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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 03.10.2016

+ **W.P.(C) 9036/2016**

AITA RAM & ORS Petitioners

Through: Mr.Ramesh K. Mishra, Adv.

Versus

HINDUSTAN TIMES LIMITED & ANR Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate with
Ms. Meghna Mishra, Mr. Nakul Sachdeva, Mr.
Naman Joshi and Mr. Navroop Singh Bakshi,
Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (oral)

1. This petition seeks setting aside of the award dated 23.01.2012 in I.D. No. 207/10/05, passed by the Industrial Tribunal in Reference No. F. 24(188)/ 05/ Lab. 983-87 dated 2.2.2005. The said order had not granted full back wages to the petitioners who had worked with the respondent company, instead, it granted them reinstatement with continuity in service. The petitioners seek grant of full back wages along with concomitant benefits in addition to the relief already granted in the impugned Award. Execution of the Award apropos reinstatement is the subject matter of another Writ Petition being WP (C) 5607 of 2016. In the execution proceedings, the petitioners had contended that the grant of full back wages was implicit in the Award. Their claim was rejected by the executing court,

but was allowed by the Hon'ble Single Judge of this Court. However, the said judgment was set aside by the Division Bench judgement of this Court in LPA No. 6 of 2015. The latter judgement was impugned by the workmen in SLP No. 10578 of 2015 which was dismissed by the Supreme Court with the following observations:

“Heard the learned counsels for the parties and perused the relevant material.

We do not find any legal and valid ground for interference. The Special Leave Petition is dismissed.”

2. It is the petitioners' case that they had bonafidely pursued the earlier proceedings on the mistaken belief that the grant of full back wages was implicit in the Award. However now, the issue has been finally decided by the Supreme Court upholding the order of the Division Bench of this Court. The petitioners have now impugned the Award to the extent that full back wages have not been granted, the relief which they had initially sought in the Statement of Claim before the Industrial Tribunal. The learned counsel for the petitioners refers to the Statement of Claim which avers as under:

“ 18..... and all the claimants are unemployed since the date of their termination and as such are entitled to continue in the employment in the printing undertaking with continuity of service and with full back wages till the attainment of retirement age as per the agreed service conditions and the contract of service.....”

3. In their reply, the respondent has denied the same in one sentence as under:

“That the workmen are gainfully employed

elsewhere.”

4. In WP (C) No.12326/2009, vide order dated 12.10.2009, this Court had directed the petitioners to lead evidence through a single workman who would represent all the claimants/workmen. This Court had recorded and directed as under:

“ 6. At this stage, Mr. Ashwin Vaish, learned counsel appearing on behalf of the petitioner, on instructions from all the 272 workmen says that since the claim of all these workmen is identical, he will examine only one witness who is already under cross-examination namely WW-1 Mr. Suryamani Mishra, which should be treated as evidence on behalf of all the 272 workmen. It is further submitted by Mr. Vaish that in case, the workmen succeeds in proving the reference in their favour and if the question arise for their reinstatement and back wages, then because only one witness is going to be examined on behalf of the 272 workmen, the management should not be permitted to plead that these 272 workmen were gainfully employed unless the particulars of gainful employment are specifically proved by management before the Tribunal and in that event, opportunity should be given to the workmen to lead their evidence in rebuttal on the point of gainful employment.”

Accordingly, the evidence of the workmen was led only through one witness. The said witness, in his cross-examination, had voluntarily said:

“.....Vol. that is the only cause by which I have

rendered unemployed till date.....”

