

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1792 OF 2007

UTI Asset Management Company Private Limited .. Petitioner

vs.

All India Unit Trust Employees' Association .. Respondent

Mr.S.K.Talsania, Sr.Advocate a/w Ms.Nandini Menon, Mr.Vishal Talsania, Mr.Netaji Gawde i/b M/s.Sanjay Udeshi and Co. for the Petitioner

Mr.N.M.Ganguli a/w Ms.Karuna Yadav for the respondent

**CORAM: K. K. TATED, J.
RESERVED ON: APRIL 27, 2017
PRONOUNCED ON: MAY 5, 2017**

P.C.:

1 Heard the learned counsel for the parties.

2 By this Petition under Article 227 of Constitution of India, the petitioner challenges the award dated 28.02.2007 passed by the Presiding Officer, Central Government, Industrial Tribunal No.1, Mumbai in Reference No.CGIT-26 of 2004 holding that the demand of the respondent Union for giving / exercising the IIIrd option for pension to the employees of erstwhile UTI (Now AMC Pvt.Ltd.) w.e.f. 1.9.2000 at par with the RBI, IDBI in view of terms contained in Settlement dated 18.4.1996 read with Settlement dated 28.3.2001 is legal, proper

and justified.

3 Prior to 1994, the employees of UTI were enjoying contributory provident fund as one of the retirement benefits under the Contributory Provident Fund Scheme. In the year 1994, the board of trustees of the Unit Trust of India in exercise of the powers vested in it under section 43 (2) (n) of the Unit Trust of India Act, 1963, introduced Pension in lieu of provident fund and also formulated regulations which were called the Unit Trust of India Pension Regulations, 1994. Some of the features of the Pension Scheme relevant for the purpose of the present petition are :

- a) It came into force with effect from 1st November, 1993.*
- b) It applied to all the employees in the service of Unit Trust of India as on 1st November, 1993 except those who exercise option in writing not to be governed by pension regulations.*
- c) It also covered all the employees who were in service of Unit Trust of India as on 1st January, 1986 and retired before 1st November, 1993 provided they exercised the option for pension and refunded the Trust's contribution to Provident Fund alongwith interest as specified in the Pension Regulations and the circulars issued thereunder.*
- d) Qualifying service for pension for 10 years.*
- e) Employees who joined Unit Trust of India on after 1st November, 1993 would be covered only by pension, under UTI Pension Regulations, 1994.*

4 In view of the introduction of Pension Scheme, petitioner issued Administration Circular No.13/94-95 dated 23.9.1994 explaining in detail various provisions of the said Pension Regulations. Clause b) of the said Circular dated 23.9.1994 reads thus :

“b) Exercising of options:

i) In terms of Regulations 3, employees who were in the service of the Trust as on November 1, 1993, as also those who have retired from the Trust's Service between January 1, 1986 and November 1, 1993 (excluding those who were on LPR as on January 1, 1986) should be allowed to exercise option in the prescribed form. Two types of option forms, one for the employees in service and one for those who have already retired are enclosed (Annexures II and III). The option once exercised will be final and irrevocable. The employees in service as well as the eligible retired employees will have to exercise their option on or before October 31, 1994 or such further time as may be allowed by the Trust.

ii) The names and full service particulars of such of the existing employees who opt for continuing under contributory PF may be advised to the Zonal Offices who in turn should forward a consolidated statement to the Chief General Manager, Department of Personnel, Corporate Office, Bombay, with a copy to the General Manager, Department of Accounts, Corporate Office in the Statement No.1, Annexure IV) by November 14, 1994, for making suitable remarks in the respective PF accounts. Please note that a copy of the option forms is to be sent alongwith this statement. Suitable remarks are also to be made in the service sheets of such optees whose relative records are maintained in the concerned office. The original option forms, thereafter, be filled in the service filed of the respective employees. In the case of officers who's service files/sheets are maintained at Corporate Office, their option forms should be forwarded to the Chief General Manager, Department of Personnel, Corporate Office, Bombay after making necessary remarks on the service sheets maintained by the concerned office.

iii) All employees in service as on November 1, 1993, except those who exercise option not to be governed by the Pension Regulations will be deemed to have joined the Pension Scheme. Such of those employees who fail to exercise their option before the appointed date i.e. October 31, 1994 will also be deemed to have joined the scheme. In the case of all such employees, the contributory Provident Fund Benefit will cease to exist from November 1, 1993 and the Trust's contribution to PF

alongwith accrued interest for the past period of their service will revert to the Trust for being transferred to the Pension Fund in due course.

iv) The eligible retired employees will have to submit their options to the Chief General Manager, Personnel and Administration, Unit Trust of India, Bombay on or before October 31, 1994 failing which it will be presumed that they do not wish to join the scheme.”

5 Thereafter, the option was given by RBI / IDBI to their employees about pension scheme. On the basis of RBI/IDBI decision, the Petitioner issued administration Circular No.30/1994-95 dated 20.2.1995 and gave opportunity to the employees either to accept pension scheme or to continue with Provident Fund Scheme. Paragraph 2 and 3 of the said letter dated 20.2.1995 reads thus:

“2. On re-examination of the aforesaid provision, it has been decided that the employees who have joined the Trusts service on or after November 1, 1993 but on or before December 31, 1994 be also given an option. Accordingly employees who have joined the service of the Trust between November 1, 1993 and December 31, 1994 may exercise their option in writing on or before the appointed date i.e. March 31, 1995 in the prescribed form (copy enclosed) not to be governed by the UTI Pension Regulations 1994 and to continue to retain the Contributory Provident Fund.”

“3. The employees who have joined the services of the Trust during the above period November 1, 1993 to December 31, 1994 except those who exercise an option on or before the appointed date of March 31, 1995 not to be governed by the UTI Pension Regulations, 1994, will be deemed to have joined the Pension Scheme.”

