

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 144 OF 2002
IN
WRIT PETITION NO. 3562 OF 1997**

Nashik Workers Union

.. Appellant
(Org. Respondent)

vs.

Hindustan Aeronautics
Limited

.. Respondents
(Org. Petitioner)

Ms Gayatri Singh, Sr. Advocate a/w. Mr. Ankit Kulkarni a/w. Mini Mathews and Ms Bhavana Mhatre I/b Mr. Kranti L.C. for the Appellant.

Mr. Sudhir Talsania, Sr. Advocate a/w. Mr. Vinod N. Tayade I/b Mr. Piyush Shah for the Respondent.

CORAM : A. S. OKA AND M. S. SONAK, JJ.

**RESERVED ON : 15th OCTOBER, 2018.
PRONOUNCED ON 30th OCTOBER, 2018.**

JUDGMENT [PER M. S. SONAK, J.]:

1] Heard the learned counsel for the parties.

2] The challenge in this appeal is to the judgment and order dated 2nd March 2001 made by the learned Single Judge of this Court allowing Writ Petition No. 3562 of 1997 instituted by the respondent Hindustan Aeronautics Limited (HAL). The learned Single Judge by the impugned judgment and order dated 2nd March 2001 has set aside the orders dated 8th August 1994 and 8th July 1997 made by Labour Court and the

Industrial Court respectively, in effect allowing Complaint (ULP) Nos.35,36,44 and 45 of 1990 instituted by the appellant – Nashik Workers Union (Union) in the matter of termination and non-grant of permanency benefits to about 127 workmen represented by the Union.

3] In Writ Petition No. 3562 of 1997, the learned Single Judge by his judgment and order dated 2nd March 2001 held the following:-

(a) That the '*appropriate Government*' in respect of the dispute raised by the Union was the State Government and not the Central Government and therefore, the Union's Complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act) was maintainable before the Labour Court;

(b) However, the impugned orders made by the Labour Court and the Industrial Court, which had ordered the reinstatement and benefits of permanency to the workmen, were set aside on merits and substituted with a direction to HAL to make offers of regular appointments

to the workmen as and when regular vacancies arise for consideration and in the event they fulfill the required qualifications, then to consider them for regular employment.

4] The learned Single Judge's judgment and order dated 2nd March 2001 was challenged by the Union by instituting present Letters Patent Appeal No. 144 of 2002 and HAL by instituting Letters Patent Appeal No. 84 of 2006. By the judgment and order dated 25th June 2009, Letters Patent Appeal (LPA) No. 84 of 2006 was allowed by the Division Bench holding that the '*appropriate Government*' in relation to the present dispute was the '*Central Government*' and consequently the Union's complaints under MRTU and PULP Act were not at all competent or maintainable. By the same judgment and order dated 25th June 2009, the Division Bench noted that LPA No.144 of 2002 no longer survives and the same was also disposed of.

5] The Union instituted Civil Appeal Nos.9332-9333 of 2010 before the Apex Court, which were allowed by the judgment and order dated 26th February 2016 and the judgment and

order dated 25th June 2009 passed in LPA No. 84 of 2006 was set aside. LPA No. 144 of 2002 was revived and remitted to this Court for adjudication on merits.

6] At the very outset, the learned Senior Counsel for HAL and Union made a request that they be permitted to argue Writ Petition No. 3562 of 1997 itself, so that there is no necessity of any remand to the learned Single Judge for fresh reconsideration of the petition. In the interests of justice and since the request came from both the parties, we have heard the learned Senior Counsel on the issues raised in Writ Petition No. 3562 of 1997 and at their request and with their consent, we proceed to dispose of the main writ petition, i.e., Writ Petition no. 3562 of 1997 by the present judgment and order.

7] Accordingly, Mr. Sudhir Talsania, the learned Senior Counsel for HAL, opened the arguments and made the following submissions in support of the writ petition:-

(a) The workmen had instituted Writ Petition No.5445 of 1989 before this Court seeking substantially the same

reliefs as were ultimately sought for by the workmen/the Union in their complaints under the MRTU and PULP Act. In the writ petition, a statement was made on behalf of the HAL that the workmen would be given first preference when it comes to filling up of regular vacancies as and when they arise subject to their fulfillment of qualifications and other eligibility requirements. In view of such statements, the workmen withdrew the Writ Petition. This is specifically recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. Mr. Talsania submits that the workmen/ the Union, by retaining the benefits secured by them in terms of the order dated 9th February 1990 and the statement recorded therein, were barred from instituting or prosecuting the complaints under the MRTU and PULP Act, which were admittedly based upon the very same cause of action. Mr. Talsania submits that whilst pursuing the complaints under the MRTU and PULP Act, several workmen secured the benefits of regular employment with HAL. The Union, in fact instituted Contempt Petition No. 178 of 1998 in Writ Petition No. 5445 of 1989 complaining about non-

compliance with the order dated 9th February 1990 and the statement recorded therein. Mr. Talsania points out that even during pendency of L.P.A. Nos.144 of 2002 and 84 of 2006, the Union instituted Contempt Petition No. 232 of 2003 , once again seeking enforcement of the order dated 9th February 1990 and the statement recorded therein. Both the contempt petitions were disposed of by this Court by recording a finding that the HAL was implementing the order dated 9th February 1990 and the statement recorded therein. Mr. Talsania submits that all these circumstances attract not only the principles of *res judicata* but also the principle analogous to that set out in Order 23 of Rule 1 of Code of Civil Procedure, 1908 (CPC). Mr. Talsania submits that in any case the principles of acquiescence, estoppel, abandonment and the bar against approbation and reprobation were clearly attracted and based thereon the complaints under the MRTU and PULP Act were barred or in any case deserve to be dismissal. Mr.Talsania pointed out that all such issues were squarely raised before the Labour Court, which however, chose to only focus on the aspect of *res judicata*.

Mr.Talsania submits that all these issues go to the root of the jurisdiction of the Labour Court and thereby warrant interference with the orders made by the Labour Court and confirmed by the Industrial Court. He relies on ***Sarguja Transport Service v/s. State Transport Appellate Tribunal - AIR 1987 SC 88, Rattan Lal Sharma v/s. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School - (1993)4 SCC 10, Kalyani Sharp (I) Ltd. v/s. Labour Court - (2002) 9 SCC 655*** and ***Haryana State Co-op. Land Development Bank v/s. Neelam - (2005) 5 SCC 91*** in support of all these contentions;

(b) That the persons on whose behalf the Union filed complaints under the MRTU and PULP Act 1971 were only trainees or apprentices engaged under the HAL Apprenticeship Scheme for imparting training in specialized fields. Accordingly, such persons were not even '*workman*' in terms of section 2(s) of the Industrial Disputes Act, 1947 (I.D. Act), which definition applies to the MRTU and PULP Act. The Labour Court and the Industrial Court without adverting to this jurisdictional

aspect have granted reliefs to these persons, which exercise is clearly in excess of jurisdiction. He points out that the Labour Court has quite incorrectly proceeded on the basis that these persons have received training way back in the year 1982 to 1988-89. He points out that there is absolutely no dispute regards the fact that such persons had no truck with HAL between the period 1982-88. He relies on ***Petroleum Employees Union v/s. Indian Oil Corporation - (2001) 1 CLR 785 (Bom);***

