

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment reserved on : 23.05.2017, 21.02.2019 & 1.04.2019
Date of decision : 16.05. 2019

+ W.P.(C) No.8495/2016 and CM Nos. 8560/2017, 7216/2017,
30264/2017, 30263/2018, 44270/2018 and 148/2019

FOOD CORPORATION OF INDIA WORKERS UNION

..... Petitioner

Through: Mr.Arvind Nayar, Sr. Advocate
with Mr.Sushant Kumar,
Advocate

versus

FOOD CORPORATION OF INDIA & ANR. Respondents

Through: Mr. Om Prakash, Mr.Y.P.Rao,
Mr. Pranav Subramanyam,
Ms.Arzoo Raj, Mr.Pradeep
Kumat Tripathi, Mr.Anil
Kapoor, Advocats for R-1

+ W.P.(C) No.9260/2016 and CM Nos. 37406/2018 and
4084/2019

FOOD CORPORATION OF INDIA HANDLING WORKERS
UNION

..... Petitioner

Through: Mr.Colin Gonsalves, Sr.
Advocate with Mr.Ali Qambar
Zaidi, Advocates

versus

THE CHAIRMAN-CUM-MANAGING DIRECTOR,FOOD
CORPORATION OF INDIA & ANR. Respondents

Through: Mr. Om Prakash, Mr.Y.P.Rao,
Mr. Pranav Subramanyam,
Ms.Arzoo Raj, Mr.Pradeep
Kumat Tripathi, Mr.Anil

Kapoor, Advocats for R-1 ,
Advocate

+ W.P.(C) No.9412/2016 and CM Nos. 51106/18, 51107/18,
37694/16 and 4083/2019

FOOD CORPORATION OF INDIA SHRAMIK UNION

..... Petitioner

Through: Mr.Anirudh Sharma and
Mr.Abhaid Parikh, Advocates

versus

FOOD CORPORATION OF INDIA & ANR. Respondents

Through: Mr. Om Prakash, Mr.Y.P.Rao,
Mr. Pranav Subramanyam,
Ms.Arzoo Raj, Mr.Pradeep
Kumat Tripathi, Mr.Anil
Kapoor, Advocats for R-1

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners of all the petitions bearing No. W.P.(C) No. 8495/2016, W.P.(C) No. 9260/2016 and W.P.(C) No. 9412/2016, i.e., FOOD CORPORATION OF INDIA WORKERS UNION, FOOD CORPORATION OF INDIA HANDLING WORKERS UNION and FOOD CORPORATION OF INDIA SHRAMIK UNION substantially assail the award dated 5.7.2016 of the learned Presiding Officer, CGIT-cum-Labour, Court-I, Karkardooma, Delhi in I.D. No. 195/2011, and consequently seek a restraint against giving of any effect to the said award dated 5.7.2016 published on 11.7.2016, as also to the

circulars dated 15.12.2005, 20.2.2016 and 17.8.2016 as issued by the respondent, the Food Corporation of India.

2. As put forth on behalf of the parties to the petitions, the respondent No.1 entered into a bipartite settlement under Section 18(1) of the Industrial Disputes Act, 1947 and Rule 58 of the Industrial Disputes (Central) Rules, 1957 which was between the respondent No.1 management and the Food Corporation of India Workers Union dated 13.3.1999, vide which the revision of Incentive schemes w.e.f. 1975 were considered and it had been agreed between the parties as under:-

“REVISION OF PIECE-RATE INCENTIVE SCHEME IN RESPECT OF DEPARTMENTAL WORKERS.

It was agreed that existing norm of 90 bags per day per worker for determining the labour strength etc. would continue while considering the demand for revision of datum for the purpose of the incentive place-rate scheme in respect of departmental workers. Accordingly a mutually agreed incentive scheme placed at Annexure- ‘A’ will be implemented w.e.f. ____-4-1998. With regard to the demand of the Union for lumpsum grant in lieu of incentive payment on the ground that the scheme was liable to be implemented from the year 1975, it was agreed that both the Management and the Union would abide by the final decision in the pending litigation.”