6 Again on the basis of option given by RBI / IDBI to their employees, Petitioner by their administrative Circular No.12/96-97

dated 24.12.1996 gave option to their employees who had earlier opted not to be governed by the Pension Regulation and continued to be covered by Contributory Provident Fund, on the terms and conditions set out therein. The said letter reads thus:

“All the Departmental Heads at Corporate Office and Zonal / Branch Office in-charges

Administration Circular No.12/96-97

UTI Pension Regulations, 1994 – Exercising of Option

Consequent on revision of scales of pay and allowances of the employees of the Trust it has been decided to allow the employees who were in the Trust's service as on December 31, 1994 (excluding those who were on Leave Preparatory to retirement on that date) and who had earlier chosen to retain the CPF benefit to exercise a fresh option to be governed by UTI Pension Regulations 1994. In this connection, it is clarified as under:

(i) The employees who were in the service of the Trust as on December 31, 1994 may be allowed to exercise a fresh option in the enclosed Form 1-E (Annexure I).

(ii) The employees who were in the service as on November 1, 1993 (excluding those who were on Leave Preparatory to retirement on that date) and retired subsequently on CPF should be advised by registered post that they are eligible to exercise option to be governed by UTI Pension Regulations, 1994 in enclosed Form 1-F (Annexure II). The exercising of such option by these employees will be subject to the following:

(a) refund of Trust's contribution to Provident Fund with accrued interest together with simple interest @ 12% per annum thereon from the date of payment till the date of refund to the Trust.

(b) they will be eligible for commutation of pension on the basis of the age at next birthday on the date of receipt of application for commutation subject to medical examination,

wherever necessary, as per the existing rules,

(c) they will be eligible for full pension from the date of their retirement upto the date of commutation and commuted pension thereafter.

(iii) The spouses/eligible family members of the employees who were in service as on November 1, 1993 and expired thereafter, will also be allowed to exercise option for family pension in Form 1-G (Annexure-III) subject to the following conditions:

(a) amount of Trust's contribution to Provident Fund with accrued interest together with simple interest @ 12% per annum thereon should be refund from the date of payment till the date of refund to the Trust.

(b) communication of family pension will not be permissible.

2. The contents of this circular may please be brought to the notice of all the employees attached to your 1 -office/department who have retrained CPF benefits and their acquittances for having noted the contents of the circular be obtained and placed in a separate file.

Similarly, a copy of the circular should also be sent to the employees who are on leave/deputation/training/tour/ etc to their addresses and their acquittances be obtained.

3. A copy of the circular together with the relevant option form in respect of retired employees/eligible family members (together with other relevant information) will be sent by Department of Personnel, Corporate Office to each of such employees/eligible family members who were in the Trust's service as on November 1, 1993 and retired/expired thereafter with CPF benefits.

4. The option should be exercised by February 28, 1997. The option once exercised will be final and irrevocable.

5. Copies of this circular may be displayed on the Notice Board, a copy each should also be furnished to the recognised

Unions/Association of employees in the respective centres.

6. A copy of the Office order giving the names of the employees exercising their option in Form I-E, together with their designations and Provident Fund Index no. may be forwarded to the Executive Director, Personnel and Administration, UTI, Corporate Office, Mumbai.

Suitable remarks should be made in the Provident Fund Account Sheets and Service Sheets of such optees.

The option forms (together with Form 4 giving details of family and one photograph of the first eligible family member) should, thereafter be filed in the service files of the respective employees.

In the case of officers whose Service Sheets are maintained at Corporate Office, their option form (together with Form 4 giving details of family and one photograph of the first eligible family member) should be forwarded to the Executive Director, Personnel and Administration, UTI, Mumbai for further action.

7. Receipt of this circular may please be acknowledged.”

7 Petitioner and respondent entered into Memorandum of Settlement dated 28.3.2001 for their terms and conditions of service. Relevant terms of settlement as per Memorandum of Settlement dated 28.3.2001 are as under:

“(1) The Trust shall have its own compensation package and service conditions for its workmen employees with effect from January 1, 2001. The revision / changes if any, in pay and allowances and other service conditions, taking place in Reserve Bank of India (RBI) from the said date onwards will not have any bearing on the compensation package and other service conditions in the Trust. Accordingly, clause 31(ii) of Memorandum of Settlement dated April 18, 1996 shall henceforth have no effect and would cease to operate.”

(13) SUPERANNUATION BENEFITS
(A) **Provident Fund**

There is no change in the existing rules and the same shall continue. However, those workmen employees who are contributing additional subscriptions to the Provident Fund under the Unit Trust of India Employees' Provident Fund (Additional Subscriptions) Regulations, 1964 may, if they so desire, modify the earlier instructions with regard to rate of additional subscriptions with retrospective effect from January 1, 2001, subject to the condition that the additional subscription will be in multiples of 5 % of pay as provided under the Regulations and that the option will not result in any refund of the additional subscription already paid by the workmen employees.

(B) Pension Scheme

Consequent on revision in pay and allowance and also on account of merger of dearness allowance into basic pay, any changes/amendments, which are found necessary will be made in UTI Pension Regulations, 1994. Till such time, UTI Pension Regulations, 1994 are amended, pension benefits in respect of those employees who have retired on or after January 1, 2001 will continue at the existing rate worked out on notional basis.

(C) Gratuity

There is no change in the existing rules and the same shall continue. Additional gratuity admissible, if any, on the basis of revised pay will be payable to all workmen employees who were in service of the Trust as on January 1, 2001, including those who were on Leave Preparatory to Retirement as on that date and ceased to be in service after that date.

