

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.04.2017

Verdict on : 25.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.995 of 2015
M.P.Nos.1 & 2 of 2015

Parry Retired Employees Welfare Association,
Rep., by its President,
No.10, Jain Complex,
Kamarajar Street, Near CSI Church,
Walajahpet-632 613. ... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Labour and Employment Department,
Fort St. George, Chennai-600 009.
- 2.The Conciliation Officer,
Labour Office-1,
No.10, Thiyagarajapuram,
Vellore-632 001.
- 3.The Management of Roca,
Bathroom Products Private Limited,
Ranipet-632 401, Vellore District.
- 4.The Management of Coromandel
International Limited, Fertilizer Division,
Ranipet-632 401, Vellore District. .. Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for an issuance of writ of certiorarified mandamus to call for the records relating to the order bearing ref.Na.Ka.Enn 734/2013 dated 01.04.2014 passed by the 2nd respondent and to quash the same as being illegal, arbitrary and the provisions of the Industrial Disputes Act, 1947 and to direct the first respondent to consider and issue a reference relating to the revision of pension to the members of the petitioner Association to the appropriate labour forum and to adjudicate the same within a time frame fixed by this Court.

For petitioners : Mr.N.G.R.Prasad for
M/s Row & Reddy
For respondents : Mr.S.Diwakar,
Special Govt. Pleader for R1&R2
Mr.Anand Gopalan for
M/s T.S.Gopalan & Co., for R3 & R4

ORDER

The petitioner-Association comprises of its members, who are the retired workmen of respondents 3 and 4. It made a representation on 26.03.2012 seeking revision of pension to its members. Thereafter, a notice was issued to the third respondent terminating the earlier settlement dated 20.12.1993. It was followed by another notice dated 16.06.2013 and thereafter, a dispute was raised before the second respondent on 19.08.2013.

2. The second respondent, in and by the letter dated 13.09.201, raised five queries, in respect of registration of the petitioner Association, the capacity under which the petitioner was authorized to raise the dispute, the annexures to be submitted as provided for under Rule 24 of the Tamil Nadu Industrial Disputes Rules, whether "employer" "employee" relationship subsists between the members of the petitioner-Association and the respondents to provide for copies of the petition. In response thereof, the petitioner Union has submitted their reply dated 04.10.2013.

3. On receipt of the same, the second respondent has taken up the complaint and issued notice to respondents 3 and 4. They, in turn, filed written statements followed by rejoinder of the petitioner dated 29.11.2013.

4. The complaint was disposed of by the second respondent by proceedings dated 01.04.2014 holding, the petitioner is not a registered Trade Union, the dispute not pertains to any conditions of service and it does not conform with Section 2(k) of the Industrial Disputes Act, 1947. In sum and substance, it has been held that there is no dispute between the "employer" and "workmen" as defined under Section 2(k) of the Industrial Disputes Act, since the members of the petitioner-Association are only retired employees. Thus, they do not fall under the definition of "workman" under Section 2(s) of the Industrial Disputes Act. Aggrieved over the same, the present writ petition is filed.

5. Heard Mr.N.G.R.Prasad, learned counsel appearing for the petitioner, Mr.S.Diwakar learned Special Government pleader appearing for respondents 1 and 2 and Mr.Anand Gopalan,

learned counsel appearing for respondents 3 and 4 and perused the documents filed along with affidavits of the petitioner and the respondents.

6. Though the impugned order has not gone into the merits, it is imperative to give a finding on the legal issue. This is for the reason that before the Conciliation Officer this issue was already put to both the contesting parties. The Conciliation Officer has already taken a stand on the maintainability. The first respondent, who is the authority to decide on a reference, has also filed a counter affidavit in support of such a stand. Now, the arguments have also been made on the issue by all the parties. Hence, this Court is constrained to answer the said issue despite the present trend of the Courts deprecating piecemeal decisions on preliminary issues by the Tribunals, quasi judicial and administrative authorities dealing matters with civil consequences.

7. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner, would contend, a narrow and restricted meaning cannot be given to the definition clause contained under Sections 2(k) and 2(s) of the Industrial Disputes Act. What the petitioner seeks is a claim by taking into consideration of the inflation that exists as of now and in tune with the entitlement for a period over which a relationship of "employer" and "workmen" subsisted. The pension is not only a statutory right, but fundamental one and thus, such a right flows even after termination of the employment. An employee cannot raise the issue of pension during employment, when it arises thereafter. In support of his contention, the learned counsel has made reliance upon the following decisions.

