of demands as well as the order of reference passed by the Government were referred to. Further, by referring to another Government Order in G.O.Ms.No.241, dated 01.08.2011 in respect of another company, it is submitted that the Government in that case specifically referred the dispute regarding the demand for interim relief, which was not done in the instant case. Further, it is submitted that while disposing of Contempt Petition No.1080 of 2014, the Court did not say as to whether the petition for interim relief was maintainable or not and therefore, no liberty was granted, but the Court merely recorded the submission of the learned Senior counsel. Therefore, it is submitted that the Employees Union was aware that the Government did not refer the interim relief for adjudication and therefore, they took advantage of the observation in Contempt Petition. No.1080 of 2014, in which the Management was not a party. Further, it is submitted that interim relief is an equitable relief and cannot be granted when a party in equity is not entitled to such relief. In the instant case, the workmen have not complied with 93 items in the earlier settlement. Further, it is submitted that assuming the impugned order is an interim award, it has to confirm to Section 17 and Section 17A of the I.D. Act and requires to be published. In the instant case, the impugned order has not been published by the Government and therefore, the same cannot be enforced. With regard to the power of the Tribunal under Section 10(4) of the Act, it is submitted the petition is not maintainable, the relief sought for is not interim or incidental relief and the matter which is required to be adjudicated in the main dispute, cannot be considered as an interim relief. In support of his contentions, the learned Senior counsel referred to the decision in the case of Hotel Imperial, (supra) E.I.D.Parry (India) Ltd., & Anr., (supra), Goa MRF Employees Union (supra). Further, it is submitted that by adopting the “Region-cum-Industry” principle,

the Tribunal has virtually decided the main dispute and there is nothing more to be considered in the main dispute and when the interim relief is not incidental to the main relief, the Tribunal erred in passing the impugned order.

15. Mr.V.Prakash, learned Senior counsel appearing in person on behalf of the Employees Union submitted that the impugned order is an order granting interim relief and it is not an interim award. By relying on the decision in the case of Hotel Imperial, (supra) E.I.D.Parry (India) Ltd., & Anr., (supra), it is submitted that the Tribunal has got power to grant interim relief and the parameters which are required to be considered, were taken note of and the Tribunal has passed an order. However, the Tribunal erred in not granting the entire relief. Therefore, it is submitted that the Employees Union is aggrieved by the inadequacy of the relief granted by the Tribunal. Elaborating his submissions, the learned Senior counsel contended that an interim award is also like a final award i.e., the Court can pass an award on a few points, which were referred for adjudication and if it does so it is also an award and such an award is not an interim relief under Section 10(4) of the I.D., Act. To support this contention, the learned counsel referred to paragraph 22 of the judgment in the case of Hotel Imperial, (supra). Further, it is submitted that the discretion has been exercised by the Tribunal, though not fully in favour of the Employees Union and such discretion can be exercised by this Court under Article 226 of the Constitution. In support of such contention, the learned counsel referred to the decision in the case of Gujarat Steel Tubes Ltd., vs. Gujarat Steel Tubes Mazdoor Sabha reported in 1980-1-LLJ-137. It is further submitted that the Tribunal considered the prima facie case made out as there were periodical wage increase in the past and the last wage increase was in 2009 and that the balance of convenience was in favour of the workmen. While determining the issue, the Tribunal adopted the various parameters, which are required to be taken note of such as capacity of the employer to meet the raise in cost index, the “Region-cum-Industry” principle and other factors. Therefore, to say that the Tribunal has virtually adjudicated the main dispute is incorrect, since the Tribunal was bound to give reasons and failure to do so, would render the order bad in law as was held by this court in the case of E.I.D.Parry (India) Ltd., & Anr., (supra). Further, the Tribunal took into consideration the oral and documentary evidence and thereafter assigned reasons for exercise of discretion. Further, it is submitted that the Management did not produce any wage slips of employees in the region to disprove the case of the workmen. Further, it is submitted that at the stage of reference, the Management need not be heard and the Government can refer or decline to refer and a prayer for interim relief need not be subject matter of reference and the in instant case, the