(c) In terms of the letters of engagement, persons whose cause the Union espouses were engaged for only a fixed term. The disengagement of such persons was also in accordance with such fixed term stipulated in their letters of engagement. Such engagement, therefore, was governed by section 2(oo)(bb) of the I.D. Act and could never constitute 'retrenchment' so as to attract the applicability of section 25F or section 25N of the I.D. Act. Mr. Talsania submits that the Labour Court incorrectly relied upon ***Jaybharat Printers and Publishers v/s. Labour Court - 1993 (67) FLR 757***

for interpretation of section 2(oo) (bb) of the I.D. Act when in fact the view taken by the Kerala High Court in the said ruling stands overruled by the Apex Court in ***M. Venugopal v/s. LIC - (1994) 2 SCC 323, Escort Ltd. V/s. Presiding Officer - (1997) 11 SCC 54, Kalyani Sharp (I) Ltd. v/s. Labour Court - (2002) 9 SCC 655 and Municipal Council, Samrala v/s. Raj Kumar - (2006) 3 SCC 81;***

(d) The Union examined only two out of 127 trainees on whose behalf the complaints were made. There was no assertion that the two trainees were deposing on behalf of the remaining trainees. In any case, the two trainees would not be competent to depose on behalf of the remaining trainees. On basis of depositions of such two trainees, the Labour Court and the Industrial Court were not at all justified in granting relief to the remaining trainees. In particular, it was pointed out that the two trainees have nowhere deposed that the balance 125 trainees were not gainfully employed since the dates of their disengagement and during pendency of the complaints. Mr. Talsania submits that the findings

recorded by the Labour Court, at least insofar as they concerned 125 trainees who chose not to depose in the matter are based on no evidence and consequently constitute perversity;

(e) HAL is a public sector undertaking and recruitments at HAL are governed by its own Recruitment Rules and Policies. Admittedly, the trainees had never been engaged in accordance with the Recruitment Rules. Therefore, award of reinstatement of permanency in such circumstances, would amount to grant of back door entry, which is expressly prohibited by the Constitution Bench judgment in ***State of Karnataka v/s. Umadevi - (2006) 4 SCC 1.*** Mr.Talsania submits that the view taken by the Labour Court and the Industrial Court is therefore, contrary to the view in *Umadevi (supra)*;

(f) The Labour Court and the Industrial Court exceeded their jurisdiction in granting reinstatement and permanency to over 100 trainees without appreciating the fact that there were no vacancies or

posts to which all such trainees could actually be reinstated or appointed. Mr. Talsania points out that in fact, in terms of Circular dated 10th June 1989, there was a ban on recruitment and the Labour Court clearly exceeded jurisdiction in ignoring this position. He relies on ***Hindustan Aeronautics Ltd. V/s. A.Radhika Thirumalai - (1996) 6 SCC 394*** and ***National Fertiliser Ltd. V/s. Somvir Singh - (2006) 5 SCC 493*** in support of this contention;

(g) The Labour Court has incorrectly stated the legal position that the onus is always upon the employer to prove that the workmen are not gainfully employed during the pendency of the proceedings. Mr. Talsania submits that the legal position as explained in ***U.P. State Brassware Corporation Ltd. v/s. Uday Narayan Pandey - (2006) 1 SCC 479*** is exactly contrary. He submits that in the present case, except two trainees none of the other 125 persons were examined. There are no pleadings in the complaint as regards such persons not being in gainful employment. In the absence of both pleadings as well as proof, the

Labour Court clearly exceeded jurisdiction in awarding full backwages.

8] Mr. Talsania further submitted that HAL in pursuance of the undertaking/order in Writ Petition No. 5445 of 1989 as well as the order in Writ Petition No. 3562 of 1997 has already appointed on regular basis 80 out of 127 trainees on whose behalf the Union had lodged the complaints under the MRTU and PULP Act. He submits that from out of balance 47 trainees at least 9 trainees were offered appointment, but such trainees failed to accept the offers. He submits that the candidatures of balance trainees were duly considered but most of them either failed to attend the written test or were not found to qualify for appointments. Mr. Talsania, on such basis, submits that HAL has honoured its undertaking recorded in the order dated 9th February 1990 in Writ Petition No. 5445 of 1989 or the directions issued in the order dated 2nd March 2001 in Writ Petition No. 3562 of 1997. Mr. Talsania submits that this is an additional circumstance which is required to be taken into consideration in the present matter.

9] Ms Gayatri Singh, the learned Senior Advocate for the Union, has not disputed the position that almost 80 out of 127 workmen whose cause the Union espouses have been appointed at HAL on regular basis. However, on instructions, she disputes the position that 9 workmen were offered employment on regular basis but they failed to accept such offers. She also, on instructions, disputes the position as regards the balance workmen failing to attend the selection procedure or being found unfit for regular appointments with HAL. In any case, she submits that such subsequent developments are not at all relevant because in terms of the orders made by the Labour Court and the Industrial Court, all 127 workmen were entitled to reinstatement backwages and regular appointments from the dates on which their services were illegally retrenched by HAL. She submits that acceptance of regular appointments by 80 out of 127 workmen, as and by way of fresh appointments from later dates, was clearly without prejudice to the pending proceedings. On this basis, Ms Singh submits that these developments ought not to impact the issues involved in the present matter.

10] Ms Singh submits that the contention based upon *res judicata*, acquiescence, estoppel and/or bar under Order 23 Rule 1 of CPC is entirely untenable. She submits that Writ Petition No. 5445 of 1989 was admittedly instituted at the stage when 127 workmen were very much in service of HAL. She submits that the complaints in which the Labour Court and the Industrial Court have ultimately granted relief to the Workmen were made after HAL indulged in unfair labour practice of terminating services of those workmen without even compliance with the provisions of section 25N and 25F of the I.D. Act. She submits that the cause of action for institution of the writ petition and the complaints under MRTU and PULP Act were different and distinct. She submits that there was no adjudication, much less any concluded adjudication in Writ Petition No. 5445 of 1989. For all these reasons, Ms Singh submits that the plea of *res judicata* raised by HAL before the Labour court was entirely misconceived and quite correctly rejected by the Labour Court and the Industrial Court.

11] Ms Singh submits that this is not at all a case of any acquiescence because the material on record establishes that

the workmen/the Union were continuously agitating the issue of permanency. She submits that even otherwise the principles of acquiescence and estoppel ought not to ordinarily apply to industrial adjudications. She submits that the provisions of Order 23 Rule 1 of CPC do not apply to proceedings under MRTU and PULP Act. She submits that even the principles analogous to Order 23 Rule 1 of CPC were not at all attracted, in the facts and circumstances of the present case.

12] Ms Singh submits that *Sarguja Transport (supra)* itself notes that withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition will not bar other remedies like a suit. She points out that in the present case, the workmen or the Union had not instituted a fresh writ petition but had sought the remedies under MRTU and PULP Act. She submits that in terms of *Sarguja Transport (supra)* itself, such remedies were not barred.