- 1.Manicka Mudaliar Vs. Labour Court (1961 (1) LLJ 59 MDS);
2. ICI India Ltd., V. Presiding Officer, Bombay (DB) (dated 19.06.1994)
3. Philips India Ltd., Vs. P.N.Thorat, Assistant Commissioner of Labour and Conciliation Officer and others (2006 (2) LLN 604 Bomb (DB);
- 4.A.Satyanarayana Reddy and others V. Presiding Officer, Labour Court and others (2016 (9) SCC 462).

8. Per contra, the learned counsel appearing for the respondents submit that the petitioner and the dispute would not come under the purview of Sections 2(k) and 2(s) of the Industrial Disputes Act. They also would not come under the definition of the trade union. Therefore, once there is a termination of the relationship between the petitioner on the one hand and the respondents 3 and 4 as the case may be on the other hand, no dispute can be raised being not maintainable. To buttress their submissions, the following decisions have been relied upon.

1. Retired Employees Association V. Government of Andhra Pradesh (A.P.) dated 13.03.2008
2. Hindustan Lever Limited V. Fourth Industrial Tribunal and others (2007 (1) LLN 881).

9. As the facts are not in dispute, there is no necessity to reiterate them once again. Indeed, there was a settlement on 20.12.1993, which also contains a clause giving an element of certainty. However, this Court is not willing to go into the said issue as it does not form part of the impugned order. In other words, the impugned order has been passed without going into the merits of the case. Therefore, this Court does not propose to go into it as no substantial argument has been made and there is no need to enlarge the scope of the writ petition.

10. The sum and substance of the grievance of the petitioner is that the settlement entered into with respect to the pension does not legally bind them. It ought to have provided for revision, the clauses involving cost of living index and acting as a bar on the pensioner to seek review are bad in law. The main purpose of the pension is now lost.

11. The Industrial Disputes Act, 1947, has got a laudable object behind it. It is meant for resolving disputes. It covers a wide spectrum of disputes. It is a social welfare legislation, to create a congenial industrial environment, to give succour to the workmen. Section 2(k) of the Industrial Disputes Act, 1947, defines an "industrial dispute". It is apposite to place the provision for better understanding.

"2(k) -Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons."

12. The import of the aforesaid provision is rather wide. It takes in its sweep "any dispute" or "difference". The words "means" and "any dispute" are to be given an interpretation of wider amplitude. Thus, a restrictive meaning has to be eschewed. This definition provision is the lifeline of the enactment. Once, the object of the enactment is understood, then it becomes axiomatic to give a wider interpretation. This provision also speaks about an "industrial dispute", which is connected with the employment. It speaks of "any person".

13. Where an industrial dispute has occasioned during the course of an employment, it cannot be said that the workman

cannot raise it after his retirement. The issue of pension though might arise after retirement, stand related to the service put in during employment. Thus, it is for the reason, a workman seeks pension for the services put in by him and not otherwise. More often than not, he would not seek and raise a dispute qua the pension during his employment.

14. Section 2(s) of the Industrial Disputes Act, 1947, defines a "workman" in the following manner.

" workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

15. A careful reading of the abovesaid provision would show that it includes "any person". The word "means" again cannot be given a restrictive interpretation. In other words, it only connotes the categories given therein as illustrative but not conclusive. Thus, it does not take from its purview, the other cases. The workman since retired may not seek for benefits, which would be available after his retirement. However, it does not mean that he cannot seek such a benefit, by which, according to him, he is entitled for the service rendered by him. A pension gives a continuous cause of action and a right over it stands vested. Section 2(s) of the Industrial Disputes Act, 1947, includes a person, who has been dismissed, discharged etc. Once again it enlarges its scope by introduction of the words "any person" and "includes". Curiously, though it excludes by its non inclusion certain categories of persons, it does not speak about a retired workman. "Workman" is a class by itself. Therefore, there is no need to sub divide it into

existing and retired. To put it differently, the word "workman" would also include a retired one though the dispute has to be seen contextually.

16. A useful reference may be made to the recent pronouncement of the Apex Court on the reading of the statute through literal and purposive interpretation. Here is the fruitful recapitulation.