Annexure ‘A’ as detailed in the said terms qua the incentive schemes reads to the effect:

“ INCENTIVE SCHEME

I, HANDLING NORM;	Bags below	Bags above
	66 KG.	66KG.

Unloading from truck and stacking inside godown.	105	70
Unloading from wagon and stacking inside godown	90	60
Unloading from wagon and Dumping on platform	134	90
Stacking inside godown, Removing the bags dumped.	140	90
Destacking in godown	110	70
Loading into trucks.		
Destacking into godowns	94	60
And loading into wagons		
Unloading from wagons and loading into trucks	67	60
Standardisation/Rebagging/	42	35
Filling bags with loose grain Including weighment.		
Salvaging of damaged foodgrains	30	20
Including weighment		
Breaking stack and restacking	140	90
Weighment	62	60

ABOVE NORM (ABOVE 66 Kg.)

First 20 bags	:	Full wages + 8% extra of full wages.
Next 20 bags	:	Full wages + 15% extra of full wages.
Next 20 bags	:	Full wages + 35% extra of full wages.
Beyond 60 bags	:	Full wages + 50% extra of full wages.

BELOW NORM (BELOW 66 Kg.)

First 30 bags	:	Full wages + 8% extra of full wages.
Next 30 bags	:	Full wages + 15% extra of full wages.
Next 30 bags	:	Full wages + 35% extra of full wages.
Beyond 90 bags	:	Full wages + 50% extra of full wages.

II. HEIGHT NORM	8 HIGH (ABOVE NORM) (ABOVE 66 KG)
9 to 10 High	: 10% of Full wages
11 to 12 High	: 25% of Full wages (Full Wages

13 to 14 High	:	30% of Full wages	means
15 to 16 High	:	40% of Full wages	Pay +DA+ HRA)
17 and Above High:		50% of full wages	

HEIGHT NORM		(BELOW 66 KG)	
11 to 12 High	:	10% of Full wages	
13 to 14 High	:	25% of Full wages	(Full Wages
15 to 16 High	:	30% of Full wages	means
17 to 18 High	:	40% of Full wages	Pay +DA+ HRA)
19 and Above High:		50% of full wages	

III. LEAD : (NORM 66 FT.) ABOVE NORM

67 to 99 ft	:	15% of full wages	
100 to 132 ft	:	30% of full wages	
133 to 165 ft	:	50% of full wages	
Above 65 ft	:	100% of full wages	

IV. GENERAL

- i) The other terms and conditions of the existing Scheme unchanged.
- ii) This Scheme will be made effective from 1.4.98. This will be applicable to all the regular departmental workers and will remain in force till further order.
- iii) No adhoc relief @ 45% on the incentive earnings at the above rates will be allowed in the revised Incentive Scheme. Calculation of the incentive wages should be made strictly as per the existing formula.
- iv) Daily full wages means-Pay + DA + HRA per worker per bag shall be calculated by dividing the wages of the worker by 70 bags instead of 90 bags as done now and it would be applied for all operations.
- v) Stack No. and lay out to be indicated in the work slip.
- vi) If norm in handling is not achieved for want of workload, incentive on lead and height would be paid without any equation formula for shortfall in handling quantum.
- vii) Adhoc norm of handling gunny bales, silo operation as in vogue in terms of Hqtrs. Letter No. ___ dated ___ or as in vogue as per practice in the field offices shall continue till

the regular norms of above operation and other misc. operations settled in consultation with the union.

- viii) The dumping of stacks i.e. operation No.(iii) should be allowed only to ensure that there is no demurrage on wagon and stack so dumped should be stacked or issued out on the next day but no dumped stacks should be kept for more than 3-4 days.*
- ix) During overtime hourly incentive to handling workers will be payable after completion of his handling norm for example, worker is required to unload and stack 70 bags during his 6 ½ working hours that is to say his performance per hour should be 10.9 bags (say 11 bags) if a worker works on OTA for 3 hours his incentive will be payable after handling 33 bags of foodgrain.”*

3. The grievance of the three petitioner unions is to the effect that the respondent Corporation issued circular No.18/15 dated 15.12.2015 to the effect:

“ No. IR(L)/4(52)/2002 Dated: December 15,2005

CIRCULAR NO. 18/2005

Sub: Piece Rate Incentive Scheme for handling bags weighing upto 50 kg by Departmental Workers in inland depots of Food Corporation of India.