5. This statement was recorded on 07.11.2009. According to Mr. Mishra, the learned counsel for the petitioners this evidence of the petitioner although given voluntarily, is a record of the workmen being unemployed and was in consonance with the pleadings of the workman wherein he had specifically said that he was unemployed from the date of termination of his service in 2004 till the date of the deposition. No specific evidence was led by the respondent – management to show that the workmen were gainfully employed elsewhere. Therefore he submits, that in substance the petitioners had made out a case that they were unemployed. He further submits that a mere pleading by the workman about his being unemployed is enough and it is for the management to prove otherwise. He relies upon the judgment of the Supreme Court in **Deepali Gundu Sarwase vs. Kranti Junior Adhyapak** (2013) 10 SCC 324 wherein it was held as under:

"...33. The propositions which can be cull out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases In which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders. If any, but holds that the punishment was disproportionate to the misconduct found

proved, then It will have the discretion not to award full back wages. However, If the Labour Court/Industrial Tribunal finds that the employee or workman Is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases In which the competent Court or Tribunal finds that the employer has acted In gross violation of the statutory provisions and/or the principles of natural justice or Is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified In directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/ illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) *In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).*

vii) *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three*

Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

6. The learned counsel further submits that insofar as the petitioners had sought reinstatement with full back wages, it was incumbent upon the Industrial Tribunal to adjudicate upon the issue and to the extent that the issue of back wages has been left undetermined, the award of the Industrial Tribunal is erroneous. This may be adjudicated by this Court by giving the petitioners relief in the writ jurisdiction.

7. A reference to the Industrial Tribunal implicitly required adjudication regarding full back wages. The reference was made vide order dated 02.02.2005 to the Industrial Tribunal which read as under:

“Whereby on consideration of report submitted by Conciliation Officer, Under Section 12(4) of the Industrial Disputes Act, 1947 I, Narender Kumar, Secretary (Labour), Government of National Capital Territory Of Delhi, am satisfied that Labour dispute in respect of the matters specified in the Schedule exists between the management of (1) M/s The Hindustan Times Ltd., Hindustan Times House, 18-20, Kasturba Gandhi Marg, New Delhi (2) M/s H.T. Media Ltd., Hindustan Times House, 18-20, Kasturba Gandhi Marg, New Delhi and its workmen as represented by Hindustan Times Employees Union, Hindustan Times House, 18-20,

Kastiuba Gandhi Marg, New Delhi, that the same should be referred for adjudication to Industrial Tribunal of Delhi constituted under the said Act:

Now, therefore, in exercise of powers conferred by Section 10(1) d and 12 (5) of the said Act read with Govt of India, Ministry of Labour Notification No. S-11011/2/75/DK(IA), dated the 14th April 1975, hereby refer the dispute to the Industrial Tribunal No III presided over by Sh M.C. Garg for adjudication.

SCHEDULE
TERMS OF REFERENCE

Whether the action of management of M/s Hindustan Times Ltd. in transferring the ownership of its Printing undertaking to M/s. H.T. Media Ltd w.e.f. 2-10-04 and terminating the services of workmen whose names are given in Annexure 'A' by invoking the provisions of section 25 FF of Industrial Disputes Act 1947 is illegal and/or unjustified and if so, to what relief are the workmen entitled and what directions are necessary in this respect.?"

8. The learned counsel for the petitioners further relies upon para 22 in ***Deepali Gundu Surwase*** (supra) to contend that a reference has to include an issue for determination of the back wages. Para 22 of the said judgment

reads as under:

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality! of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory, provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny

back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed, and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

9. Evidently, this writ petition has been filed 58 months after the grant of the impugned Award. It suffers from delay and laches. However, the same is sought to be explained by the learned counsel for the petitioners who states that the delay and laches is not deliberate but incidental to the remedy being pursued by the petitioners under the bona fide belief that payment of full back wages was implicit in the Award. Hence, till such time that this aspect was duly decided by the Supreme Court on 01.08.2016, no such time of delay would be considered. In this regard the petitioners have averred as under:

4.4 For that given the facts of this case, though the award is of year 2012, there is no delay and laches in filing this petition. Alternatively, if there is any delay or laches at all the same may be condoned for the reasons that the petitioners have diligently pursued, their case for full

back wages through the ongoing execution proceedings and through the challenge of the order passed by the execution court under the understanding that the full back wages is implicit in the relief granted under the award. Therefore, they had no occasion to challenge the impugned award earlier. However, after the dismissal of the SLP on 1.8.2016 filed against the Division Bench order of this Hon'ble Court, the issue- whether back wages is implicit in the relief granted under the impugned award could attain finality and need for filing the present petition has arisen.”