Abhiram Singh Vs. C.D. Commachen ((2017) 2 SCC 629):
Literal versus Purposive interpretation

36. The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The interpreter has, therefore, to consider not only the text of the law but the context in which the law was enacted and the social context in which the law should be interpreted. This was articulated rather felicitously by Lord Bingham of Cornhill in *R. (Quintavalle) v. Secy. of State for Health* when it was said: (AC p. 695 C-H, paras 8-9)

"8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded

now. The meaning of "cruel and unusual punishments" has not changed over the years since 1689, but many punishments which were not then thought to fall within that category would now be held to do so. The courts have frequently had to grapple with the question whether a modern invention or activity falls within old statutory language: see Bennion, *Statutory Interpretation*, 4th Edn. (2002) Part XVIII, Section 288. A revealing example is found in *Grant v. Southwestern and County Properties Ltd.* where Walton, J. had to decide whether a tape recording fell within the expression "document" in the Rules of the Supreme Court. Pointing out (at p. 190) that the furnishing of information had been treated as one of the main functions of a document, the Judge concluded that the tape recording was a document."

37. In the same decision, Lord Steyn suggested that the pendulum has swung towards giving a purposive interpretation to statutes and the shift towards purposive construction is today not in doubt, influenced in part by European ideas, European community jurisprudence and European legal culture. It was said: [R. (Quintavalle) case, AC p. 700 C-F, para 21]

"21. ... the adoption of a purposive approach to construction of statutes generally, and the 1990 Act [Human Fertilisation and Embryology Act, 1990] in particular, is amply justified on wider grounds. In *Cabell v. Markham* Lord Hand, J. explained the merits of purposive interpretation [at p. 739]:

'Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.'

The pendulum has swung towards purposive methods of construction. This change was not initiated by the teleological approach of European Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas: see, however, a classic early statement of the purposive approach by Lord Blackburn in *River Wear Commissioners v. Adamson*. In any event, nowadays the shift towards purposive interpretation is not in doubt. The qualification is that the degree of liberality permitted is influenced by the context, e.g. social welfare legislation and tax statutes may have to be approached somewhat differently."

(emphasis supplied)

To put it in the words of Lord Millett: "We are all purposive constructionists now."

38. In Bennion on *Statutory Interpretation* it is said that:

"General judicial adoption of the term "purposive construction" is recent, but the concept is not new. Viscount Dilhorne, citing Coke, said that while it is now fashionable to talk of a

purposive construction of a statute the need for such a construction has been recognized since the seventeenth century. In fact the recognition goes considerable further back than that. The difficulties over statutory interpretation belong to the language, and there is unlikely to be anything very novel or recent about their solution ... Little has changed over problems of verbal meaning since the Barons of the Exchequer arrived at their famous resolution in Heydon case Legislation is still about remedying what is thought to be a defect in the law. Even the most "progressive" legislator, concerned to implement some wholly normal concept of social justice, would be constrained to admit that if the existing law accommodated the notion there would be no need to change it. No legal need that is ... " (emphasis supplied)

39. We see no reason to take a different view. Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses. Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good.

40. The Representation of the People Act, 1951 is a statute that enables us to cherish and strengthen our democratic ideals. To interpret it in a manner that assists candidates to an election rather than the elector or the electorate in a vast democracy like ours would really be going against public interest. As it was famously said by Churchill: "At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper..." if the electoral law needs to be understood, interpreted and implemented in a manner that benefits the "little man" then it must be so. For the Representation of the People Act, 1951 this would be the essence of purposive interpretation.

41. To fortify his submission that clause (3) of Section 123 of the Act should be given a narrow interpretation, the learned counsel for the appellants referred to the debates on the subject in Parliament extracted in Ramesh Yeshwant Prabhoo. It is not necessary to delve into the debates in view of the clear expression of opinion that the purpose of the amendment was to widen the scope of corrupt practices to curb communal, fissiparous and separatist tendencies and that was also "the sense of the House". How and in what manner should the result be

achieved was debatable, but that it must be achieved was not in doubt.

42. The purpose of enacting clause (3) of Section 123 of the Act and amending it more than once during the course of the first 10 years of its enactment indicates the seriousness with which Parliament grappled with the necessity of curbing communalism, separatist and fissiparous tendencies during an election campaign (and even otherwise in view of the amendment of Section 153-A IPC). It is during electioneering that a candidate goes virtually all out to seek votes from the electorate and Parliament felt it necessary to put some fetters on the language that might be used so that the democratic process is not derailed but strengthened. Taking all this into consideration, Parliament felt the need to place a strong check on corrupt practices based on an appeal on grounds of religion during election campaigns (and even otherwise).