13] Ms Singh relies upon ***Sarva Shramik Sanghatna (KV), Mumbai v/s. State of Maharashtra and ors. - (2008) 1 SCC 494*** to submit that *Sarguja Transport (supra)* has been

distinguished by the Apex Court itself, as not applicable to the proceedings under the ID Act. Relying upon the very same ruling, she points out that the Apex Court has itself held that *Sarguja Transport (supra)* principle will apply to a situation where a petitioner seeks to indulge in bench hunting which is opposed to public policy. She points out that in the present case there is and there can be no allegation that the Union or the workmen have indulged in any bench hunting and therefore, *Sarguja Transport (supra)* principle was clearly not attracted.

14] Ms Singh also relies upon ***D.G.P. Windsor (India) Ltd. And Pradeep Shivram Thakurdesai and ors. - 2006 (3) LLN 967*** in which the Single Judge of this Court has taken a view that the doctrine of *res judicata* will not apply where complaint before the Industrial Court was withdrawn without permission to file a fresh complaint before it and thereafter a fresh complaint was filed before the Labour Court. For all these reasons, Ms Singh submits that Mr. Talsania's first contention deserves no acceptance.

15] Ms Singh points out that the workmen in the present case had already been engaged as apprentices some time in the year 1981-1982 and had successfully concluded their apprenticeship training. She points out that in the year 1988-89 when the workmen were reappointed, their description as '*apprentices*' was nothing but an unfair labour practice. Such description was only in order to avoid payment of regular salaries to the workmen and to deny them the benefits of permanency. Besides, she points out that the workmen were admittedly not appointed as '*apprentices*' under the provisions of Apprentices Act or under any Scheme to which the Apprentices Act applied. She points out that there is absolutely no dispute that the workmen, though described as apprentices, were in fact undertaking the duties assigned to their regularly appointed counterparts and were contributing to production/out put of HAL. She, therefore, submits that merely on basis of nomenclature, the workmen, could never have been excluded from the definition under section 2(s) of the I.D. Act. Clearly, therefore, the complaints made by the Union on behalf of 127 workmen were very much maintainable under the MRTU and PULP Act and Mr. Talsania's second contention also deserves rejection.

16] Ms Singh submits that the case of 127 workmen was not at all governed by section 2(oo) (bb) of the I.D. Act. She submits that the work for which the workmen had been engaged was admittedly perennial in nature. She submits that it was not even the case of HAL that the workmen were appointed for completion of some project or project activities, which were themselves of some definite duration. She submits that the facts in the case of *Venugopal v/s. LIC (supra)* were entirely different and therefore, the said ruling has no nexus with the facts in the present case. She points out that in case of *Venugopal v/s. LIC (supra)*, the service conditions of the workmen were governed by the Rules which had provided for two year probation period, at the end of which, the workmen could be terminated for unsatisfactory services. She submits that the other rulings relied upon by Mr.Talsania are also distinguishable on facts and therefore, clearly inapplicable to the present matter. Mr. Singh pointed out that in the present case the Union has produced the material on record that the workmen were working continuously and independently at HAL and contributing to its production. She pointed out that in the present case the material has been produced on record that the workmen were

not under training and that they were in fact carrying out regular duties/work just the same as their regularly appointed counterparts. She submits that HAL has not produced any material on record to establish that the service conditions of 127 workmen were governed by section 2(oo)(bb) of the I.D. Act. For all these reasons, Ms Singh submits that even the third contention of Mr. Talsania deserves rejection.

17] Ms Singh has relied upon ***Devinder Singh v/s. Municipal Council, Sanapur - (2011) 6 SCC 584*** and ***S.M. Nilajkar and ors v/s. Telecom District Manager, Karnataka - (2003) 4 SCC 27***, to submit that the provisions of sections 25F and 25N are mandatory and to also explain the scope and import of section 2(oo) (bb) of the I.D. Act. She submits that these two rulings also warrant rejection of Mr.Talsania's contentions as regards the applicability of section 2(oo)(bb) of I.D. Act.

18] Ms Singh adverted to the Recruitment Rules framed by HAL and pointed out that there was nothing irregular, much less illegal in the recruitment of the workmen. She pointed out that such recruitment was quite consistent with the

Recruitment Rules then in force. For this reason, Ms Singh submits that the principle in *Uma Devi (supra)* was clearly not attracted to the present matter. She submits that the Apex Court has itself clarified that the issue in *Uma Devi (supra)* was not about the employer indulging in unfair labour practices and therefore, the proceedings under MRTU and PULP Act cannot be defeated by resort to *Uma Devi (supra)* principle. She therefore, submits that Mr. Talsani's contention based upon *Uma Devi (supra)* deserves no acceptance.

19] Ms Singh submits that Mr. Talsania's contention that there were no regular vacancies to which the workmen could be reinstated was neither raised before the Labour Court or the Industrial Court nor is such contention supported by the records. Ms Singh submits that in fact the records belie such contention. She points out that even if the charts submitted by Mr. Talsania are to be accepted as correct, then 80 out of 127 workmen have already been regularly appointed and insofar as the balance is concerned, it is the case of HAL that they were considered for appointment but it is they who rejected the offers or were not found fit. Ms Singh submits that although the later submission is incorrect, such

submissions completely belie the contention that there were no regular vacancies at HAL against which the workmen could be regularly appointed. In any case, the terminations in breach of the statutory provision of sections 25F and 25 N of I.D. Act cannot be defended on the ground that there are no regular vacancies and therefore, reinstatement could not have been ordered. She submits that the rulings in *A. Radhika Thirumala (supra)* and *Somvir Singh (supra)* are totally distinguishable on facts and therefore, the reliance placed upon them by Mr. Talsania, is quite misplaced.

20] Ms Singh relies upon ***Deepali Surwase v/s. Kranti Junior Adhyapat Mahavidyalaya (D.Ed.) and ors. - (2013) 10 SCC 324*** in order to distinguish the principle in *U.P. State Brassware Corporation Ltd. (supra)*. She submits that in the present case, the two workmen who deposed for and on behalf of all remaining workmen, had clearly made a statement in their deposition that they were not gainfully employed. This was neither seriously challenged in the cross-examination nor did HAL lead any evidence to discharge the onus, which had shifted upon it to establish that the workmen were indeed gainfully employed. She points out that the

complaints were made no sooner HAL illegally terminated the services of the workmen and consequently, there was no scope for the workmen being gainfully employed in the interregnum. Relying upon *Deepali Surwase (supra)*, Ms Singh submits that there is no case to warrant interference with the award of full backwages by the Labour Court and the Industrial Court.

21] For all the aforesaid reasons, Ms Singh submits that Writ Petition No. 3562 of 1997 instituted by HAL warrants dismissal.

22] The rival contentions now fall for our determination.

23] Upon careful consideration of the rival contentions as also the material on record, we are satisfied that the main issue involved in this matter relates to the impact of the proceedings and the orders in Writ Petition No. 5445 of 1989 instituted by the workmen seeking substantially the same reliefs as were sought in Complaint (ULP) Nos. 35,36, 44 and 46 of 1990 under the MRTP and PULP Act. If HAL's contentions

on this aspect are to be upheld, then there arises no necessity of dealing with the rest of the rival contentions raised by the respective parties. In effect therefore, if we are to uphold Mr.Talsania's first contention [see paragraph 7(a)] , then, there would be no necessity of dealing with the other contentions raised by him or responded to by Ms Singh in the present matter.