Government did not reject the prayer for interim relief. Further, elaborate reference was made to the documents, which were exhibited before the Tribunal to demonstrate that the Management had achieved the production target inspite of the fact that the equipments in the Tiruvottiyur plant are outdated equipment as the plant was established in 1960s. The learned counsel placed reliance on the decision in the case of Management of Bata India Ltd., vs. Presiding Officer reported in 2010-2-LLJ-175 (MAD) and submitted that though the challenge in the said Writ Petition was to a final award, it was submitted that the Court has considered all the relevant judgments on point and in particular the decision in the case of Killick Mixson Limited. vs. Killick Allies Companies Employees Union reported in 1975-2-LLJ-53 (SC), with regard to the manner in which the Court should approach a matter for fixing the wage level. The learned counsel referred to the impugned order to demonstrate that the Tribunal has given cogent reasons as to how the petition is maintainable and the entitlement of the workmen, but only erred in not granting the full relief sought for.

16. In reply, the learned Senior counsel for the Management submitted that the contentions raised by the Employees Union would be justified if it is a case of final award passed by the Tribunal on adjudication. However, the Tribunal passed a final award in an Interlocutory Application by applying improper tests. Further, it is submitted that the considerations for fair wages are totally different and the considerations for wage revision are different and different criteria have to be adopted. Further, the Management did not adduce any evidence with regard to comparable industry as if done at this stage, it would prejudice the parties. Further, it is contended that the "Region-cum-Industry" principle was not specifically pleaded in the affidavit filed in support of the Interlocutory Application.

17. By way of further reply, the learned Senior counsel for the Employees Union submitted that if the Tribunal did not give any reasons, then the impugned order will be faulted as being devoid of reasons and therefore, the Tribunal had to adopt some parameters and it has adopted the relevant parameters while considering the workmen's entitlement, but should have granted the entire relief. Further, it is submitted that whatever finding rendered by the Tribunal in the impugned order, is only a prima facie finding and will not affect the final adjudication.

18. I have elaborately heard the learned counsels for the parties and perused the materials placed on record.

19. Three questions fall for consideration in these Writ Petitions, (i) whether the application filed by the Employees Union before the Tribunal under Section 10(4) of the I.D., Act

was maintainable in law as well as on facts; (ii) whether the discretion exercised by the Tribunal in granting an interim relief of Rs.4,000/- per month and a lumpsum payment of Rs.10,000/- to each worker was just and proper; (iii) whether the Tribunal ought to have granted the entire relief as prayed for by the Employees Union and directed payment of interim relief at the rate of Rs.15,000/- per month per worker.

20. Point No.(i):-

Elaborate submissions have been made on either side regarding the maintainability of an application for interim relief before the Tribunal. The endeavour of the Management is to convince this Court that such application is not maintainable on facts apart from not being maintainable on law. The legal aspect as regards the power of the Tribunal to grant interim relief is no longer res integra and has been settled in the celebrated decision in the case of Hotel Imperial, (supra), rendered about 56 years back. This decision has held the field and the Hon'ble Supreme Court in a recent decision in the case of Goa MRF Employees Union vs. MRF Limited reported in (2014) 14 SCC 483, while considering an order of reference made by a Two Judge Bench, by order dated 08.03.2006, held that it is not necessary to answer the question formulated in the order of reference, dated 08.03.2006, and the decision in the Hotel Imperial, (supra), is holding the field for the last 53 years. One of the issues, which was decided in the case of Hotel Imperial, (supra), was whether an Industrial Tribunal is competent to grant interim relief without making an interim award, which should have been published. While answering such question, it was held as follows:-

> 21. After a dispute is referred to the tribunal under Section 10 of the Act, it is enjoined on it by Section 15 to bold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An " award " is defined in Section 2 (b) of the Act as meaning " an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto." Where an order referring an industrial dispute has been made specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters incidental thereto; (s. 10(4)). It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words " incidental

thereto" appearing in Section 10(4). There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under Section 10 (4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.

22. The next question is as to how the tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word "award" shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or of any question relating thereto. Thus it is open to the tribunal to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to the tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by Section 17. Such awards are however not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the tribunal under s. 10(4) with respect to matters incidental to the points of dispute for adjudication.