(D) Compassionate Gratuity

There is no change in the existing rules and the same shall continue.

(E) Compassionate Financial Assistance

The existing provisions contained in the Memorandum of Settlement dated August 23, 1999 is modified as under:

a. The financial support as ex-gratia lumpsum payment to the bereaved family will be the higher of the two amounts stated at (i) and (ii) below, subject to the ceiling stated at (iii).

(i) 1.2 times the total monthly emoluments last drawn for every completed year of service.

(ii) 1.8 times the total monthly emoluments last drawn for every remaining year of service.

(iii) Provided that the ex-gratia payment will be limited to the total monthly emoluments (last drawn) for the remaining service of the deceased workmen employee worked out notionally, as per the age of retirement, prescribed under Unit Trust of India (Staff) Rules, 1978. The floor limit for the ex-gratia payment will be notional commutation value of pension.

b. In cases of workmen employees who have not availed housing loan from the Trust, the spouse/dependants will be given an additional amount equivalent to 7 times the total monthly emoluments on the basis of salary last drawn.

c. The Compassionate compensation of Rs.1,00,000/- introduced vide Adm. Circular No.7/94-95 dated September 1, 1994 is withdrawn. Compassionate Gratuity will be payable to the nominee/legal heir of the employee dying while in service @ one month pay (at the rate admissible to the deceased workman employee at the time of death) for every completed year of service subject to a minimum of 2 months pay and allowances and a maximum of Rs.15,000/-.

d. There will be no provision for employment on compassionate grounds.

e. The above is effective from December 1, 1994.

20. DATE OF EFFECT

(a) The Management agrees to extend the benefits of the revised Pay & Allowances on the lines of Reserve Bank of India for the period November 1, 1997 till December 31, 2000.

(b) *It is agreed that this settlement shall come into force from January 1, 2001 and shall remain in force till December 31, 2003 both days inclusive and shall continue to be binding on the parties even thereafter as stipulated under the Section 19 of the Industrial Disputes Act, 1947.*

(c) *It is also agreed that Memorandum of Understanding dated December 8, 2000 was not given effect to and stands cancelled.*

21) **GENERAL**

It is agreed that

(a) *the other existing terms and conditions of service for workmen employees express or implied which have not been specifically dealt with herein, shall continue unaffected.*

(b) *the common endeavor of the Trust and the AIUTEA shall be to achieve improvements in productivity keeping in view the best interest of the unitholders.*

(c) *if any doubt or difficulty arises regarding interpretation of any provision of this Settlement, the matter shall be discussed mutually with a view to resolve the same.*

(d) *The AIUTEA may submit new Charter of Demand any time during last six months of the currency of this settlement and the Trust will hold the negotiations with a view to reach a new settlement at the earliest.*

(e) *the AIUTEA agrees to withdraw all pending industrial disputes of whatever nature and wherever raised.*

23) **OTHER DEMANDS**

The AIUTEA agrees that during the period of operation of this settlement they shall not raise any new demands involving directly or indirectly any additional financial burden on the employer.”

exercising the option to either accept Pension Scheme or to Continue provident fund scheme. On the basis of RBI's Circular the respondent again demanded extension of time for their members for exercising the option. The same was not accepted by the Petitioner. Hence, the respondent All India Unit Trust Employees' Association made a demand with Assistant Labour Commissioner (I) by their letter dated 3.9.2003 for directing the petitioner to allow their member to accept the Pension Scheme. Pursuant to the said respondent's grievance Under Secretary, Government of India, Ministry of Labour by its order dated 24.3.2004 in exercise of powers conferred by clause (d) of sub-section 1 and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 made a reference for adjudication to the Central Government Industrial Tribunal No.1, Mumbai which was as follows:

“Whether the demand of the Union for giving/exercising the IIIrd option to the employees of the erstwhile UTI (Now UTI AMC Pvt.Ltd.) w.e.f. 1.9.2000 at par with the RBI / IDBI in view of terms contained in settlement dated 18.4.1996 read with settlement dated 28.3.2001 is legal proper and justified? If so what relief the Union is entitled for and from which date and what order directions are necessary in the matter?”

9 In the said Reference, the respondent filed their statement of claim dated 14.5.2004 before the Industrial Court. The Petitioner also filed their written statement dated 23.6.2004 opposing the reference. On the basis of pleadings on record and submissions, the Industrial Court passed the impugned award dated 28.2.2007 in Reference No.CGIT-26 of 2004. Hence, the present petition is preferred by the petitioner.

10 The learned Senior Counsel for the Petitioner submits that the

Industrial Court erred in coming to the conclusion that the Petitioners are bound to provide 3rd option for pension to the members of the respondent w.e.f. 1.9.2000 at par with the RBI / IDBI in lieu of the terms contained in settlement dated 18.4.1996 read with settlement dated 28.3.2001.

11 The learned Senior Counsel for the Petitioner submits that the petitioner in 1994 introduced Pension Scheme vide UTI Pension Regulations, 1994. As per Clause 3 of Pension Regulations, Pension Regulations would apply to (i) The employees who joined the trust's services on or after 1.11.1993 and (ii) the employees who are in the service of the Trust as on 1.11.1993 except those employees who, within the period prescribed by the trust exercise an option in writing not to be governed by these Regulations. He submits that in view of this fact all the existing employees were covered by the Pension Regulation unless an employee specifically denied to join the pension scheme. He submits that Clause 4 of the said scheme reads thus:

“4. Eligibility

Pension will be payable on retirement to a full-time employee and to a part-time employee on part-time work exceeding thirteen hours per week, provided they have completed a minimum service shall not be applicable for drawing Family Pension in the case of an employee who dies while in service.”