24] The record indicates that Mr. Talsania's first contention as now paraphrased in paragraph 7(a) was squarely raised by HAL before the Labour Court and the Industrial Court. However, the Labour Court, after taking cognizance of the fact that the workmen had indeed instituted Writ Petition No. 5445 of 1989 based upon substantially similar cause of action and the withdrawal of the same in circumstances recorded in the order dated 9th February 1990, proceeded to focus only on the issue of *res judicata* and no other issues which obviously arose in the matter.

25] In *Rattan Lal Sharma (supra) and Kalyani Sharp (I) Ltd. (supra)*, the Apex Court has held that the High Court is required to entertain even a new plea or a plea which is

sought to be raised for the first time before it where such plea goes to the root of jurisdiction and does not require any further investigation into the question of facts. In fact, the Apex Court has held that the High Court is not only justified in entertaining such a plea but is duty bound to entertain the same, particularly, when the plea goes to the root of the jurisdiction and does not involve adjudication into any disputed questions of fact. Before this Court, raising of the plea as paraphrased in paragraph 7(a) of this judgment and order was therefore, not objected to, but rather submissions were advanced by Ms Gayatri Singh on merits of such a plea.

26] In order to appreciate such a plea, not only from perspective of *res judicata* but also from the perspective of applicability of principles analogous to those set out in Order 23 of Rule 1 of CPC or the principles of acquiescence, estoppel, bar against the approbation and reprobation, it is necessary to compare the contents of memo of Writ Petition No. 5445 of 1989 and the identical set of complaints under the MRTU and PULP Act. Upon such comparison, at the outset, we note that the same are substantially similar both in scope as well as content.

27] In fact, the only difference pointed out by Ms Singh was that Writ Petition No. 5445 of 1989 was instituted by the workmen prior to the termination of their services by HAL and the complaints under the MRTU and PULP Act were instituted after termination. The impact of such a distinction is required to be examined.

28] In Writ Petition No. 5445 of 1989, the workmen had sought for the following reliefs:

*“(A) That this Hon'ble High Court be pleased to issue a Writ of Certiorari or any other Writ, Order or Direction in the nature of Writ of Certiorari calling for the papers pertaining to the case of the petitioners and after going into the legality and propriety thereof set aside the orders dated 21.9.1989 so far as the period of employment expiring on 31st December, 1989 only **And quash and set aside the order of Respondent No.IT/1614(10)/89/1402 dated 26.12.1989;***

(B) This Hon'ble High Court be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus against the respondent company restraining the respondent company from taking any action against the petitioners removing them from the services and or terminating their services effective from 31st December, 1989, and further direct the respondent company to continue the petitioners in the employment of the respondent company in the capacity as Fitters as at present;

(C) Pending hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to issue an Injunction and/or restraining order against the

*respondent company restraining the respondent company from taking any action against the petitioners removing them or terminating them from the services from or after 31st December, 1989 **in terms of the order No.IT/1614(10)/89/1402 dated 26.12.1989.***

(D) Ad-interim Injunction in terms of Clause (C) hereinabove:

(E) Such other relief or reliefs as the facts or circumstances of the case may require;

(F) The cost of the Petition to be paid by the respondents."

(The boldened portions were added by amendments carried out on 29th October 1989]

29] In the identical complaints under the MRTU and PULP Act, the Union espousing the cause of these very workmen, applied for the following reliefs:

(i) It be declared that the respondents have engaged in unfair labour practice in terminating the services of the employees whose names are given in Annexure "B,C,D", as stated in the aforesaid paras.

(ii) The respondents be directed to cease and desist from engaging in unfair labour practice any further.

(iii) The respondents be directed to reinstate the employee mentioned in Annexures "B,C,D" with continuity of service and full back wages from the date of their termination till realisation, alongwith the benefits of permanency and the arrears of such wages be paid to the concerned employees alongwith the interest @ 18% p.a.

(iv) Interim relief was prayed for separately may be granted in the interest of justice.

(v) Costs of this complaint may be awarded in favour of the complainant and the concerned employees.

(vi) Any other equitable relief to meet the ends of justice.”

30] In effect therefore, the reliefs in the two proceedings were in relation to the termination of the services of the workmen and the claims for permanency. Such reliefs in both the proceedings were founded upon the cause of action that the workmen though styled as Apprentices were in fact engaged and required by HAL to discharge the same functions and duties as were being discharged by their regularly appointed counterparts. Both the petition as well as the complaints had alleged that the workmen had been initially appointed as Apprentices in the year 1982-83 and therefore, by the time they were appointed in the year 1987-88 once again, they were already trained and there was no reason to reappoint them as Apprentices. Both in the petition as well as in the complaints the allegation was that such appointment/engagement as Apprentices was nothing but an unfair labour practice. Both in the petition as well as in the complaints, the workmen had contended that they had completed more than 240 days of service and therefore, they were entitled to protection under Chapter – VA of the I.D. Act.

The foundational facts as pleaded in both the writ petition as well as the complaints were virtually identical or in any case, substantially similar.

31] In the aforesaid regard, reference is necessary to the averments in paragraph 4A, 12, 13, 14, 21 of the Writ Petition No. 5445 of 1989, which read as follows:

“4A. The Petitioners Nos.3 to 52 were also similarly employed initially as trade apprentice under the Apprentice Act 1961 for a period of three years. On completion of the training successfully they were taken in Employment by the Respondent Co. under the a Garb of Company Apprentice for a period of one year, and subsequently the said period of extended every time for three months. In all the Petitions worked under the style of company Apprentice for over 20 to 29 months. In this entire period they were not given any training at all and actually worked like any other permanent worker in the trade in which they were employed. They were not Apprentices at all and to continue them as an Apprentices was illegal under the Industrial Employment (standing orders) Act, 1946. The Petitioners have worked continuously and uninterruptedly for over 12 months and more than 240 days in a year.

...

12. The petitioners state that both the petitioners along with large number of employees of the respondent company are members of the Nashik Workers' Union, a trade union registered under the Trade Unions Act. The said trade union addressed a letter to the Hon'ble Minister of Defence, Ministry of

Defence, Government of India, New Delhi under whose charge the respondent company is working, on 21.12.1989 requesting the Hon'ble Minister to intervene in the matter and restrain the respondent company from terminating the services of the workmen concerned. Along with the said letter the union gave a list of the workmen on whose behalf the said letter was addressed stating therein the period of the so called training during which the workmen were employed by the respondent company after the completion of their three years' training under the Apprentices Act, 1961. A copy of the list, along with office order No.IT/1614(10)/89/1402 dated 26-12-1989 are enclosed herewith and marked Annexure 'H'.

13. The petitioners state that ever since the petitioners and other workmen who were employed in the style of trainees in the post of Fitter apprentices were not given any training and were made to work as permanent workmen in the departments to which they were attached, in the entire period. From time to time they were given overtime work as regular workmen and were called upon to do and perform regular duties as normal workmen under the disguise as trainees on the wages so called as stipend of Rs.440/-.

14. The petitioners state that their designation as trainees was a sham practice adopted by the respondent company with a view to make these workmen work on short payments and meagre wages. They were all trained for a period of three years in their trade under the Apprentices Act, 1961 and had completed their course in the trade of Fitter satisfactorily and all of them had passed the Apprenticeship Examination held as per the provisions of the said Act and were issued regular certificates.