23. It is however urged on behalf of the appellants that even if the tribunal has power under s. 10(4) of the Act to grant interim relief of the nature granted in these cases it can only do so by submitting an award under Section 15 to the appropriate government. Reference in this connection is made to sections 15, 17 and 17-A of the Act. It is submitted that as soon as the tribunal makes a determination whether interim or final, it must submit that determination to government which has to publish it as an award under Section17 and thereafter the provisions of Section 17-A will apply. In

reply the respondents rely on a decision of the Labour Appellate Tribunal in Allen Berry and Co. Ltd. v. Their Work. men(1), where it was held that an interim award had not to be sent like a final award to the government for publication and that it would take effect from the date of the order. We do not think it necessary to decide for present purposes whether an order granting interim relief of this kind is an award within the meaning of Section 2(b) and must therefore be published under Section 17. We shall assume that the interim order passed by the Tribunal on December 5, 1955, could not be enforced as it was in the nature of an award and should have been submitted to the government and published under Section 17 to become enforceable under s. 17-A. It is, however, still open to us to consider whether we should pass an order giving interim relief in view of this alleged technical defect in the order of the Industrial Tribunal. We have the power to grant interim relief in the same manner as the Industrial Tribunal could do and our order need not be sent to government for publication, for Sections. 159 17 and 17-A do not apply to the order of this Court just as they did not apply to the decision of the Appellate Tribunal which was governed by the Industrial Disputes (Appellate Tribunal) Act, 1950 (No. XLVIII of 1950), (since repealed). We have already mentioned that this Court passed an order on June 5, 1956, laying down conditions on which it stayed the operation of the order of December 5, 1955, made by the Industrial Tribunal. We are of opinion that order is the right order to pass in the matter of granting interim relief to the workmen in these cases. Ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. In fairness to the Industrial Tribunal and the Appellate Tribunal we must say that they granted the entire wages plus Rs. 25 per mensem per head in lieu of food on the view that no suspension was possible at all in those cases and therefore the contract of service continued and full wages must be paid. Their orders might have been different if they had held otherwise. It seems to us just and fair in the circumstances therefore to order that the appellants shall pay to their respective workmen concerned half the amount adjudged payable by the order dated

December 5, 1955, with respect to the entire period, as the case may be, from October 1, 1955 to December 10, 1955 or July 15, 1956, by which date, as we have already pointed out, practically all the workmen were taken back in service. We, therefore, order accordingly.

21. While pointing out the distinction between an interim award and a final award, the Hon'ble Supreme Court observed that the interim relief is one which is granted under the power conferred on the Tribunal under Section 10(4) of the I.D.,Act with respect to matters incidental to the points of dispute for adjudication. Therefore, it has to be seen as to whether the interim relief sought for by the Employees Union was in respect of a matter incidental to the points of dispute for adjudication. It is an admitted case of the parties that the dispute referred to the Tribunal for adjudication pertains to wage revision and other allied reliefs. By way of an Interlocutory Application, the Employees Union sought for an interim relief i.e., to pay them an adhoc increase in the wages pending adjudication of the main dispute. Therefore, it is clear that the interim relief sought for is a matter incidental to the points of dispute, which have been referred for adjudication in the main dispute.

22. A some what identical issue arose for consideration before this Court in the case of E.I.D.Parry (India) Ltd., & Anr., (supra). The question in the said case was whether an Industrial Tribunal exercising powers under Section 10(4) of the I.D.Act., can grant interim relief. This Court after taking note of the decision in the case of Hotel Imperial, (supra), and the decision of the Hon'ble Division Bench of Patna High Court in the case of B.S.E., Board vs. Workmen B.S.E., Board reported in 1971-1-LLJ-389, and the decision of the Hon'ble Division Bench of the Rajasthan High Court in the case of National Textile Corporation vs. State of Rajasthan reported in 1989-1-LLN-778, held that the Tribunal had power to grant interim relief. The operative portion of the order reads as follows:-