10. The learned counsel for the petitioner further relies upon the judgment of the Supreme Court in ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others*** (2008) 7 SCC 169. He submits that when a litigant pursues a mistaken remedy by selecting the wrong forum, the time taken in such misdirected or mistaken remedy would have to be excluded. He submits that the petitioners have diligently pursued the remedy before the wrong forum/Court, therefore on the basis of the aforesaid belief, there can be said to be no delay or laches because the civil proceedings were between the same parties and were being pursued with due diligence and in good faith and related to the same subject matter in issue being pursued in Court. He relies upon paragraphs 21 and 22 of the said judgment which read as under:

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without

jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) The earlier proceeding and the latter proceeding must related to the same matter in issue and;*
- (5) Both the proceedings are in a court.*

22. *The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted*

the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation and the principle affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy in a wrong court, should be excluded.”

11. Mr. Mishra, the learned counsel further emphasised on para 4.3 of the writ petition which reads as under:

“4.3 The award discloses that there is no illegality committed by the workmen and that the workmen have not contributed in even in the slightest manner to the present situation where they find themselves unemployed. On the contrary, the evidence discloses mala fide steps

taken by the employer to put forward a false case and to wilfully cause the termination of the workmen contrary to law. In particular the award concludes:

4.3.1 That the employer took the stand that the workmen were unwilling to report at the premises of HTML at Noida and that this was negated by the Tribunal which held that the workmen never refused to take up any assignment of work at Noida or elsewhere with HTML or any other party. The Tribunal held that, in fact, no transfer letters were issued to the workmen. The Tribunal has held as under:

" 63. Hence, it is held that no transfer letters were issued to the workmen. The issue is decided accordingly."

"67Since, management no. 2 itself had refused to take the services of workmen, they cannot be allowed to blow hot and cold in the same breath and cannot take the plea that it is the workmen who refused to join management no. 2. It is worth noting that workmen, during their evidence have given their willingness to join management no. 2 even at this stage. Thus, there is no refusal on the part of individual workman to the said transfer of ownership from HTL to HTML.

Thus, issue is decided accordingly."

4.3.2 The Tribunal also held that the transfer of ownership of the printing undertaking from HTL to HTML was not bona fide on the part of the HTL. The Tribunal held as under:

" 65. As held vide Issue no. 1, management no. 1 and 2 are not separate entities. HTML is the subsidiary company of HTL and managed by same management. HTML is extended version of HTL. Therefore, refusal by management no. 2 to take services of workers of management no. 1 does not seem to be justified. Hence, it is held that decision of management no. 1 in transferring of the ownership of printing undertaking to management no. 2 is not bona fide to protect the interest of workmen."

4.3.3 The Tribunal held that reference was not legally incompetent and 272 workmen had not taken their full and final settlement.

"79. It is worth noting that no proof has been shown by management that the reference is legally incompetent or that 315 workmen have taken their full and final settlement. However, during arguments, it is agreed for workmen that 43 workmen have settled their disputes with management. ...Present dispute

remains regarding 272 workmen."

4.3.4 The Tribunal held that the action of the management in terminating the services of the workmen was illegal and unjustified in the following way:

"58. In the situation of the present case, the word 'Transfer' is of vital significance. When the ownership of management of two companies, one holding company and the other subsidiary company, is found substantially in holding company, it cannot be said that under any agreement to sell, transfer has taken place in fact, though, in form it has taken place. When transferor and transferee are same set of companies, I am of the considered view that Section 25FF of the I.D. Act is not applicable. Issue no. 1 decided accordingly."

87. In view of my findings on issue no. 1, it is held that action of management of M/s Hindustan Times Ltd. In transferring the ownership of its Printing undertaking to M/s H.T. Media Ltd. w.e.f. 02.10.2004 and terminating the services of workmen whose names are given in Annexure A by invoking the provisions of Section 25FF of Industrial disputes Act, 1947 is illegal and unjustified."