Attention is invited towards HQrs. letter No. IR(L)/4(31)/98 dated 10th May,1999 vide which Piece Rate Incentive Scheme for handling of bags weighing above 66 kg and below 66 kg by the Departmental Workers in the inland Godowns/depots, was circulated.

2. At the time when the above scheme was implemented, the size of majority of the foodgrain bags in use was 95 kg or so and only a small quantum of bags of 66 kg or below were being handled in the Corporation.

3. Subsequently the size of foodgrain bags has been reduced to 50 kg each on ILO recommendations and now majority of the foodgrain bags is of 50 kg almost throughout the country. Therefore, a need was felt to have separate handling norms(datum) for handling 50 kg bags also by the Departmental workers. For this purpose, the study was entrusted to 'Saxena Committee' for evolving suitable Handling Norms in respect of foodgrain bags weighing upto 50 kg each.

4. The 'Saxena Committee' made deliberations on this issue and suggested norms for various operations for handling of the bags weighing upto 50 kg by Departmental workers.

5. The report of the said Committee has been considered in consultation with the Finance Division and the competent authority has accepted the recommendations of the Committee about handling norms for handling of bags weighing upto 50 kg by Departmental workers in inland Godowns/ depots. The slabs of output beyond norms and the percent Incentive Piece Rates for such slabs, have been kept the same as are applicable in the existing Piece Rate Scheme in case of bags weighing above and below 66 kg.

6. Based on the recommendations of the Committee the competent authority has approved a Piece Rate Incentive Scheme also for handling bags each weighing upto 50 kg, by Departmental workers working in inland depots /godowns. A copy of the scheme is enclosed for implementation with effect from 1stDecember, 2005.

7. The payment of incentive wages to the departmental workers for handling bags upto 50 kg each, may be regulated as per the enclosed incentive piece rate scheme w.e.f, 01,12.2005.

8. The existing Piece Rate Incentive Scheme for Departmental Workers working in inland depots/godowns will remain operative 'as it is' for handling of bags weighing above 50 kg.

9. The compliance may be intimated to Hqrs.

(SUSHILNAGPAL)

End: As above.

GENERAL MANAGER (IR-L)

PIECE RATE INCENTIVE SCHEME FOR HANDLING BAGS EACH WEIGHING UP TO 50 KG BY DEPARTMENTAL WORKERS OF THE FOOD CORPORATION OF INDIA

1. SHORT TITLE & SCOPE

a) The scheme may be called piece rate 'Incentive Scheme' for handling of bags weighing up to 50 kg each by departmental workers working in the Godowns/ depots etc. of the Food Corporation of India.

b) The scheme shall apply to the following categories of Departmental workers: -

i) Sardar

ii) Mondal

iii) Handling Mazdoor

c) The scheme will be brought into force w.e.f. 1.12.2005.

2. SHIFT HOURS

Effective shift hours shall remain the same as 7 hours excluding half an hour's lunch break

(Ref: HQrs. Circular No. 07 / 2002 Dated 4.4.2002 issued from file No. IR(L)/31(12)/97 regarding working hours).

3. MANNING SCALE (GANG STRENGTH)

A handling gang shall continue to consist of 1 Sardar, 1 Mondal and 12 Handling Mazdoors.

4. PROCEDURE FOR DETERMINATION OF OUTPUT

Same as is applicable in case of bags each weighing 66 kg and above and below 66 kgs.