> 12. The next question to be decided is whether the tribunal has applied its mind or not and considered the question at the correct perspective when granting the interim order. In Management, B.S.E. Board v. Workmen B.S.E. Board 1971 LLJ 389, a Division Bench of the Patna High Court has held that the tribunal has the power to grant interim relief in appropriate cases in the form of an interim award. While holding so, the Division Bench of the Patna High Court had held that the tribunal must determine that there is a good prima facie case in favour of the workman for final

adjudication and that on the facts of the particular case interim relief by way of interim award is necessary. A Division Bench of the Rajasthan High Court in National Textile Corporation v. State of Rajasthan, 1989 I LLN 778, has held that the tribunal has got the sole judicial discretion to decide the dispute specified in the order of reference and the matters incidental thereto. In that case, the Division Bench has held that the tribunal is competent to grant interim relief under Sec. 10(4) of the Act with respect to matters incidental to the points of dispute for adjudication, and the tribunal is competent to grant an ad hoc increase in wages in the matter of industrial dispute with regard to demand for increase in wages, for the adjudication of which reference has been made to it by the State Government. It has also been held that the granting of interim relief is purely within the discretion of the tribunal and while granting such reliefs the tribunal should take note of the following points :

"(1) that there is a prima facie case, meaning thereby that there is a serious question to be tried and an existence of a right;

(2) that the tribunal's interference is necessary to protect the party from that species of injury which is regarded by the Courts as irreparable; and

(3) the balance of convenience, i.e., the tribunal should weigh the amount of substantial mischief that is likely to be caused to the party claiming interim relief if the same is refused and compare it with that which is likely to be caused to the other side if the interim relief is granted...."

So if the principles laid down in the above mentioned cases are considered, I am of the view that on the facts of the case on hand, prima facie the tribunal has not applied its mind at all to come to the correct conclusion. The question referred to for adjudication is as follows :

"..... Whether the demand of the workmen for revision of Wages and Dearness Allowance is justified if so to fix the revised rates ...."

A reading of the abovementioned reference shows that the scope of the reference is very wide. So the tribunal has come to the conclusion that an increase in wages is necessary and essential. I do not think the tribunal has considered the issue, but has passed an order prima facie, in my view, without applying its mind. Though the reference, extracted hereinabove, is very wide, the tribunal has to look into the pleadings carefully and the tribunal should have gone into in detail since what is asked for is settlement of the year 1978 which has culminated in an award by settlement in the year 1985. So these are all matters, prima facie, the tribunal should have examined and that it has not been done so. The rise of cost of index cannot be a sole criterion. There are many more things to be considered when an increase in wages is asked for. In my view, the tribunal has passed a cryptic order without adhering to the principles laid down in the above mentioned decisions, while passing an order under Sec. 10(4) of the Act. A reading of the order of the tribunal clearly shows that it has not applied its mind and has not decided the question as to whether there is any prima facie case made out and the existence of the right in favour of the respondent Union. So I am of the view that the contention of Mr. M. R. Narayanaswamy, the learned Senior Counsel has to be upheld on the facts and circumstances of the case that the order is liable to be set aside applying the principles laid down in the abovementioned cases.

13. The contention of the learned Senior Counsel appearing for the petitioner management that the introduction of Sec. 10-B of the Tamil Nadu Amendment has taken away the power of the tribunal which passed an order under Sec. 10(4) of the Act, is not convincing. It is well establishing principle to interpret the provisions of a statute as harmoniously as possible so that there is no conflict of the provisions and likewise that no provision is rendered otiose. It is also well-established that the power of the Government under Sec. 10(1) of the Act is purely an administrative function. It has been held so in Telco Convoy Drivers Mazdoor Sangh v. State of Bihar, MANU/SC/0605/1989 : (1989)IILLJ558SC . It has been further observed in that case as follows : (at pp. 560-561)

".... While exercising power under Sec. 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Sec. 10. It is true that in considering the question of making a reference under Sec. 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended" But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. Where, as in the instant case, the dispute was whether persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Sec. 10(1) of the Act. The order of the Government refusing to refer the dispute on ground that the persons raising the dispute are not workmen is liable to be set aside. As the Government has persistently declined to make a reference under Sec. 10(1) the Supreme Court directed the Government to make a reference..."

While referring to a dispute under Sec. 10(4) of the Act, the legislature has conferred on the Government a power to issue an order under Sec. 10-B of the Act by Tamil Nadu Act 36 of 1982. Sec. 10-B of the Act reads as follows :

"10-B. Power to issue order regarding terms and conditions of service pending settlement of disputed :- (1) Where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under sub-sec. (1) of Sec. 10and if, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, they may, by general or special order, make provisions :

(a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman;

(b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and

(c) for any incidental or supplementary matter which appears to them to be necessary or expedient for the purpose of the order;

Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months immediately preceding the date of the order ...."