12 The learned Senior Counsel for the Petitioner submits that the petitioner issued the administration circular dated 23.9.1994 bearing no.13/94-95 by which the employees were communicated the provisions of Pension Regulations and were given option under regulation 3 to opt out of the pension regulation. He submits that

pursuant to the said regulation maximum employees accepted the pension scheme. Thereafter again in the interest of Justice on the basis of option given by RBI / IDBI to their employees, petitioner again by their administration circular no.30/94-95 dated 20.2.1995 informed to their employees that the employee who had joined between 1.11.1993 and 31.12.1994 may exercise their option in writing on or before the appointed date 31.3.1995 in prescribed form not to be governed by the Unit Trust of India's Pension Scheme or continue to retain the Contributory Provident Fund. He submits that thereafter on 18.4.1996 settlement was arrived at between the Petitioner and respondent under section 2(p) of the Industrial Disputes Act, relating to pay revision and other terms and conditions of service. The relevant clauses of the said settlement are as under:

“(26) SUPERANNUATION BENEFITS
(A) **Provident Fund**

There is no change in the existing rules and the same shall continue. However, those employees who are contributing additional subscriptions to the Provident Fund under the Unit Trust of India employees provident fund (additional subscriptions) regulations, 1964 may, if they so desire, modify the earlier instructions with regard to rate of additional subscription with retrospective effect from 1st November, 1992 subject to the conditions that the additional subscription will be in multiples of 5% of pay as provided under the regulations and that the option will not result in any refund of the additional subscription already paid by the employees.

(B) **Gratuity**

There is no change in the existing rules and the same shall continue. Additional gratuity admissible, if any, on the basis of revised pay will be payable to all employees who were in service of the Trust as on 1st November, 1992, including those who were on leave preparatory to retirement as on that date and ceased

to be in service after that date.

(C) Compassionate compensation.

There is no change in the existing rules and the same shall continue.

(D) Pension

There is no change in the existing rules and the same shall continue.

(30) OTHER DEMANDS

In view of this Settlement, the Association as a gesture of goodwill and with a view to continued harmonious industrial relations with the employer as hitherto drops demand Nos.7, 9, 13, 15, 25, 30, 31, 32, 34 & 35. Items 21 (medical Aid) and 23 (Staff quarters) will be discussed and settled at the earliest. The association further agrees that during the period of operation of this settlement they shall not raise any new demands involving, directly or indirectly any additional financial in view of this settlement, the association as a gesture of goodwill and with a view to burden on the employer, save and except to the extent envisaged by item No.31 of this settlement.

(31) DATE OF EFFECT

(i) It is agreed that this settlement shall come into force from June 14, 1995 and shall remain in force for a period of five years ending on June 13, 2000 both days inclusive and shall continue to be binding on the parties even thereafter as stipulated under the section 19 of the Industrial Disputes Act, 1947.

(ii) It is further agreed by the employer that they shall revise pay and allowances by an agreement with the All India Unit Trust Employees' Association in the event of any revision/s occurring in the Reserve Bank of India and Industrial Development Bank of India during the period of operation of this settlement and effective from the date from which it becomes operative in Reserve Bank of India and Industrial Development Bank of India.

(iii) *It is agreed that in accordance with clause XXIII (2) of the settlement dated September 4, 1986 between the parties, the revised scales of pay and allowances in this settlement at item Nos.3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 24, 26(A), (B) and (C) shall be effective from November 1, 1992 and item No.18 shall be effective from November 1, 1994 as has been done in Reserve Bank of India and Industrial Development Bank of India and other clauses, namely 12 and 28 shall be effective from the date of signing of this settlement, viz., April 18, 1996.*

(iv) *It is agreed that item Nos.19, 21, 22 and 27 of the settlement will be modified on the lines of RBI / IDBI and made effective from the date on which they become effective in RBI / IDBI.”*

13 The learned Senior Counsel for the Petitioner submits that in view of clause 30 of 1996 Settlement it is clear that no new demand involving financial burden can be raised by respondent except as provided in clause 31. He submits that the Petitioner issued another administration Circular 12/96-97 dated 24.12.1996 giving second option to the employees who had earlier opted to be not governed by the pension regulation and to continue to be covered by the contributory provident fund on the terms and conditions as set out therein.

14 The learned Counsel for the petitioner submits that inspite of giving two options, the respondent again demanded one more option for remaining workers / employees inspite of 1996 and 2001 settlement. The learned Senior Counsel submits that as the petitioner and respondent decided to discontinue the terms and conditions of service provided by RBI / IDBI to their employees, the Petitioner declined to accept the respondent's demand for providing the 3rd option

to their members. He submits that these facts were not considered by the Industrial Court at the time of passing of the impugned award. Hence, the learned Senior Counsel for the Petitioner submits that the impugned award is required to be set aside on following grounds:

“a. The Award passed by the Tribunal is ex-facie illegal and perverse.

b. The Tribunal failed to appreciate that the demand made by the Respondent-Association was for the third option for pension. Admittedly, the Pension Scheme was already in force and earlier two options were already given to the employees to opt either for pension or continue with the provident fund. Whether to give or not to give third option is purely a management's decision and is, in any case, not related to the conditions of service of any employee. Therefore, there cannot be any industrial dispute as to whether the management should give further option to the employees to opt for pension instead of provident fund. Under the circumstances, there cannot be any reference for adjudication of a non-existing industrial dispute. The Tribunal therefore, ought to have rejected the Reference;

c. The Tribunal failed to consider that the demand raised by the Respondent Association was illegal in view of settlement of 2001, wherein the Respondent Association specifically agreed not to raise any new demand imposing additional financial burden on the management. Admittedly, giving of third option for pension would impose huge financial burden on the Petitioner. Therefore, the demand ought to have been rejected.