... ..

21. The petitioners state that in the case of both the petitioners ever since 26.3.1988 both of them continuously worked upto this date uninterruptedly and continuously and thereby became eligible for all the provisions under Chapter VA of the Industrial Disputes Act, 1947."

32] Similarly, reference is also necessary to the grounds I to V of the Writ Petition No. 5445 of 1989, which read as follows:

I. That the petitioners were not apprentices at all on and from their reemployment effective from 26th March, 1988 since they were in fact not employed for any training nor any training was given to them at all by the respondent company. Ever since their reemployment on and from 26.3.1988 they were called upon to do regular work as any other normal Fitter employed in the permanent capacity.

II. That in any event on completion of a period of one year i.e. on 25.3.1989 both the petitioners cease to be apprentices as provided under the Standing Orders applicable to the respondent company under the Industrial Employment (Standing) Orders Act, 1946 and as such , they became full fledged permanent workmen of the respondent company.

III. That being workmen under the Industrial Disputes Act, 1947, both the petitioners were governed by the provisions of chapter Va of the Industrial Disputes Act, 1947 and as such were entitled to all the benefits under Section 25F of the Industrial Disputes Act, 1947.

IV. That workmen junior to the petitioners continue to be in employment after 31st December, 1989 and as such the termination of the services of the petitioners with effect from 31st December, 1989 is illegal, unjust and improper.

V. That the employment of the petitioners as apprentices from 26.3.1988 on compassionate grounds was malafide in as much as the petitioners were not employed on compassionate grounds at all. On the contrary it has been the regular practice of the respondent company to re-employ trained workmen under the Apprentices Act on a meagre salary of

Rs.440/- per month with a view to deny them the regular salary payable under the service contract to the permanent workmen. Thus the respondent company has been acting malafide and guilty of unfair labour practice in as much as instead of appointing the trained people in permanent post of regular salaries/wages, they continued to employ the trained workmen under the guise of apprentices in violation Industrial Employment (Standing) Orders Act."

33] By way of comparison, reference is also necessary to the averments in paragraphs 3(c), 3(e), 3(g), 3 (h), 3(k) and 3(o) of the Complaint (ULP) No. 35 of 1990, particularly since the other complaints under the MRTU and PULP Act, which came to be disposed of by the Labour Court by its common judgment and order dated 8th August 1994 are identical. These averments read as follows:

"3(c) It is further submitted that, the so called trainees had put more than 240 days continuous service in 12 consecutive calendar months. The scheme under which they were employed was for one year with an intention to observe them in the services of the Respondent. The complainant submits that, the concerned 52 employees were employed in the Respondent's services even though they were designated as trainees but they were performing the duties of regular nature and they were only being branded as trainees with an intention to pay them less wages than the permanent employees. The concerned employees had completed 3 years of training under the Apprenticeship Act and thereafter appointing them as trainees is only with a malafide intention to deprive them with the benefits of permanency. The difference between the wages of a permanent employee and the so called trainees is many fold. A permanent employee earns more than Rs.3,000/- p.m. whereas the trainees were employed at the rate of Rs.400/- p.m.

..

3(e) *The complainant submits that, in the mean time the workmen became the members of the complainant union and the complainant served a notice through an Advocate requesting the respondents not to terminate the services of these employees. The respondent did not concede the just demand of the employees, therefore the complainant approached the Hon'ble High Court for a Writ of Mandamus and ad-interim stay was granted by the Hon'ble Bombay High Court on 28/12/89, however on hearing the parties, the Hon'ble High Bombay High Court was not inclined to admit the Writ Petition and on respondents giving undertaking that these employees will be observed in the services on the basis of their respective seniority as and when the vacancies arise, they will not recruit fresh employees and on the said undertaking, the Hon'ble High Court was pleased to allow the complainant to withdraw the Writ Petition which was without prejudice to the rights of the parties. In view of the fact that the matter of the Writ Petition was an Industrial Dispute, no Writ Petition could lie before the Hon'ble High Court.*

(g) *It is further submitted that, as there was a stay in the said Writ Petition by the Hon'ble High Court, these 52 employees were not terminated during the month of January 1990 but another set of employees were terminated on 16/1/90 and 29/1/90 by the respondent, a list of employees who were terminated on 16/1/90 is enclosed herewith and marked as ANNEXURE "C" and the list of employees who were terminated on 29/1/90 is enclosed herewith and marked as ANNEXURE "D".*

(h) *The complainant submits that the employees whose services have been terminated on 31/1/90 as well as on 16/1/90 and 29/1/90 are the workmen under section 2(s) of the Industrial Disputes Act, 1947 as well as under the Standing Orders applicable to the Respondents. The employees have put in more than one year of continuous service and have put more than 240 days during the 12 consecutive calendar months. The said termination of these employees amounts to*

retrenchment. While effecting the said retrenchment the respondents have not offered to the concerned employees the retrenchment compensation under section 25 F of the Industrial Disputes Act, 1947.

.....

(k) The respondents have not obtained the permission from the Appropriate Government before terminating the services of these employees. Therefore, the respondents have violated the provisions of section 25N of the Industrial Disputes Act. The respondents employ about 8000 employees. They are covered under Chapter V-B of the Industrial Disputes Act, 1947. Thus the said act of the respondents is malafide and the same is not in good faith but as a colourable exercise of the employer's right.

(o) The respondents have also violated the provisions of section 25G of the I.D. Act, 1947 which is also unfair labour practice. No charge sheet was issued to any of the concerned employees and no enquiry was held against them before their termination and hence the said termination is illegal and hence, unfair labour practice committed by the respondents."

34] It is necessary to note at the outset that Writ Petition No. 5445 of 1989 was instituted by the workmen on 28th December 1989 apprehending their imminent termination with effect from 31st December 1989. After institution of the writ petition, the workmen on 29th December 1989 sought for and were granted leave to amend the writ petition so as to seek the relief of quashing and setting aside the notice dated 26th December 1989, in terms of which, the services of almost 127 workmen were to be discontinued with effect from 31st December 1989. The names of all such workmen were set out

in Annexure - H to the petition which is to be read in conjunction with the averments in paragraph 4A and 12 of Writ Petition No. 5445 of 1989. This means that Writ Petition No. 5445 of 1989 was instituted hardly two days prior to the date of termination or disengagement of the services of the workmen, at the stage when such termination/disengagement was imminent. The complaints under the MRTU and PULP Act were instituted some time in February 1990, i.e., after about a month from the date of actual termination/disengagement.

35] As noted earlier, we are satisfied that the foundational facts as well as cause of action in both Writ Petition No.5445 of 1989 as well as the complaints under the MRTU and PULP Act are substantially similar, if not identical. The circumstance that the writ petition was instituted hardly two or three days prior to the date of actual termination or disengagement and the complaints under the MRTU and PULP Act were instituted after about one month from the date of such termination/disengagement is not some significant distinction in the facts and circumstances of the present case. The termination, at the stage of institution of Writ Petition No. 5445 of 1989 was imminent and therefore, the same was

attacked on the very same grounds as were ultimately set out in the complaints under the MRTU and PULP Act.