On a perusal of this, I am of the view that the insertion of Sec. 10-B of the Act has not taken away the power of the tribunal under Sec. 10(4) of the Act, to pass an interim order. The power under Sec. 10-B is given to the Government to give an interim relief to the workers including the payment of money by the employer. Sub-secs. (2) and (3) of Sec. 10-B state that such an order shall cease to operate on the expiry of a period of six months from the date of the order or on the date of the award of the Labour Court or the tribunal as the case may be, whichever is earlier and that the money which has been paid can be adjusted. So, in any view, if the Government, while referring the dispute has passed an order under Sec. 10-B of the Act giving an interim relief to the workmen, then the power under sub-sec. (4) of Sec. 10 cannot be exercised by the tribunal. For instance, when the adjudication is pending before the tribunal, no interim relief can be asked for, if an order has already been passed under Sec. 10-B of the Act granting some interim relief to the workmen under Sec. 10-B of the Act. At the same time, if no interim relief has been given while making a reference, the sole authority to decide the dispute and as a matter incidental thereto, the tribunal has got the power before whom the award proceeding is pending. So the power of the Government to pass an order under Sec. 10-B of the Act has to be exercised immediately after a reference is made under Sec. 10-(1) of the Act. If it is not made, in my view, it cannot be contended that the tribunal has lost its power to grant an interim relief.

14. Apart from that, a quasi-judicial power under Sec. 10(4) of the Act cannot be taken away by conferring an administrative power on the

> Government by an amendment. It is also settled law that the repeal by implication is not favourable and such interpretation is not to be adopted unless it is inevitable. The presumption is always against the principle of repeal. Any reasonable construction which offers an escape from implied repeal must be considered in consonance with the true intention of the Legislature. So, in my view, two provisions can co-exist side by side even though one may to some extent overlap the other. So if such a construction is given, in my view, it will be harmonious and it will be in accordance with well accepted principles of rule of constructions as stated above. So I am not able to accept the contention raised by Mr. M. R. Narayanaswamy, the learned Senior Counsel appearing for the management, that after the introduction of Sec. 10-B of the Act, the power of the tribunal to pass an interim order has been taken away completely.

23. In the light of the above settled legal position, it has to be held that the Tribunal had power to entertain an application under Section 10(4) of the I.D.,Act for grant of interim relief.

24. The next issue arising Point No.1, would be whether on facts, the Tribunal was justified in entertaining such an application. Section 10(4) of the I.D., Act states that the Tribunal shall confine its adjudication to those points and matters incidental thereto. As pointed out earlier, the dispute which is referred for adjudication is regarding wage revision and what the workmen seek by way of interim relief is an adhoc payment pending such adjudication which is undoubtedly, incidental to the main relief. In the light of the above discussion, it is held that the application filed by the Employees Union for interim relief is maintainable both on law as well as on facts.