43. The concerns which formed the ground for amending Section 123(3) of the Act have increased with the tremendous reach already available to a candidate through the print and electronic media, and now with access to millions through the internet and social media as well as mobile phone technology, none of which were seriously contemplated till about fifteen years ago. Therefore now, more than ever it is necessary to ensure that the provisions of clause (3) of Section 123 of the Act are not exploited by a candidate or anyone on his or her behalf by making an appeal on the ground of religion with a possibility of disturbing the even tempo of life.

Social context adjudication

44. Another facet of purposive interpretation of a statute is that of social context adjudication. This has been the subject-matter of consideration and encouragement by the Constitution Bench of this Court in *Union of India v. Raghubir Singh*. In that decision, this Court noted with approval the view propounded by Justice Holmes, Julius Stone and Dean Roscoe Pound to the effect that law must not remain static but move ahead with the times keeping in mind the social context. It was said: (SCC pp. 766-67, para 10)

"10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that 'the life of the law has not been logic it has been experience', and again when he declared in another study that 'the law is forever adopting new principles from life at one end', and 'sloughing off' old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone

elaborated that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined."emphasis supplied)

A little later in the decision it was said: (SCC pp. 767-68, para 13)

"13. Not infrequently, in the nature of things there is a gravity-heavy inclination to follow the groove set by precedential law. Yet a sensitive judicial conscience often persuades the mind to search for a different set of norms more responsive to the changed social context. The dilemma before the Judge poses the task of finding a new equilibrium prompted not seldom by the desire to reconcile opposing mobilities. The competing goals, according to Dean Roscoe Pound, invest the Judge with the responsibility 'of proving to mankind that the law was something fixed and settled, whose authority was beyond question, while at the same time enabling it to make constant readjustments and occasional radical changes under the pressure of infinite and variable human desires'. The reconciliation suggested by Lord Reid in *The Judge as Law Maker* lies in keeping both objectives in view, 'that the law shall be certain, and that it shall be just and shall move with the times'."

(emphasis supplied)

45. Similarly, in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay* H.R. Khanna, J. rather pragmatically put it that: (SCC p. 426, para 22)

"22. ... As in life so in law, things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time it has to be recognised that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself."

(emphasis supplied)

46. Finally, in *Badshah v. Urmila Badshah Godse*³⁴ this Court reaffirmed the need to shape law as per the changing needs of the times and circumstances. It was observed: (SCC p. 197, para 16)

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the

law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law."

17. Thus, from the above said pronouncements, this Court is of the view that both Sections 2(k) and 2(s) of the Industrial Disputes Act, 1947, to be given wider interpretation to include a workman, who is retired as well. After all, a workman retires by contingency, as on fact, he was indeed working under the management. The learned counsel appearing for the petitioner has made reliance on the decision of the Mumbai High Court in ICI India Ltd., V. Presiding Officer, Bombay (DB) (dated 19.06.1994), wherein it has been held as follows:

"The expression 'Industrial dispute', as defined under Section 2 (k) of the Act, means " any dispute or difference between employers and employees which is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any persons". It was urged that Section 2(s) defines 'workman' as any person employed in any industry for hire or reward, and a pensioner, who is retired from employment, cannot be treated as 'any person employed. We are unable to find any merit in the contention. The expression 'any person' in Section 2(s) must be interpreted liberally so as to include past and present about revision of pensioners benefit cannot be raised by the existing workmen and which dispute takes in its sweep the benefit which is available even to a retired employee."

18. The Division Bench of Mumbai High Court in Philips India Ltd., Vs. P.N.Thorat, Assistant Commissioner of Labour and Conciliation Officer and others (2006 (2) LLN 604 Bomb (DB), has held as follows:

"12. From the above, what emerges is that there are serious triable issues. The contention of the Union and the workmen is 3 that fraud has been practised upon them. If the workmen are able to succeed in proving that the agreement was entered into by playing fraud it will be open to them to avoid the settlement. This issue cannot be answered by this Court at this stage as it would require evidence to be led. Prima facie a Division Bench of this Court in the very proceedings has taken note that the

employees involved in both the writ petitions would be workmen. The Apex Court, however, left that question to be decided. At any rate the expression workmen considering Section 2(s) of the I.D. Act would include ex-workmen. That contention of the management that they are not workmen would require adjudication of facts."