36] Initially, the ad-interim relief was granted in the Writ Petition No. 5445 of 1989 restraining the HAL from terminating the services of the workmen with effect from 31st December 1989. However, when the matter was taken up for hearing on 9th February 1990, it appears that this Court was not inclined to admit the writ petition. This is pleaded by the workmen/the Union in paragraph 3(e) of the complaint under the MRTU and PULP Act. The workmen/Union, in the same paragraph 3(e) have also pleaded that the Court was pleased to allow the complainant to withdraw the writ petition '*which was without prejudice to the rights of the parties*'. There is a further pleading in paragraph 3(e) itself that since '*the matter of the writ petition was an industrial dispute, no writ petition could lie before the Hon'ble High Court*'.

37] The pleadings in paragraph 3(e) of the complaints that the withdrawal of Writ Petition No. 5445 of 1989 was without prejudice to the rights of the parties or the suggestion that the withdrawal was on account of the fact that a writ petition

would not lie to adjudicate an industrial dispute are not supported by the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. The order does not state that withdrawal was permitted without prejudice to the rights of the parties. The order does not even remotely reflect that the withdrawal was in order to enable the complainants to pursue remedies under the I.D. Act or the MRTU and PULP Act. It is impermissible for parties to add any gloss to orders made by Courts or Tribunals or to attempt to read into the orders made by the Courts or Tribunals, something, which does not actually find any place in such orders. The order dated 9th February 1990 speaks for itself.

38] The order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989 reads as follows:

“Coram: S.C. Pratap & M.L. Dudhat, JJ.

Learned Counsel for the respondent makes statement before this Court here recorded to the effect that as and when vacancies arise, the petitioners and others similarly situate will be given first preference in filling up the said vacancies and the said filling up will be in order of their respective seniority, but subject to the petitioners and others similarly situate being found otherwise qualified.

In view of the aforesaid statement Mr.Phadnis, learned Counsel for the petitioners seeks leave to withdraw this petition.

Petition is allowed to be withdrawn. Ad-interim order stands vacated."

(emphasis supplied)

39] From the aforesaid order dated 9th February 1990, it is quite clear that the workmen withdrew Writ Petition No. 5445 of 1989 unconditionally and without seeking any liberty to re-agitate the issue of permanency or unfair labour practices, being satisfied with the statement made on behalf of the HAL that the petitioner who had instituted the writ petition as well as the other similarly situated will be given first preference in filing up vacancies as and when such vacancies arise, subject no doubt to their fulfilling the qualifications and eligibility requirements. On behalf of HAL a further statement was made that the vacancies will be filled-up in the order of respective seniority of the workmen. The order dated 9th February 1990 clearly records that the petition was being withdrawn '*in view of the aforesaid statement*'.

40] The order dated 9th February 1990 makes it clear that Writ Petition No. 5445 of 1989 was not withdrawn by the workmen without prejudice to their rights and contentions or for the purposes of agitating the matter further under the I.D. Act or the MRTU and PULP Act. The writ petition was

withdrawn by the workmen, because they were satisfied with the relief, limited though it may have been, which they secured in terms of the statement made by HAL and recorded by this Court in its order dated 9th February 1990.

41] This is neither a case of withdrawal of the writ petition with liberty to file a fresh proceedings based upon the same cause of action nor is this even a case of withdrawal simplicitor. The fact that the workmen were satisfied with and accepted the relief in terms of the statement made on behalf of HAL as recorded in the order dated 9th February 1990 is evident from the subsequent conduct of the workmen/the Union in instituting no less than two contempt petitions seeking for enforcement of such reliefs. This is also evident from the fact that on the basis of this very statement made on behalf of HAL as recorded in the order dated 9th February 1990, admittedly 80 out of 127 workmen secured regular employment with HAL, during pendency of the complaints under MRTU and PULP Act. No record was produced at any stage to demonstrate that such regular employment was accepted by these workmen without prejudice to their rights

and contentions of their pending complaints under the MRTU and PULP Act.

42] In the year 1988, during pendency of Writ Petition No.3562 of 1997 instituted by HAL to challenge the orders of the Labour Court and the Industrial Court granting workmen the benefits of reinstatement and consequential benefits, the Union, instituted Contempt Contempt Petition No. 178 of 1998 in Writ Petition No. 5445 of 1989 complaining about breach of undertaking on the part of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989.

43] The contempt petition was disposed of by order dated 22nd August 2006. In Paragraph 8 of this order, the learned Single Judge of this Court has recorded the conclusion that HAL had complied with the statement made before the Court as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989.

44] Writ Petition No. 3562 of 1997 was disposed of by the learned Single Judge of this Court by judgment and order

dated 2nd March 2001. The orders made by the Labour Court and the Industrial Court in favour of the workmen were in fact set aside. However, at paragraph 14 of the judgment and order dated 2nd March 2001, the learned Single Judge reiterated the effect of the statement made on behalf of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989 and issued directions to HAL to comply with the same.

45] The aforesaid is evident from paragraph 14 of the judgment and order dated 2nd March 2001, which reads as follows:

"The other facts is that on behalf of the petitioner, an affidavit was filed that the trainees were in fact offered employment in terms of the assurance made to this Court. I do not propose to enter into that arena as Contempt Petitions filed, are pending before this Court. Suffice it to say, that the grievance is that what was offered was not regular employment but temporary or for a short period. Many members of the petitioner therefore, did not apply by giving up the permanent job they had or that the offer made was for a temporary period they preferred not to join the temporary job least they lost their regular job considering their earlier experience. To my mind when the statement was made on behalf of the petitioner it was to offer the said trainees regular job and not temporary job. In the light of that though I allowing the petition, petitioner to consider the cases of those trainees either who had applied or who had applied but were offered temporary job and did not accept the same. To such persons

petitioner to make an offer as and when regular vacancies arise for consideration. In the event they fulfill required qualification then to consider them for regular job. These observations are independent of the proceedings which are pending before this Court for contempt of this Court's order."

46] The Union, aggrieved by the judgment and order dated 2nd March 2001, instituted the present L.P.A. No. 144 of 2002 before the Division Bench of this Court. During pendency of this LPA, the Union instituted yet another Contempt Petition No. 232 of 2003 complaining this time about non-compliance with the directions in paragraph 14 of the judgment and order dated 2nd March 2001.

47] The Contempt Petition No. 232 of 2003 was dismissed by the order dated 13th April 2005 after the learned Single Judge of this Court recorded a finding that HAL has taken due steps to follow the directions given in Writ Petition No. 3562 of 1997 and there is no case made out of willful disobedience.

48] From the aforesaid, it is apparent that the workmen workmen withdrew Writ Petition No. 5445 of 1989 unconditionally and accepted without any reservations the relief flowing from the statement made on behalf of HAL as

recorded in the order dated 9th February 1990 disposing of Writ Petition No.5445 of 1989. Not only was such relief accepted by the workmen, but on the basis of the same, no less than 80 out of 127 workmen actually availed the benefit of regular employment with HAL. Further, the workmen/the Union instituted at least two contempt petitions seeking enforcement of such relief in full measure. Such circumstances, in our opinion, were extremely relevant but have been ignored by the Labour Court and the Industrial Court in assessing the impact of the proceedings in Writ Petition No. 5445 of 1989 on the complaints under MRTU and PULP Act.