5. GENERAL NORMS OF OUTPUT

- a) *HANDLING - 135 BAGS (each weighing upto 50 kgs) per Handling Mazdoor per day I shift.*
- b) *HEIGHT - 10 bags high (for bags weighing upto 50 kgs (STACKING) each)*
- c) *LEAD - 66 feet*

NOTE: Stacking of bags will always refer to standard stacking of interlocking pattern with basis of standard size with a view to ensure to optimum utilization of storage space.

6. NORMS DATUM FOR VARIOUS OPERATIONS (PER HANDLING MAZDOOR PER DAY I SHIFT) .

<i>S.No.</i>	<i>Operations</i>	<i>No. of bags weighing upto 50 kgs.</i>
<i>i)</i>	<i>Unloading from truck and stacking inside Godwn</i>	<i>135</i>
<i>ii)</i>	<i>Unloading from wagon and stacking inside Godwn</i>	<i>115</i>
<i>iii)</i>	<i>Unloading from wagon and dumping on platform</i>	<i>170</i>
<i>iv)</i>	<i>Removing the bags dumped and stacking inside the godowns</i>	<i>180</i>
<i>v)</i>	<i>Destacking into Godown and loading into trucks</i>	<i>140</i>
<i>vi)</i>	<i>Destacking into Godown and loading into wagons</i>	<i>120</i>
<i>vii)</i>	<i>Unloading from wagons and loading into trucks</i>	<i>110</i>

viii)	Standardisation/rebagging/filling bags with loose grain including weighment	055
ix)	Salvaging of damaged foodgrains including weighment	040
x)	Breaking stack and restacking	180
xi)	weighment	105

DESCRIPTION OF IMPORTANT ITEMS

- | | | |
|------|---------------------------------|--------------------------|
| i) | Weighment | Same as is applicable in |
| ii) | Standardisation | case of bags (each |
| iii) | Salvaging of damaged foodgrains | weighing 66 kg & above |
| | | and below 66 kgs) |

8. INCENTIVE EARNING BEYOND GENERAL NORMS (DATUM) AT PARA 5 ABOVE (FOR BAGS'WEIGHING UPTO 50 KG EACH)

A) HANDLING INCENTIVE (Per Handling Mazdoor) -Full wage

Next 30 bags -	Full wage for 30 Bags + 8% extra	
Next 30 bags -	Full wage for 30 Bags + 15 % extra	Full wage
Next 30 bags -	Full wage for 30 Bags + 35% extra	mean Pay + D.A. + HRA
Beyond 90 bags -	Full wage for Actual No. of bags handled in this slab + 50% extra	for actual number of bags.

B) HEIGHT INCENTIVE (Per Gang)

Height Norms: 10 high

11 to 12 high @10% of full wages |The percentage will be
for actual No. of bags| applicable for the

	stacked in this slab	respective slab provided the slab is completed as laid down.
13 to 14 high	@ 25% of full wages “	
15 to 16 high	@ 30% of full wages “	In case the height is not built upto the maximum of the slab, the workers will
17 to 18 high	@ 40% of full wages “	be entitled to the incentive at the rate prescribed
19 & above high	@ 50% of full wages “	for lower slab.

C) **LEAD INCENTIVE (PER GANG)**

LEAD NORM : 66 feet

67' to 99'	@ 15% of full wages for actual No. of Bags carried in this Slab.
100' to 132'	@ 30% -do-
133' to 165'	@ 50% -do-
Above 165'	@ 100% -do-

NOTE: 'Full wage' means the proportionate wage for the actual number of bags handled, stacked or carried for lead, as the case may be, in respective slabs of output beyond norm / Datum.

9. **INCENTIVE FOR SARDAR/MONDAL**

Same procedure as is applicable in the existing Piece Rate Incentive Scheme for bags weighing 66 Kgs and above and below 66 kgs.

10. **PAYMENT OF INCENTIVE BEYOND SHIFT HOURS**

The General norm of output for handling as at Clause 5 above, would be divided by 7 hours to arrive at the hourly norm. If the handling worker works for one hour after shift hours and attains

the hourly norm, then he would also be paid OTA wages at the rate as per the existing Rules & instructions on OTA. It is clarified that this payment for achieving the hourly norm during OTA period will be called OTA wages. However, the worker would be eligible for payment of incentive wages, for the output in; excess of the hourly norm during OTA hours. Thus, if a worker works on overtime for 3 hours, the incentive will be payable for the number of bags handled in excess of the number of bags required to be handled in 3 hours as per the hourly norm.