d. The Tribunal failed to appreciate that the case of the Respondent-Association was, at the highest, that there was an identical pay scale and terms and conditions of employment between the employees of Reserve Bank of India and IDBI on one hand and the erstwhile Unit Trust of India on the other. Assuming that to be true, it was also an undisputed position that every settlement between the erstwhile Unit Trust of India and the Respondent-Association relating to pay scales and service conditions were negotiated settlements and not a

mechanical or automatic adoption of whatever the RBI or IDBI had decided / settled with their own employees. Under these circumstances, the Petitioner could not have been compelled to give third option of pension to the employees merely on the basis that the RBI and IDBI had given such option to their employees.

e. The Tribunal failed to appreciate that in the settlement of 2001, there was de-linkage of any parity in the service conditions of the employees of RBI and IDBI and their employees on the one hand and the erstwhile Unit Trust of India and its employees on the other hand.

f. The Tribunal failed to appreciate that under the 2001 Settlement, the Respondent-Association had expressly agreed (i) to withdraw any demand relating to any industrial dispute wherever pending, (ii) not to raise any new demand involving additional financial burden on the management and (iii) that existing Pension Scheme would continue. In view of the above specific terms of settlement, the demand raised by the Respondent Association for third option for pension was totally illegal and ought to have been rejected by the Tribunal.

g. The Tribunal has preferred oral assurances by the office bearers of the Respondent-Association to the documentary evidence on record. By various documents filed by both the parties, it was clear that when the negotiations were being held prior to settlement of 2001, the RBI had already announced the third option for pension to its employees and it was also clear that the management of erstwhile Unit Trust of India was not inclined to give any such option to the employees concerned in the Reference. Notwithstanding the said fact the Respondent-Association has agreed to treat the demands settled by the settlement as full and final settlement and not to raise any new demand and also to drop any other industrial dispute pending any where, which would lead to the irrefutable conclusion that there was no assurance by the management of the erstwhile Unit Trust of India to consider the alleged demand of the Respondent-Association for third option for pension in the line with RBI. The Tribunal thus, committed grave error of law in discarding the documentary evidence on record while recording a finding that the management of erstwhile Unit Trust of India

had given assurance to the office bearers of the Respondent-Association that their alleged demand for third option for pension would be considered, making the finding perverse;

h. The Tribunal failed to appreciate that even if the assertions of oral assurances by the office bearers of the Respondent-Association were to be taken at its face value, it would, at the highest, mean that the management would consider the demand and not that the management would concede or grant the demand. The Tribunal has grossly erred in concluding that considering the demand would mean granting the demand.

i. The Tribunal has wrongly recorded in paragraph 12 of the Award (i) that there was no dispute about the fact that the workmen had been given all the benefits which are availed by the staff of RBI and IDBI since 1994 under the Pension Regulations, 1994, (ii) that the first and second options given to the staff of RBI were extended to the workmen under the Reference despite existence of Memorandum of Settlement and (iii) that as and when there was any circular issued by RBI, regarding upward pay revision and accordingly, it was accorded to the workmen under Reference. The above three facts were seriously disputed by the Petitioner and the Tribunal has grossly erred in recording that the said above-referred facts were admitted. Indeed, the record itself would indicate that there have been separate settlements and Pension Regulations governing the employees of the erstwhile Unit Trust of India;

j. The Tribunal has grossly erred in concluding that the employees of the Petitioner had a legitimate expectation that the Management of erstwhile Unit Trust of India would extend the third option for pension. The Tribunal has based the conclusion on alleged oral assurances by the management of the erstwhile Unit Trust of India, which, as set out hereinabove, were not only seriously disputed but could not have been said to be established in view of the documentary evidence to the contrary.

k. The Tribunal has not at all considered the huge financial implication of granting the demand for third option for pension, which in the existing scenario, the Petitioner would not be able to bear. It is an undisputed position that the

Petitioner is competing with several Indian and multi-national mutual funds and in an open and competitive market it would be impossible to absorb such an exorbitant financial burden;

l. The Tribunal failed to appreciate that the only justification in support of the demand was that the Reserve Bank of India and IDBI has granted such option to their employees. There was no other justification offered by the Respondent-Association in support of its demand.

m. The Tribunal failed to take into consideration the subsequent events viz. Repeal of the Unit Trust of India Act and incorporation of the Petitioner-Company which is exposed to serious competition from various other national and international level mutual funds. Under the circumstances, the employees of the Petitioner ceased to be, in any way, comparable to the employees of RBI or IDBI.

o. That the learned Presiding Officer failed to appreciate that when the Respondent addressed a letter to the erstwhile management on 08.04.2001, they did not raise the question of pension option as one of the issues to be discussed during the course of discussion of the 'residual issues'. The learned Presiding Officer ought to have held that this indicated that the question of giving a IIIrd pension option did not arise at all and that the said issue had been decisively concluded against the Respondent;

p. That having once exercised their option in respect of the pension scheme, the employees cannot be permitted to agitate the same issue time and again. The employees cannot seek a backdoor method to exercise pension option which have been closed to them forever.”

15 The learned Senior Counsel for the Petitioner filed written submissions dated 27.4.2017 in support of his contention. The learned Senior Counsel for the Petitioner submits that if the impugned award is not set aside, irreparable loss and injury will be caused to them.

16 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that under Article 226 of the Constitution of India, there is very limited scope to set aside the award unless and until it is contrary to the well settled principle of law.