19. This Court is of the view that the abovesaid passages would clearly spell out the correct position of law. Therefore, though in general parlance, the expression "means" is restrictive and exhaustive qua a definition clause as against expression "includes" being extensive and thus, involves enlargement. Ultimately, the Court of law will have to apply the interpretation depending upon the text and context. Hence, at times, the expression "includes" and "means" may become interchangeable and also get the meaning of the other depending upon the settings, context and object. As discussed above, the interpretation also depends upon nature of legislation be it penal, procedural or social. In *State of Jammu and Kashmir V. Lakhwinder Kumar and others* (2013 (6) Supreme Court Cases 333), considering the interpretation of the words "means" and "includes", the Apex Court has held as follows: "It is well settled that legislature has authority to define a word even artificially and while doing so, it may either be restrictive of its ordinary meaning or it may be extensive of the same. When the legislature uses the expression "means" in the definition clause, the definition is prima facie restrictive and exhaustive. However, use of the expression "includes" in the definition clause makes it extensive. Many a times, as in the present case, the legislature has used the term "means" and "includes" both and, hence, definition of the expression "active duty" is presumed to be exhaustive. In our opinion, the use of the expression "includes" enlarges the meaning of the word "active duty" and, therefore, it shall not only mean the duty specified in the section but those duty also as declared by the Central Government in the Official Gazette."

20. In *Mamta Surgical Cotton Industries, Rajasthan V. Assistant Commissioner (Anti Evasion) Bhilwara, Rajasthan* (2014 (4) Supreme Court Cases 87), it has been held as follows: "48. The expression "include" is used as a word of extension and expansion to the meaning and import of the preceding words or expressions. The following observation of Lord Watson in *Dilworth v. Commr. of Stamps*, (1899) AC 99 in the context of use of 'include' as a word of extension has guided this Court in numerous cases: '... But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to

"mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.' 49. The meaning of the said expression has been considered by a three Judge bench of this Court in the case of the South Gujarat Roofing Tiles Manufacturers Association and Anr. v. State of Gujarat and Anr., (1976) 4 SCC 601, wherein this Court has observed: "Now it is true that 'includes' is generally used as a word extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation." 50. Principles of Statutory Interpretation (12th Edn., 2010) by Justice G.P. Singh, at p. 181, has discussed in detail the connotations of the word "include" and emphasized on the exhaustive explanation of the word "inclusive" thus: "...The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include." 51. In RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424 this Court has followed the observations in the Dilworth case (supra) and explained the purpose and expanse of the "inclusive definitions" as under: "32. We do not think it necessary to launch into a discussion of either Dilworth case or any of the other cases cited. All that is necessary for us to say is this: legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive." 52. In Karnataka Power Transmission Corpn. v. Ashok Iron Works (P) Ltd., (2009) 3 SCC 240 this Court after analyzing the afore-cited decisions has observed as follows: "17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word 'includes' by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word 'includes' may have been designed to mean 'means'. The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word 'includes' for the purposes of such enactment." 53. The word "include" is generally used to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used

those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. That is to say that when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. *Commr. of Customs v. Caryaie Equipment India (P) Ltd.*, (2012) 4 SCC 645; *U.P. Power Corpn. Ltd. v. NTPC Ltd.*, (2014) 1 SCC 371; *Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd.*, (2007) 3 SCC 607; *Dadaji v. Sukhdeobabu*; *Mahalakshmi Oil Mills v. State of A.P.*; *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union*, (2007) 4 SCC 685) 54."

21. The Apex Court, in *A.Satyanarayana Reddy and others V. Presiding Officer, Labour Court and others* (2016 (9) SCC 462), though a petition was filed under Section 33-C(2) of the Industrial Disputes Act, 1947, technically, it has held as follows:

"17. We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc, the workman would be entitled to approach the Labour Court under Section 33-C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

22. In *B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association and others* (2016 (11) Supreme Court Cases 731), the Apex Court was dealing with the rights of trade union under the Trade Union Act, 1926, and held thus:

"In our opinion, the High Court gravely erred in refusing to examine the question of locus standi on the ground that it is decided in the earlier writ petition which operates as res judicata and that the petitioners even otherwise have locus standi. Chapter-III of the Trade Unions Act, 1926 sets out rights and liabilities of the registered Trade Unions. Under the said enactment, an unregistered trade union or a trade union whose registration has been cancelled has no manner of right whatsoever even the rights available under the I.D. Act have been limited only to those trade unions which are registered under the Trade Unions Act 1926 by insertion of clause 2 (q) (q) in the I.D. Act w.e.f. 21.08.1984 defining a trade union to mean a trade union registered under the Trade Unions Act. 1926."

23. This Court is afraid that the decisions relied upon by the learned counsel appearing for the respondents do not merit acceptance to the case on hand. Section 2(k) of the Industrial Disputes Act, 1947, does not restrict the relief only at the instance of the trade unions.