49] Based upon the aforesaid circumstances, the plea of *res judicata* might not have been attracted. This is because there was no adjudication as such in Writ Petition No. 5445 of 1989. However, the aforesaid circumstances, in our judgment, were sufficient to attract the principles analogous to those set out in Order 23 of the CPC as well as the principles of acquiescence, estoppel and the bar against approbation and reprobation.

50] The provisions of Order 23 of CPC may not *per se* apply to the proceedings under the MRTU and PULP Act. Such provisions, also do not *per se* apply to proceedings under Articles 226/227 of the Constitution of India. Nevertheless, in *Sarguja Transport (supra)*, the Apex Court held that the principles analogous thereto, which are founded upon the public policy can, in a given case, certainly apply.

51] Order 23 of the CPC relates to withdrawal and abandonment of suits. Order 23 Rule 1 of CPC provides that at any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. Order 23 Rule 3 of CPC provides that where the Court is satisfied that a suit must fail by reason of some formal defect or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Order 23 Rule 4 of CPC provides that where the plaintiff abandons any suit or part of

a claim under sub-rule (1), or withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

52] In *Sarguja Transport (supra)*, the Apex Court has held that the petitioner after withdrawing the petition filed by him in the High Court under Article 226 of the Constitution of India without permission to institute a fresh petition, cannot file a fresh petition in respect of the same cause of action under that article. The Apex Court has explained that the principles underlying the rule in Order 23 Rule 3 of the CPC is founded on public policy and is not the same as the rule of *res judicata*. The Apex Court has pointed out that such principle is extended in interest of administration of justice to cases of withdrawal of writ petitions, not on the grounds of *res judicata*, but on the grounds of public policy. The extension of such principle would discourage the litigant from indulging in bench hunting tactics. The Apex Court has held that there is no justifiable reason to permit a party to institute a fresh petition after the first petition is withdrawn without seeking

liberty to institute a fresh petition and the remedy under Article 226 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition. The Apex Court further clarified that such principle is not applicable to the writ petitions involving personal liberty where a writ in the nature of habeas corpus may have been applied for since such cases stand on different footings altogether.

53] In the present case, perusal of the order dated 9th February 1990 makes it apparent that the workmen chose to abandon their claims in relation to termination and permanency, being satisfied by HAL's commitment that they would be given first preference in matters of regular appointments, as and when regular vacancies arose. They relied upon the said statement and withdrew the petition unconditionally when the termination of their employment was imminent. As noted earlier, this is neither a case of withdrawal or the petition with liberty to institute a fresh petition on the same cause of action nor is this a case of withdrawal simplicitor. This is a case where the workmen withdrew Writ Petition No. 5445 of 1989 *'in view of '*

statement made by HAL granting the workmen some though not the entire relief sought for by them.

54] In paragraph 3(e) of the complaint under MRTU and PULP Act , all workmen have admitted that Writ Petition No. 5445 of 1989 was withdrawn by the workmen because the High Court was not inclined to admit the writ petition and an undertaking was given on behalf of HAL that the employees will be absorbed in services on basis of their respective seniority as and when vacancies arise. Nothing prevented the workmen, at this stage itself, to seek liberty to agitate surviving issues, if any, by resort to the remedies under the I.D. Act or the MRTU and PULP Act. Nothing prevented the workmen to at least apply to record the withdrawal of their petition was without prejudice to their rights to agitate the surviving issue, if any, before the for a under the I.D. Act or the MRTU and PULP Act.

55] Rather, the subsequent conduct of workmen/Union indicates that at least 80 out of 127 workmen accepted without any demur the benefits of regular employment with HAL on basis of the statement recorded in the order dated 9th

February 1990 disposing of Writ Petition No. 5445 of 1989. The workmen/the Union, went on to institute at least two contempt petitions before this Court seeking for full implementation of the relief in terms of the statement made on behalf of HAL as recorded in the order dated 9th February 1990. The cumulative consideration of all these factors prompts us to hold that the complaints made by the Union/workmen under MRTU and PULP Act warranted dismissals applying principles analogous to those set out in Order 23 of CPC.

56] Ms Gayatri Singh, whilst not disputing the factual position, however, sought to distinguish the principle explained in *Sarguja Transport (supra)* by relying upon the decisions of the Apex Court in ***Himachal Pradesh Financial Corporation vs. Anil Garg and ors. - Civil Appeal No. 661 of 2008 dated 28th March 2017***, *Sarva Shramik Sanghatan (supra)* and decision of the Single Judge of this Court in *D.G.P. Windsor (India) Ltd. (supra)*.

57] In *Himachal Pradesh Financial Corporation (supra)*, the Apex Court noted that there was line in *Sarguja Transport*

(*supra*) that withdrawal of writ petition filed in the High Court without permission to file a fresh writ petition may not bar other remedies like a suit. The Apex Court also held that the question whether there has been an abandonment of a claim or not is a mixed question of fact and law. Therefore, the language of the order of withdrawal will not always be determinative. The background facts will necessarily have to be examined for proper and just decision. The Apex Court has concluded by observing that *Sarguja Transport (supra)* principle cannot, therefore be applied as an abstract proposition nor can its ratio be applied sans the facts of the case.

58] Applying the aforesaid principle as well, we are unable to agree with the distinction sought to be made by Ms Singh, in the present case. In *Himachal Pradesh Financial Corporation (supra)*, the Apex Court noted that the application seeking leave to withdraw the writ petition had itself stated that the withdrawal was to pursue remedies under the Himachal Pradesh Public Moneys (Recovery of Dues) Act, 1973. Based upon this and other attendant circumstances, the Apex Court noted that the appellant never

intended to abandon its claim by withdrawing the suit and the language of the withdrawal order cannot be determinative without considering the background facts.

59] In the present case, the background facts and the attendant circumstances make it very clear that the workmen withdrew Writ Petition No. 5445 of 1989 in view of the statement made on behalf of the HAL that they would be considered for regular employment on priority basis as and when regular vacancies arise. The withdrawal unlike in the case of *Himachal Pradesh Financial Corporation (supra)* was not to pursue remedies under the I.D. Act or the MRTU and PULP Act. Almost 80 out of 127 workmen, in fact availed the benefit of the statement made on behalf of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. At least the two contempt petitions were filed by the workmen to enforce such reliefs relatable to Writ Petition No. 5445 of 1989.

60] *Sarva Shramik Sangathana (supra)*, was a case where the employer had withdrawn first application under section 25-O(1) of the I.D. Act seeking permission to close down the

industry and thereafter, after lapse of some period, filed a fresh application under section 25-O(1) of the I.D. Act once again seeking permission to close down the industry. The Union, relied upon *Sarguja Transport (supra)* had contended that the second application after withdrawal of the 1st application, without seeking any liberty to file fresh application, was barred on principles analogous to those set out in Order 23 of the CPC.