INCENTIVE EARNINGS FOR OUTPUT BEYOND HOURLY NORM (DATUM) DURING OVERTIME PERIOD (FOR BAGS WEIGHING UPTO 60 KGS EACH)

i) **HANDLING INCENTIVE (Per Handling Mazdoor)**

Handling Norm	=	19 bags per hour
First 5 bags above norm		Full wage for 5 bags + 8% extra.
Next 5 bags above norm		Full wage for 5 bags + 15% extra.
Next 5 bags above norm		Full wage for 5 bags + 35% extra.
Beyond 15 bags		Full wage for actual number of bags Handled in this slab + 50% extra

ii) **HEIGHT INCENTIVE PER GANG**

- As per Clause 8(B) above concerning Height Incentive

iii) **LEAD**

As per Clause 8 (C) above concerning Lead incentive.

11. **GENERAL**

- I) *The other terms & conditions shall be the same as incorporated in the existing Piece Rate Incentive Scheme for bigger bags.*
- II) *This scheme will be made effective from 1.12.05. This will be applicable to the departmental workers only and will remain in force till further order.*

III) Full wage means = Pay + DA + HRA Per bag wage shall be calculated by dividing the daily wage of the worker by 135 bags (each weighing upto 50 kg) and it would be applied for all operations.”

and thus submitted that the handling norms in relation to the bags to be carried by the workers below 66 Kg. had been altered by the respondent No.1 in contravention of the settlement dated 13.3.1999 without complying with the mandatory requirement of Section 9A of the Industrial Disputes Act, 1947, arbitrarily without any consultation with the workmen and as the respondent No.1 did not adopt a reasonable attitude to the legitimate concerns raised by the petitioners, the dispute was taken to conciliation by the Regional Labour Commissioner, vide letter dated 17.1.2016 whereafter the conciliation proceedings were held between the parties which did not result into any settlement and subsequent thereto, the reference was made vide order dated 22.12.2005 to the CGIT to the effect:

“ Whether the demand of the Union for withdrawing the new incentive scheme announced vide circular No.18/2005 dated 15.12.2005 is legal and justified? If not, to what relief of the workman entitled.”

which reference was answered by the CGIT in Industrial Disputes No. 195/2011 vide the impugned award dated 5.7.2016 published on 11.7.2016 to the effect that the demand of the Food Corporation of India Union for withdrawing the new incentive scheme announced vide circular No. 18/05 dated 15.12.2005 was neither legal nor justified under the law and that the workmen were not entitled to any relief particularly when liberty had been granted to the Food Corporation of

India i.e., the respondent No.1 under Clause (iv) of para 30 of the judgment of the High Court of Bombay, Nagpur Bench, in PIL No. 84/2014 vide judgment dated 20.11.2015.

4. Though the prayer clause in Writ Petition (C) No. 9260/2016, *inter alia*, seeks quashing of the award of the Industrial Tribunal, Delhi dated 23.7.2016 in Reference No. 195/2011 as well as circular No. 8/16 of the respondent dated 17.8.2016, apparently, the contents of the petition relate to the impugned award in ID No. 195/2011 of the Presiding Officer, CGIT-cum-Labour Court-I, Karkardooma, Delhi dated 5.7.2016 published on 11.7.2016.

5. During the pendency of the present petitions, circular No.1/2017 dated 17.1.2017 was also issued by the respondent No.1, in view of the award dated 5.7.2016 published on 11.7.2016 vide which circular No. 18/05 issued by the respondent No.1 became applicable w.e.f. 1.12.2005. Vide circulars dated 17.8.2016 and 17.1.2017 the respondent No.1 seeks to effect the recoveries of incentives, which had been given to the workers by the respondent No.1 in terms of the bipartite settlement dated 13.3.1999.