12. Respondent No. 1 is represented by counsel who appears on service of advance copy of the writ petition. He submits that the writ petition is not maintainable because all the issues stand duly adjudicated upon by the Division Bench of this Court and that judgment has finally received assent of the Supreme Court. The learned Senior Advocate for the respondent No. 1 refers to paragraph Nos. 3, 4, 5, 17, 18 and 24 of the judgment of the Division Bench which inter alia record that the petitioners knew fully well that they have not been granted back wages and that is why they moved an application for clarification and thereafter for the reasons best known to them, they withdrew that application. This aspect clearly gets crystallized by a reading of paragraphs 17 and 18 of the judgment which read as under:

“17. From a perusal of the application filed by the workman seeking clarification of the award, it is apparent that the workmen were aware that back wages had not been directed to be paid and hence desired, by way of clarification, an order to be passed by the Tribunal that back wages had to be paid. The workmen withdrew the application.

18. During arguments in the appeal we had put it to learned senior counsel for the workman as to what would be the effect of the pleadings of the workman admitting that there was an omission in the award qua back wages and withdrawal of the application, to which learned senior counsel replied that the application was

withdrawn since the Industrial Tribunal was functus officio.”

13. The learned counsel for the respondent No. 1 – management further emphasises that no issue apropos back wages was framed in the proceedings before the Industrial Tribunal. Indeed additional issues were also framed, but the petitioners chose not to raise the issue regarding payment of full back wages. The issues framed before the Industrial Tribunal were:

“Issues

- 1. Whether HTML is the subsidiaiy company of MIL and managed by same management i.e. persons belonging to the same family, if so, its effect? OPW*
- 2. Whether the transfer letters were issued to the workmen?*
- 3. Whether decision of management no.1 in transferring of the ownership of Printing Undertaking to management no.2 is bona fide to protect the interest of workmen? If not, to what effect? OPM*
- 4. Whether there was any refusal on the part of individual workmen to the said transfer of ownership from MIL to HTML? OPM*
- 5. Whether management no. 1 duly communicated the workmen about the transfer of printing undertaking to management no.2, if not, its consequences? OPM*
- 6. Whether termination/retirement of the workmen is in terms of relevant provisions of the ID Act i.e. Chapter 5B of the Act?*

7. Whether the workman are bound by the unauthorised statement of the office bearer of the Union that workmen will not comply the order of transfer? OPM

8. Whether references are legally incompetent (OPM). Whether 315 'workmen named in Annexure have taken their full and final settlement. Whether the claim statement has been sent by competent person having locus standi? OPW

Additional Issues

1. Whether any employer-employee relationship has ever existed between the claimants and the Applicant/Management no.2? OPW

2. Whether the claimants can claim any relief from the management no.2.OPW

3. Whether the Hindustan Times Employees Union represents the interest of the employee of the Management No.2 and is entitled to raise an industrial dispute against them? OPW. "

14. The learned counsel for respondent No. 1 submits that it was always open for the petitioners to challenge the non-framing of issues apropos determination of grant full back wages. However, they chose not to do so for the past almost eight years since the issues were framed. Furthermore, he submits that there was no bar in law for the petitioners to challenge the Award itself insofar as there was no explicit direction to pay them full back wages as was claimed by them. He submits that in any case it was always open to them to pursue both: the execution of the Award to the effect it gave

them specific reliefs and to challenge it to the extent they felt it was non-specific or silent on the reliefs sought in the Statement of Claims. The alternative remedies could have been pursued.