61] In the context of the aforesaid facts, the Apex Court noted and recorded that the first application under section 25-O(1) of the I.D. Act was withdrawn by the employer *bonafide* because the employer had received a letter from the Dy. Labour Commissioner calling for a meeting of the parties so that an effort could be made for an amicable settlement. The Apex Court noted that the company could have simply waited for expiry of 60 days from the date of filing of its application under section 25-O(1) of the I.D. Act, on the expiry of which the application would have deemed to have been allowed under section 25-O (3) of the I.D. Act. The fact that it did not do so, and instead applied for withdrawal of its application under section 25-O (1), shows its *bona fide*. The

company was trying for an amicable settlement and this was clearly *bona fide*, and it was not a case of bench hunting when it found that adverse order was likely to be passed against it. On this basis, the Apex Court, distinguished *Sarguja Transport (supra)* principle and stated that the principle will apply when the first petition was withdrawn in order to do bench hunting or for some other *mala fide* purpose.

62] In the present case, as noted earlier, the workmen/the Union, in their complaint under the MRTU and PULP Act have themselves admitted that Writ Petition No. 5445 of 1989 was withdrawn on account of the following two reasons:

- (i) That the High Court was not inclined to admit the writ petition; &
- (ii) HAL gave an undertaking that the workmen would be absorbed in the services on the basis of their respective seniority as and when the vacancies arise.

63] That apart, in case of *Sarva Shramik Sanghatana (supra)*, the employer which withdrew the first application

under section 25-O(1) of the I. D. Act did not secure or retain any benefits on account of such withdrawal. Rather, the withdrawal was *bonafide*, in order to genuinely explore the possibility of amicable settlement with the workmen/the Union. In the present case, the Union/workmen secured benefits in terms of HAL's statement as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. The Union / workmen whilst insisting upon retaining such benefits, chose to institute fresh proceedings, despite the fact that there was no leave granted to institute the same or to prosecute the same. Clearly, therefore, the fact situation in the present case is totally different and distinct from the fact situation in *Sarva Shramik Sanghatana (supra)*.

64] Besides, in *Sarva Shramik Sangathana (supra)*, the Apex Court noted and held that when parties are different, issues are different, reliefs are different, the question of either *res judicata* or acquiescence or estoppel will not arise. Such distinguishing features do not arise in the present matter.

65] The ruling in case of *D.G.P. Windsor (India) Ltd. (supra)* also turns on its own peculiar facts. In that case, the workmen

withdrew their complaint before the Industrial Court in order to file a fresh complaint before the Labour Court having realised that the remedy before the Labour Court was the appropriate remedy for redressal of their grievances. This was not a case where the workmen secured some benefits from the Industrial Court and without seeking leave of the Industrial Court proceeded to institute fresh proceedings before the Labour Court. It is in these circumstances that the plea based on *res judicata* was negated by the learned Single Judge.

66] The undisputed facts and circumstances which emanate from the orders made in Writ Petition No. 5445 of 1989, the acceptance of regular employment by 80 out of 127 workmen involved in the dispute without any demur, the institution of at least two contempt petitions by the Union/workmen seeking to enforce the statement made on behalf of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989, the orders made in the contempt petitions are sufficient to make out a case that the Union/workmen clearly acquiesced and accepted without any demur the reliefs which flowed from the statement made on

behalf of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. Thereafter, whilst retaining the benefit of such relief, it was not open to the Union/workmen to insist upon further reliefs, even though, such further reliefs were given up by the Union/workmen, which is evident from their conduct in not only withdrawing Writ Petition No. 5445 of 1989 in view of the statement made on behalf of HAL but also their subsequent conduct in accepting the benefits of regular employment with HAL without demur and in taking out proceedings to enforce relief in terms of the statement of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. Such undisputed conduct, in any case, attracts the principle of estoppel as well as the bar against approbation and reprobation. This is independent of the bar applying principles set out in Order 23 CPC as explained in *Sarguja Transport (supra)*.

67] In ***Haryana State Coop. Land Development Bank vs. Neelam - (2005) 5 SCC 91***, the Apex Court has held that aim and object of Industrial Disputes Act may be to impart social justice to the workman but the same by itself

would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance *sub silentio*.

68] In ***Himmat Singh and ors vs. ICI India Ltd. and ors. - (2008) 3 SCC 571*** and ***Steel Authority of India Ltd. vs. Union of India - 92006) 12 SCC 233***, the Apex Court has held that common law of principles of estoppel, waiver and acquiescence are applicable in industrial adjudication.

69] In ***U.P. State Road Transport Corporation vs. Ram Singh and another - (2008) 17 SCC 627***, the respondent Booking Clerk was dismissed from the appellant's service. The appellate authority however converted the order of dismissal to one of removal and gave respondent a fresh chance to work with the appellant. This was accepted by the respondent and consequently, the respondent, was reemployed. The Apex Court held that in such circumstances, the respondent having acquiesced in the condition of re-employment could not later

resile and seek to question the termination of his services.

70] For all the aforesaid reasons, we uphold Mr. Talsania's first contention that the Labour Court ought to have dismissed the complaints under the MRTU and PULP Act in the present case by applying *Sarguja Transport (supra)* or in any case, the principle of acquiescence, estoppel and the bar against approbation and reprobation. In view of this, as indicated earlier, there is no necessity to decide other rival contentions in the present proceedings.

71] However, we reiterate that HAL will be bound by the statement made on its behalf as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. The relief in terms of such statement is therefore, reiterated.

72] The purpose for the aforesaid reiteration is two fold. In the first place, since we are holding in favour of HAL on the basis of their aforesaid statement in Writ Petition No. 5445 of 1989, it is only appropriate that HAL stands by such statement and implements the same, if not already implemented in full measure. Secondly, though there is no

dispute that 80 out of 127 workmen involved in this dispute have already been regularly employed with HAL in compliance with such statement, there is some dispute as regards the status of the balance 47 workmen. This is really not the occasion to adjudicate such dispute. However, if such balance 47 workmen are of the opinion that the relief in terms of such statement has been denied to them, then, nothing prevents them from taking out appropriate proceedings for securing reliefs consistent with the statement made on behalf of HAL as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989. If such proceedings are taken out, needless to add that the same shall be decided on their own merits and in accordance with law.

73] For all the aforesaid reasons, we dispose of Writ Petition No. 3562 of 1997 and consequently, the present L.P.A. No. 144 of 2002 with the following order:-

(a) The judgment and order dated 8th August 1994 made by the Labour Court in Complaint (ULP) Nos. 35,36,44 and 45 of 1990 and the judgment and order dated 8th July 1997 made by the Industrial Court confirming the same are hereby set aside;

(b) The relief to the workmen in terms of HAL's statement as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989 is reiterated;

(c) If 47 out of 127 workmen involved in the dispute are of the opinion that the relief in terms of HAL's statement as recorded in the order dated 9th February 1990 disposing of Writ Petition No. 5445 of 1989 has been denied to them, it is open to such 47 workmen to take out appropriate proceedings for securing reliefs consistent with such statement. If such proceedings are taken out, needless to add, that the same shall be decided on their own merits and in accordance with law;

(d) Rule is made partly absolute in Writ Petition No.3562 of 1997 in the aforesaid terms;

(e) Letters Patent Appeal No. 144 of 2002 is disposed of in the aforesaid terms;

(f) There shall, however, be no order as to costs.

(g) Pending civil applications, if any, do not survive and the same are disposed of.

(M. S. SONAK, J.)

(A. S. OKA, J.)