17 The learned Counsel for the respondent submits that erstwhile Unit Trust of India (UTI) was a legal creature created by statute and was a Statutory Corporation established by an Act of Parliament, i.e. Unit Trust of India Act, 1963. It came into existence on 1st of February, 1963. From that date till 1976, the UTI was a part of Reserve Bank of India (RBI). It was being managed by RBI and the employees / officers who were managing it were the employees / officers of RBI on deputation with UTI. Therefore, the service conditions of the employees of UTI were the same as of the employees of RBI. On 16th February, 1976, it was separated from RBI. In terms of Sub-section 3 of Section 31 of the Unit Trusts of India Act, 1963 all the members of Staff of RBI who were working in UTI on 16th February, 1976 and opted to be the employees of UTI were deemed to be appointed by UTI on the same salary, emoluments and other terms and conditions of the service to which they were entitled while in the employment of RBI as on 16th February, 1976. Those not interested to continue in UTI were given option to go back to RBI. Thus, the pay scales and service conditions of the staff who thus opted to remain with UTI was on the same line as the pay scales and service conditions as existing in RBI.

18 The learned Counsel for the respondent submit that after separation from RBI, the UTI decided to continue following the pay scales and service conditions of RBI for its newly recruited staff and

accordingly the said pay scales and service conditions of RBI were followed all along till devising its own pay scales and service conditions distinct from RBI with effect from 1st January, 2001 in terms of tripartite settlement dated 28th March, 2001.

19 The learned Counsel for the respondent submit that the erstwhile Unit Trust of India introduced UTI Pension Regulations 1994 for the employees. Same was similar to those as governing the Pension Scheme prevailing at RBI and IDBI. It was also envisaged that the UTI Pension Scheme will always be implemented having regard to the corresponding provisions of RBI Pension Regulations, 1990 or IDBI Pension Regulations, 1993. Accordingly in terms of the Pension Scheme prevailing in RBI & IDBI, UTI followed the same and allowed its employees option to join Pension Scheme vide its Circular dated 24th December, 1996.

20 The learned Counsel for the respondent submit that it has always been a practice and custom sanctioned through tripartite settlements between the workmen and the management to incorporate the various service conditions on par with RBI & IDBI. A perusal of various changes in the service conditions right from 1979 will show that major service conditions, such as Age of Retirement, Housing Loan, etc. have always been at par with RBI & IDBI and even other service conditions such as Fan Advance, Bicycle Advance, etc. have been the same as applicable to the employees of RBI & IDBI. Whenever improvements were brought in the service conditions of the employees of RBI & IDBI, the same were incorporated and implemented for the employees of UTI also. The memorandum of settlement dated 18th April, 1996 in paragraph 26(D) on Pension, provides that there is no

change in the existing rules and the same shall continue.

21 The learned Counsel for the respondent submit that immediately after settlement, UTI management offered option to its employees to opt for Pension Scheme, if desired, vide Circular Reference No.12/96-97 dated 24th December, 1996. This settlement was binding on both the parties till 31st December, 2000. In Reserve Bank of India, third option was allowed to its employees vide Circular No.8 dated 14th of September, 2000. It was obligatory on the part of UTI Management to have extended third option to its employees to opt for pension. The contents in paragraph I of the settlement dated 28th March, 2001 expressly provide that revisions, if any, in pay and allowances and other service conditions taking place in RBI will not have any bearing on the compensation package and other service conditions in the Trust after 1st January, 2001. In true interpretation of the settlement dated 18th April, 1996 as also the settlement dated 28th March, 2001, it was obligatory on the part of UTI management to have been given third option to its employees to opt for pension scheme since the same was provided in RBI before the settlement dated 28th March, 2001 was enforced.

22 The learned Counsel for the respondent submit that the Management of UTI has referred to Union a letter dated 8th April, 2001 stating that Union had not set out pension option as one of the issues to be discussed during the course of discussion of residual issues. Historically speaking UTI Pension Scheme was introduced in 1994 on the same pattern as of Pension Scheme introduced by RBI & IDBI. In the settlement dated 18th April, 1996 it was provided for settlement of residual issues but in the correspondence thereafter Union had no cause to mention the same as residual issue because consequent on the

revision of pay scales and allowances of the employees of the Trust, the Management has decided to allow the employees the benefit to exercise fresh option to be governed by UTI Pension Regulation 1994. This decision was implemented vide Circular No.12/96-97 dated 24th December, 1996, whereas the settlement was dated 16th April, 1996.

23 The learned Counsel for the respondent submit that in view of the assurances given by the petitioner during the discussion while settling the Charter of demands, they were under the impression that it is not necessary to put the same immediately in writing as a residual issue in its letter dated 8th April, 2001. In view of the specific assurance of the Management during discussions and also in view of the practice and custom of following RBI & IDBI to introduce any change there for incorporating the same in UTI also. Respondent was under impression that they were entitled the same. However, as soon as it became clear that Management was trying to go back from their assurances and was trying to take the Union for a ride, Union in its letter dated 2nd April, 2002 mentioned the pension option as the settled issue awaiting implementation.

24 The learned Counsel for the respondent also filed written submissions in support of his contentions/submission dated 27.4.2017. He submits that the Apex Court in the matter of **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana), 2010 - Volume II CLR 1** held that in rare case the High Court should interfere with the award passed by Industrial Court under Article 226 of the Constitution of India. He relies on paragraph 10 and 11 of the said authority which reads thus:

“10. A reading of the impugned order shows that the Division Bench of the High Court set aside the award of the Labour Court without even advertting to the fact that challenge to similar award passed in the cases of other employees was negatived by the High Court and this Court. We have no doubt that if the Division Bench had taken the trouble of ascertaining the status of the disputes raised by other employees, then it would have discovered that the award of reinstatement of similarly situated employees has been upheld by the High Court and this Court and in that event, it may not have passed the impugned order. That apart, we find that even though the Division Bench did not come to the conclusion that the finding recorded by the Labour Court on the issue of non-compliance of Section 25-F of the Act is vitiated by an error of law apparent on the face of the record, it allowed the writ petition by assuming that the appellant's initial engagement/employment was not legal and the respondent had complied with the conditions of a valid retrenchment. In our view, the approach adopted by the Division Bench is contrary to the judicially recognised limitations of the High Court's power to issue writ of certiorari under Article 226 of the [Constitution - Syed Yakoob v. K.S. Radhakrishnan](#)(1964) 5 SCR 64, [Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd.](#) (1999) 1 SCC 566, [Lakshmi Precision Screws Ltd. v. Ram Bhagat](#)(2002) 6 SCC 552, [Mohd. Shahnawad Akhtar v. 1st ADK Varanasi JT](#) 2002 (8) SC 69, [Mukand Ltd. v. Mukand Staff and Officers' Association](#) (2004) 10 SCC 460, [Dharamraj and others v. Chhitan and others](#) 2006 (11) SCALE 292 and [Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd.](#) 2008 (12) SCALE 582.”

“11. [In Syed Yakoob v. K.S. Radhakrishnan](#) (supra), the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi judicial functions under the Motor Vehicles Act, 1939. Speaking for majority of the Constitution Bench, Gajendragadkar, J. observed as under:

".....A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are

passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order; or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art.226 to issue a writ of certiorari can be legitimately exercised.”

(emphasis supplied)”

25 The learned Counsel for the respondent submits that the Apex Court in the matter of ***Jasmer Singh vs. State of Haryana and Another, (2015) 4 SCC 458*** held that interference with the finding of fact recorded by Labour Court / Industrial Tribunal under Industrial Dispute Act and similar social welfare legislation should not interfere unless and until same is perverse, against the well settled principle of law. He relies on paragraph 19 which reads thus:

*“19. Further in the case of **Harjinder Singh v. Punjab State Warehousing Corporation** (supra), wherein this Court opined on the exercise of power by the High Court Under Article 227 of the Constitution of India as under: (SCC p. 205, para 21)*

21. Before concluding, we consider it necessary to observe that while exercising jurisdiction Under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J., opined that:

'10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State"

(State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923."

26 The learned Counsel for the respondent submits that similar view taken by the Apex Court in the matter of **Mohd. Yunus vs. Mohd. Mustaqim and others, AIR 1984 SC 38**. He relies on paragraph 6 and 7 which reads thus:

“6. The petition under Article 227 of the Constitution was wholly misconceived. An appeal lay from an order under Order XXI. Rule 92 setting aside or refusing to set aside a sale, under Order XLIII, Rule 1 (i) to the District Judge. That apart, the application made by the petitioner claiming to be the legal representative of the surety, the judgment-debtor's representative, on the one hand and the auction-purchaser, the decree-holder's representative, on the other alleging that there had been a fraud perpetrated by the decree-holder in causing the sale to be held, with a prayer for recording satisfaction of the decree under Order XXI, Rule 2. raised a question relating to the execution, discharge or satisfaction of the decree and therefore fell within the purview of Section 47 which prior to February 1, 1977 was appealable because then a decision under Section 47 was deemed to be a decree under Section 2(2) of the Code, and therefore the petitioner had the remedy of an appeal to the District Judge. Even if no appeal lay against the impugned orders of the learned Subordinate Judge, the petitioner had the remedy of filing a revision before the High Court under Section 115 of the Code. Upon any view of the matter, the High Court had no jurisdiction to interfere with the impugned orders passed by the learned Subordinate Judge, under Article 227 of the Constitution. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the

procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

27 On the basis of these submissions and the authorities of the Apex Court, the learned Counsel for the respondent submits that there is no substance in the present Writ Petition and same is required to be dismissed with costs.

28 I have heard both the sides at length. Considering the submissions made by both the parties the point to decide is whether the award passed by Industrial Court dated 28.2.2007 in Reference No.CGIT No.26 of 2004 can sustain in law on the facts and circumstances of the present case.

29 In the present proceeding, earlier all the employees of the petitioners were covered under the Contributory Provident Fund Scheme. Thereafter the petitioner introduced Unit Trust of India Pension Regulations 1994. That time the Petitioner gave option to their employees either to opt Pension Scheme or to continue with the Provident Fund Contributory Scheme. It was specifically stated in the said offer that those who do not want to accept pension scheme they have to give in writing in Form No.1. Pursuant to the said offer some of the employees of the Petitioner executed Form No.1 stating that they do not wish to govern by the UTI Pension Regulations, 1994. In spite of that petitioner again gave one more chance to the members of the respondent for accepting Pension Scheme. In spite of that some of the members of the respondent Union failed to accept the same.

30 The petitioner and respondent executed memorandum of settlement dated 28.3.2001. It was agreed between the parties that petitioner shall have its own compensation package and service conditions for its workmen employee w.e.f. January 1, 2001. The revision/changes if any, in pay and allowances and other service condition / taking place in the RBI from the said date onwards will not have any bearing on the compensation package and other service conditions in the Trust. In spite of the terms and conditions of memorandum of settlement dated 28.3.2001 the respondent Union demanded 3rd option for their members for accepting the UTI Pension Regulations, 1994.

31 It is to be noted that after introduction of the Pension Regulation the petitioner granted twice the opportunity to the respondent's members to accept the same. In spite of that, some of the members of the respondent declined to accept the same by giving in writing in Form No.1. This itself shows that having knowledge of the entire scheme and the settlement dated 28.3.2001, members of the respondent Union accepted not to govern by the Unit Trust of India Pension Regulation, 1994 introduced by the petitioner.