25. Point No.2:-

The Tribunal exercising its power under Section 10(4) of the I.D.,Act, after considering the oral and documentary evidence, granted an interim relief of Rs.4,000/- per month per worker and a lumpsum payment of Rs.10,000/- per worker. The impugned order is challenged by the Management contending that the Tribunal has virtually adjudicated the main dispute and there is nothing more to be considered by the Tribunal at the time of final adjudication. In this regard, elaborate reference was made to the factual averments and it is submitted that the Tribunal could not have applied the “Region-cum-Industry” principle, interim relief being an equitable relief ought to have considered the conduct of the workmen in not adhering to as many as 92 items in the earlier wage settlement, several stoppages of work affecting the production etc. In the case of E.I.D.Parry (India) Ltd., & Anr., (supra), the workmen succeeded on the legal issue that an application for interim relief was maintainable before the Tribunal. On the factual issue, the workmen lost the case as the Court found that the Tribunal did not assign any reason as the Tribunal while exercising its discretion in granting an interim relief should take note as to whether there is prima facie case and whether irreparable injury would be caused and the balance of convenience. Therefore, in my view the Tribunal while exercising discretion should set down the parameters which have been fulfilled to justify the grant of relief. This would necessarily mean, the Tribunal has to adopt an yardstick, assess the facts and then render a finding justifying its exercise of discretion. An order passed by the Tribunal granting an interim relief cannot be in the abstract. The order should contain reasons and the reasons should flow from the facts. Therefore, there can be no error attributed to the Tribunal to consider the over all circumstances so as to assess the case pleaded before it on the three broad parameters as pointed out in the E.I.D.Parry (India) Ltd., & Anr., (supra) and record a finding as regards the workmen's entitlement. This finding rendered by the Tribunal being an Interlocutory finding can have no impact on the final adjudication of the main dispute as those findings are prima facie findings rendered by the Tribunal to justify the need for granting interim order. Therefore, to state that the Tribunal has virtually decided the main dispute is an argument not well founded. The Tribunal while granting the interim relief has analysed the oral and documentary evidence placed before it. To justify that the workmen are entitled to some interim reprieve, the Tribunal has compared the wages paid by other industries in the region as there is no other tyre manufacturer in that region. Therefore, there can be no error in the manner in which the Tribunal has proceeded to consider the case. That apart, with regard to the defaults committed by the Workmen in not honouring the wage settlement, the Tribunal took note of the evidence which was placed before it and rendered a finding that it requires full adjudication and to be done at the time of deciding the main dispute. Furthermore, this issue has now been referred for adjudication before the Tribunal by Government Order dated 22.09.2015. In the interregnum to justify its exercise of discretion, the Tribunal considered the various documents which were exhibited by the workmen and the Management regarding the “health” of the company, the capacity of the employer to pay. The production details and the comparative increase of the salary of the Managerial staff, though the increase in remuneration of the Directors or the Managing Director would not be of relevance, and making an over all assessment, the Tribunal has granted the relief. This Court is conscious of the fact that it is exercising jurisdiction under Article 226 of the Constitution examining the correctness of an order of the Tribunal. This exercise is not an exercise as an appellate Court over the decision of the Tribunal. While exercising Certiorari jurisdiction, this Court will consider as to whether the order of the Tribunal suffers from any error apparent on the face of the record or whether the exercise of discretion was palpably erroneous and no reasonable man could have come to such a conclusion or an order passed without evidence. In the preceding paragraphs, the reasoning assigned by the Tribunal had been set down in detail, which goes to show that there is no perversity in the approach of the Tribunal nor there is an error of law. The contention raised by the Management is that the "Region-cum-Industry" formula could not have been applied, the balance sheet, profit and loss statement etc., are not the sole indicators that would justify the claim for interim relief etc.

26. As pointed out earlier, these documents which were exhibited before the Tribunal were considered by the Tribunal to assess the financial well being of the Management, the wage scale which is prevalent in Management, the wages being paid to the workmen employed in the industries in the same region and the capacity of the Management to bear the additional burden. Therefore, I am of the view that there is no error in the manner of exercise of discretion by the Tribunal and the findings given by the Tribunal are only prima facie findings to support its conclusion regarding the entitlement of the workmen for an interim relief. Therefore, the exercise of discretion does not call for interference.

27. This leaves us with the only question as to what is the quantum of interim relief that was payable. As observed earlier, the Tribunal exercised discretion took note of the fact that there were 11 earlier settlements, the wage increase which was accepted by the Workmen in the 2009 settlement. The interim relief sought for by the Workmen was at the rate of Rs.15,000/- per month per worker. In the affidavit filed in support of the Interlocutory Application, there were no specific details given as to how the Workmen arrived at the quantum of Rs.15,000/- and thus, it appears to be an adhoc amount. The Tribunal undoubtedly cannot be fixed an adhoc amount as the Tribunal was bound to assign reasons to justify the quantum it proposes to fix. Therefore, the Tribunal should be guided by sound reasons. In the impugned order, the Tribunal exercised its discretion considered the proportionate wage increases in the successive settlements between the workmen and the Management. The wage structure which was prevailing in the area coupled with the plea raised by the Management, that the workmen were guilty of frequent stoppages not adhering to 93 items in the earlier wage

settlement etc., and on overall consideration fixed the interim relief at Rs.4,000/- per month apart from a lumpsum payment of Rs.10,000/-.