15. To the aforesaid contention, Mr. Mishra, the learned counsel for the petitioners submits that the petitioners have pursued their claim for back wages under the bona fide belief that the Award had granted them full back wages. However, on the said issue being determined against them finally by the Supreme Court, they have now preferred to challenge the Award by way of this writ petition under Article 226 of the Constitution of India which challenge is neither barred in law nor by laches. He seeks to emphasise this point by referring to para 20 of the Division Bench judgment which records as under:

“20. The issue before the learned Single Judge was not whether the workman were entitled to back wages or not. Thus, it would be useless to discuss various decisions of the Supreme Court where emphasis was placed by the Court that ordinarily back wages should be granted and non-grant thereof was the exception to the rule and such decisions which held that with the change in thinking today due to globalization, back wages could be denied or some lump sum amount could be paid. This issue could have been debated if there is a challenge to an award which grant or denies back wages. The jurisdiction of the learned Single Judge was restricted to the language of the award and then to determine whether a direction to

pay back wages was implicit in the award. Thus, reliance by the learned Single Judge on such decisions of the Supreme Court which emphasized that if termination is held to be illegal, as a matter of course back wages should be directed to be paid while ordering reinstatement would be out of place, but meaningfully read, the learned Single Judge has referred to the said decisions as the backdrop of his reasoning, with emphasis placed on paragraph 89 of the award where the Tribunal held that the workman 'are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination'. The learned Single Judge has, though not expressly so stated, held that the direction qua continuity of service and being brought back to the status as before the termination required it to be held that back wages have to be paid, because how else could somebody be brought back "as before" sans the financial aspect."

16. The learned counsel for the petitioners further submits that although the issue before the Court in the earlier execution proceedings was whether the Award had granted or denied the benefit of back wages to the petitioners, this issue was never adjudicated upon; that regarding this relief sought by the petitioners, no issues were framed but the Award should have fairly dealt with all the issues in terms of the reference; that one workman, who is not a part of the present group of petitioners-workmen, had challenged the Award on the issue of non-grant of back wages, and that case was settled amicably.

However, the settlement has been challenged through a review by the said workman and the matter is still pending. Copy of the said order has been annexed to this writ petition at page 377. He submits that in view of this matter, it can be said that the issue is still alive before this Court in another writ petition.

17. The Court is not persuaded by this argument because a settlement by a workman, which itself is under challenge, cannot lend any support to the petitioners who chose not to settle and place themselves in the same boat as that singular workman. Besides, the issues in that petition and the present petition cannot be said to be identical or similar. Hence, the petitioner cannot derive any benefit from the pendency of that writ petition. The learned counsel for the petitioner further submits that last year itself, the management has compromised with one workman. Therefore, the case is still warm and could always be adjudicated upon. However, this Court would note that right at the outset, the learned counsel for the petitioner was asked whether he would like to explore the possibility of an amicably settlement of the lis with the management and he was instructed in the Court itself that they were not ready for any amicable settlement of the lis, although the learned Senior Advocate for respondent No. 1 stated on instructions, that the said respondent was always open, ready and willing to explore the possibility of an amicable settlement.

18. The Court, having considered the rival contentions of the learned counsel for the parties, is of the view that insofar as the Division Bench records that the petitioners understood that the Award did not specifically grant to them full back wages and having once moved an application for clarification, chose to withdraw it. It was always open to them to challenge

the said Award if they were so advised. Paragraph nos. 3, 4, 5, 17, 18, 20 & 24 of the Division Bench judgement crystallize the case against the relief sought by the petitioners in this petition. The Division Bench records twice over (in paragraph nos. 3 & 24) that the Award had become final because the workmen had chosen not to challenge it and they were pursuing only the execution proceedings. The said conclusion of the Division Bench was upheld by the Supreme Court, at which stage also the petitioners could have sought leave of the Court to challenge the Award on merits. However, they did not seek any such relief. Therefore, insofar as the Supreme Court has upheld the order of the Division Bench in its entirety, this Court is unable to go beyond those orders which have held that the Award has attained finality. The Court is also not persuaded by the argument that the petitioners always had a right in law to challenge the award and there was no necessity for them to seek any leave in this regard from the Supreme Court when the SLP was dismissed.

19. With the Supreme Court having upheld the Division Bench judgment, this Court is of the view that the issue stands settled and re-agitating the same would be barred by the principle of *res judicata*.

20. In view of the above, the writ petition is not maintainable and is accordingly dismissed.

NAJMI WAZIRI, J

OCTOBER 03, 2016/acm