32 When the RBI granted 3rd option that was declined by the petitioner on the ground that in view of the terms and conditions of the memorandum of settlement dated 28.3.2001 it was not binding on the petitioner to accept and continue whatever the benefits granted by RBI to their employees. These facts were not properly considered by the Industrial Court at the time of passing the award. Industrial Court in its award held that officers of the petitioner gave oral assurances to the

respondent members that they will provide the 3rd option to them for accepting Pension Regulations, 1994 which is contrary to the evidence on record. The Industrial Court in paragraph 17 of the impugned award held as under:

“The management has tried to deny the factum of giving the assurance but this denial is apparently false. Mr.Harish Sharma, a witness for the Union in the capacity of President of All India Unit Trust of India Association stated that assurance was given by, the management. The management means Mr.A.R.Palwankar, Executive Director, Mr.D.S.Murthy, Executive Director B.S.Pandit, Executive Director and Mr.M.Parameshwaran, Chief General Manager. The management had the opportunity to examine any one of them to rebut the theory of assurance but this Course was not opted for the reasons best known to it. Contrary to it, the management examined Mr.R.Subramanyam, Vice-President, HRD of UIT AMC Pvt.Ltd. who admitted in his cross examination in clear terms that the management had said during discussion that it would look into the demand of Pension meaning thereby there was a clear cut assurance to consider the issue of Pension as and when opportunity arose for it. In this context, the denial of oral assurance by the management is not acceptable.”

33 There is no question of any oral assurances on behalf of the Company. Company is a legal entity. Whatever decision taken by the board of directors can be enforced against the company and not on the oral assurance given by some of the office bearer thereof. Apart from that, the respondent agreed and entered into settlement with the petitioner that they will not raise any demand by which the petitioner had to bear the financial burden. In spite of the said settlement, the respondent raised the issue of the 3rd option. The Apex Court in the matter of ***Barauni Refinery Pragatisheel Shramik Parishad, v. Indian Oil Corporation Ltd. And others. With General Secretary, Barauni***

Telshodhak Mazdoor Union v. Joint Chief Labour Commissioner (Central) and Others, AIR 1990 SC 1801 held that once the financial settlement is entered into employer and employee then the employees cannot approach the authorities seeking modification of the same. Paragraph 9 and 10 of the said authority reads thus:

“9. The settlement does not make any specific mention about the age of retirement. Clause 19 of the settlement, however, provides that such terms and conditions of service as are not changed under this settlement shall remain unchanged and operative for the period of the settlement. The age of retirement prescribed by Clause 20 of the certified Standing Orders was undoubtedly a condition of service which was kept intact by Clause 19 of the settlement. The provisions of the Standing Orders Act to which we have adverted earlier clearly show that the purpose of the certified Standing Orders is to define with sufficient precision the conditions of employment of workman and to acquaint them with the same. The charter of demands contained several matters touching the conditions of service including the one concerning the upward revision of the age of retirement. After deliberation certain conditions were altered while in respect of others no change was considered necessary. In the case of the latter Clause 19 was introduced making it clear that the conditions of service which have not changed shall remain unchanged i.e. they will continue as they are. That means that the demand in respect of revision of the age of retirement was not acceded to.”

“10. By Clause 21 of the settlement extracted earlier the Union agreed that during the period of the operation of the settlement they shall not raise any demand which would throw an additional financial burden on the management, other than bonus. Of course the proviso to that clause exempted matters covered under Section 9A of the Industrial Disputes Act from the application of the said clause. However, Section 9A is not attracted in the present case. The High Court was, therefore, right in observing: "when the settlement had been arrived at between the workmen and the company and which is still in force, the parties are to remain bound by the terms of the said

settlement. It is only after the settlement is terminated that the parties can raise any dispute for fresh adjudication". The argument that the upward revision of the age of superannuation will not entail any financial burden cannot be accepted. The High Court rightly points out: "workmen who remain in service for a longer period have to be paid a larger amount by way of salary, bonus and gratuity than workmen who may newly join in place of retiring men". The High Court was, therefore, right in concluding that the upward revision of the age of superannuation would throw an additional financial burden on the management in violation of Clause 21 of the settlement. Therefore, during the operation of the settlement it was not open to the workmen to demand a change in Clause 20 of the certified Standing Orders because any upward revision of the age of superannuation would come in conflict with Clause 19 and 21 of the settlement. We are, therefore, of the opinion that the conclusion reached by the High Court is unassailable."

34 In the present proceeding, though the petitioner offered the respondent twice to accept the pension scheme, their members declined to accept the same in writing. Considering these facts, the authority cited by the respondent's counsel in the matter of **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)** (Supra), **Jasmer Singh vs. State of Haryana and Another**, (Supra) and **Mohd. Yunus vs. Mohd. Mustaqim and others (Supra)** are not applicable in the facts and circumstances of the present case. In the case in hand, inspite of settlement between the parties, the respondent Union raised demand which is contrary to the said settlement.

35 Apart from that, the Industrial Court in paragraph 17 of the impugned order considered the facts, which were not pleaded either by petitioner and or by respondent. Bare reading of the said award shows that the learned Presiding Officer of the Industrial Court passed award

on the basis of accepting the respondent's case of oral assurance given by the petitioner's officers. Hence, I am of the opinion that award passed by learned Presiding Officer of the Industrial Tribunal dated 28.2.2007 in Reference No.CGIT-26-2004 is required to be set aside. Hence, following order is passed:

(A) Writ Petition is allowed in terms of prayer clause (a) which reads thus:

“(a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction of the same or similar nature under Article 226 of the Constitution of India, calling for the records and proceedings in Reference (CGIT) No.26 of 2004 from the Central Government Industrial Tribunal No.1, and, after examining the legality and propriety of the impugned Award (at Exhibit-U hereto), to quash and set aside the same.”

B) Considering the facts and circumstances of the present case, no order as to costs.

(K.K.TATED, J.)