28. The learned counsel for the Management brought to the attention of this Court the Government Order in G.O.(D).No.517, Labour & Employment Department, dated 22.09.2015. By the said Government Order, nine issues have been referred to the Tribunal for adjudication. On a perusal of the issues, which have been referred, it is seen that the allegation that the workmen have defaulted in complying with various obligations under the earlier settlement, dated 07.07.2009, has also been referred for adjudication and it is stated that the same has been taken on file by the Tribunal in I.D.No.33 of 2015. Though, this Government Order, dated 22.09.2015, is subsequent to the impugned order passed by the Tribunal, this Court could consider the same, since the workmen raised a dispute on the allegation made against them stating that they have committed various defaults in not adhering to the issues agreed upon in the settlement, dated 07.07.2009 and the matter was under conciliation and the Conciliation Officer had submitted his failure report only on 07.09.2015. Thus, the issue as to whether there has been default on the part of the workmen in not adhering to in terms of settlement, dated 07.07.2009 had not become conclusive as the conciliation appears to have been proceeding when the Tribunal was considering the prayer for interim relief. Furthermore, the settled legal position is that the conciliation proceedings would come to an end only on the Government receiving the failure report which was received with the Government after 18.09.2015, the date on which the Commissioner of Labour sent his communication to the Government. Thus, the dispute as to whether workmen are guilty of breach of certain terms of the settlement, dated 07.07.2009, cannot put against the workmen as it was an independent dispute by itself. Though the Tribunal has assigned a different reason for not taking note of such allegation made by the Management stating that it has to be adjudicated at the time of final adjudication of the main dispute, the fact remains the same has become a separate dispute and has been referred for adjudication before the Tribunal. Therefore, this is one more circumstance to hold the defaults alleged to have been committed by the Workmen cannot be put against the workmen at this stage. Therefore, the contention raised by the learned counsel for the Management that the Government Order in G.O.(D).No.517, cannot be looked into does not merit acceptance.

29. Therefore, the fixation of a sum of Rs.4,000/- was definitely based on certain principles, which the Labour Court had adopted, it is not a sum which was fixed in the abstract, though adhoc, nor it is in the nature of a bounty to the Workmen and the Tribunal balancing the interest of the workmen and

considering the points putforth by the Management alleging defaults on the part of the Workmen fixed the interim relief at Rs.4000/-, which is to be now adjusted by the Industrial Tribunal in the dispute refixed by Government Order in G.O.(D). No.517, Labour & Employment Department, dated 22.09.2015. Thus, there is no error in the exercise of such discretion nor can it be said that the quantum so fixed is either arbitrary or fanciful. The parameters adopted are sound and the reasons are justifiable.

30. Hence, the fixation of interim relief at the rate of Rs.4000/- per month per worker and a lumpsum payment of Rs.10,000/- per worker does not call for interference. Consequently, the prayer sought for by the Employees Union to grant the interim relief as sought for by them is not feasible of consideration for the reasons assigned.

31. In the result, both the Writ Petitions are dismissed. Pursuant to interim orders granted in this Writ Petition, the Workmen were paid Rs.8500/- each, this amount shall be adjusted in the payments to be made to the Workmen as per the impugned order. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.12.2015

FOR BEING MENTIONED

This matter having been listed Under the caption "For being Mentioned on 18.12.2015 pursuant to the order of this Court dated 17.12.2015 and made herein in the presence of the aforesaid Counsels on the either side the Court made the following Order:

The matter has been listed today under the caption “For Being Mentioned”.

2. Mr.V.Prakash, learned Senior Counsel, appearing in person, on behalf of MRF Employees Union submitted that this Court may issue consequential directions, so as to implement the order of the Tribunal, since this Court has upheld the order of the Tribunal.

3. The learned counsel appearing for the Management submitted that the order copy is yet to be received and the Management has to take a decision in the matter and in any event, the Management is ready and willing to negotiate and hold talks with the Union, as for the past 50 years, eleven

settlements have been entered into, by way of bi-lateral discussion.

4. I have considered the submissions made by either side.

5. As this Court has upheld the interim order of the Tribunal, consequence would be the Management has to implement the same. Therefore, there will be a direction to the Management to implement the interim order passed by the Tribunal dated 12/8/2015, within a period of six weeks, from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Presiding Officer,
Industrial Tribunal,
High Court Campus,
Chennai - 600 001.

+1 cc to Mr.T.S.Gopalan & Co Advocate sr.68022
+1 cc to Mr.V.Prakash Advocate sr.68251

W.P.Nos.29636 & 36311 of 2015

aa22/12/2015