24. The learned counsel appearing for the respondents 3 and 4 relied upon three more judgments rendered in Standard Chartered Grindlays Bank Retired Employees Association & Others Vs. Union of India & Others (2007 (2) LLN 846) and Hindustan Lever Ltd. V. Fourth Industrial Tribunal and others (2007 (1) LLN 881) and Management of Gammon (India) Ltd., V. State of Orissa and others (ORS-DB) (1974 (2) LLJ 34). The ratio laid down in the aforesaid judgments, for the reasons stated above, does not appear to be correct. With respect to the learned Judges, who rendered the judgments, such a restrictive meaning given to the provisions is not in tune with the understanding of a statute, which is a social welfare legislation.

25. A reference is made by both the counsels to a decision of the Division Bench of this Court rendered way back in the year 1960 in Manicka Mudaliar V. Labour Court (1961 (1) LLJ 592 MDS). In fact, both the counsels seek to rely upon it. The relevant paragraph of the aforesaid decision is apposite.

"2. In the first place it must be pointed out that there is nothing in Section 33C(2) of the Act, which says that only a "workman" can apply under that provision. All that it says is that where a workman is entitled to receive from the employer any benefit, the amount of such benefit may be determined by the labour court. The fallacy in the argument on behalf of the appellant is that Section 33C(2) expressly provides that only a "workman" on the date of the application can make the application. On the other hand, the use of the passive in that provision contemplates that the application may be made by a person, who on the date of the application was not a "workman" as defined by the Act, but was a workman during the period in respect of which he was entitled to any benefit.

4. Mr. Thirumalai, learned Counsel for the appellant, strongly relied upon the definition of "workman" in Section 2(s) of the Act, and, in particular, on the words "any person employed." He argued that it is not open to the Court to disregard that definition. No doubt, certain persons who had been dismissed, or discharged, or retrenched in connexion with, or as a consequence of a dispute or whose dismissal, discharge or retrenchment had led to that dispute, are specially included. Otherwise, a person who has ceased to be employed would not come within the definition. We entirely agree. The result is that Section 33C(2) of the Act would not apply to a case where the benefit claimed relates to a period when the claimant was not a workman, i.e., when the claimant was not employed. The present case is

not such an instance. Here the claim relates to a period when the claimant was employed and must be deemed to have been employed. The application was therefore quite competent."

26. In the considered opinion of this Court, the aforesaid judgment makes a difference between the benefit for which one is entitled to for the period which he has worked as against other. As discussed above, a pension is claimed for the services rendered already. Therefore, the said judgments would, in fact, help the case of the petitioner.

27. A statement has been made in para 7 of the counter affidavit of the first respondent that a dispute does not come within the purview of items enumerated in the Second Schedule of the Industrial Disputes Act. When once a retired employee continues to be a workman on a particular issue, and the dispute comes under the purview of the Act, as discussed above, on an interpretation of Sections 2(k) and 2(s) of the Act, as a consequence thereon, such a dispute would come under the Second Schedule. The Second Schedule of the Act deals with the matters within the jurisdiction of the Labour Courts. Item No.6 speaks about all matters other than those specified in the Third Schedule. Now, the Second Schedule has to be read along with the definition clause provided under Sections 2(k) and 2(s) of the Act by applying the principle of purposive interpretation. Therefore, the stand taken cannot be accepted as legally sound.

28. Coming to the other issues, the petitioner in its reply stated that procedural compliance has not been made and in any case a direction would be required to comply with the same. This is rather very trivial and technical in nature. If required, the second respondent may direct the petitioner to comply with the procedural aspects which the petitioner shall do so accordingly.

29. Accordingly, the order impugned is liable to be set aside and the same is set aside. The writ petition stands allowed. It is hereby declared that the dispute sought to be raised is maintainable, both on locus qua the petitioner and the dispute in lis. The second respondent is directed to conclude the conciliation proceedings within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raa

To

1.The Government of Tamil Nadu,
Represented by its Secretary,
Labour and Employment Department,
Fort St. George, Chennai-600 009.

2.The Conciliation Officer,
Labour Office-1,
No.10, Thiyagarajapuram,
Vellore-632 001.

+1cc to M/S.T.S. Gopalan & Co, Advocate Sr. 24901

+1cc to M/S. Row & Reddy, Advocate Sr. 24895

Pre-delivery order in
W.P.No.995 of 2015

SVI (CO)
VR(8/5/2017)



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