6. Vide order dated 13.12.2017 in Writ Petition (C) No. 8495/16 CM No. 44791/2017 filed on behalf of the petitioner thereof i.e., the Food Corporation of India Workers Union with the prayer seeking a stay of the operation of the circular dated 17.8.2016 issued by the respondent No.1 the Corporation, seeks thus a restraint against the respondent No.1 from initiating any recovery from the petitioners pursuant to the said circular dated 17.8.2016 directing recovery of the alleged excess incentives paid to the handling workers whilst

submitting, *inter alia*, to the effect that operation of the said circular had been stayed by the High Courts of Gujarat, Gauhati, Calcutta and Rajasthan at Jodhpur vide order dated 2.1.2017 of the High Court of Gujarat, orders dated 1.3.2017 and 3.8.2017, of the High Court Rajasthan at Jodhpur, order dated 2.7.2016 of the High Court of Gauhati and order dated 21.11.2017 of the High Court of Calcutta, operation of which restraint orders was not refuted by the respondent No.1, though it was submitted that pursuant to recommendations of the Committee that had been set up, the recoveries were sought to be effected in terms of circular dated 17.11.2017, i.e., circular No.1/17. Vide order dated 13.12.2017, taking into account the factum that the *lis* was pending pronouncement of judgment in which there was *inter alia* a prayer made by all the three petitioners also seeking a restraint against the respondent No.1 for effecting the circular dated 17.8.2016 till disposal of the writ petition, it was considered appropriate to allow the prayer made by the petitioners of W.P.(C) No. 8495/2016 restraining the respondent No.1 from making any recoveries of incentives pursuant to circular dated 17.8.2016 as well as in relation to circular No. 1/17 dated 17.1.2017 issued by the respondent No.1 from its workmen in the Delhi region with effect from the date of the order dated 13.11.2017 till pronouncement of judgment.

7. Vide order dated 23.10.2018, in view of CM No. 44270/2018 having been filed by the petitioner thereof in W.P.(C) No. 8495/2016, without any observations on the merits or demerits of the submissions that had been made in the application seeking to bring on record the subsequent events and developments which were to be considered at the

time of pronouncement of judgment, as the respondent No.1 was bound to adhere to the directions dated 13.12.2017 in CM No. 44791/2017, the respondent No.1 was further restrained from effecting any recoveries in terms of circular dated 17.8.2016 and circular no. 1/2017 dated 17.1.2017 in the Delhi Region, even in relation to those workers who had superannuated and respondent No.1 was also restrained from withholding release of the retiral benefits of the Food Corporation of India Workers in the Delhi Region in terms of the said circular till further orders.

8. Vide order dated 1.4.2019, on an application CM No. 13454/2019 filed by the respondent No.1 seeking clarification of the said orders dated 13.12.2017 and 23.10.2018 with a further prayer made by the respondent No.1 to the effect that the respondent No.1 be allowed to recover the amounts of excessive incentives paid to the retiring departmental labour between March, 2019 to July, 2019 and onwards and in the alternative, be permitted to deposit the withheld amount in Court, in view of the dismissal of the review petition vide order dated 26.3.2019 of the Hon'ble Supreme Court in SLP(C) No. 24799/2018 against the dismissal of the SLP(C) No. 24799/2018 on 5.10.2018 against the order of the Hon'ble Division Bench of the High Court of Patna, in as much as vide order dated 26.3.2019 qua the review petition, it was observed by the Hon'ble Supreme Court to the effect:

"O R D E R

"Delay of 30 days in preferring this review petition is condoned.

The decisions of the Single Judge as well as of the Division Bench of the High Court were affirmed by

this Court while dismissing special leave petition on 05.10.2018.

It is principally submitted in this review petition that some of the employees in category II drew more than Rs.1 lakh per month and therefore recovery of excess payment could not be considered harsh or arbitrary and that the ratio laid down in State of Punjab & Others v. Rafiq Masih (White Washer) & Others, (2015) 4 SCC 334 would not strictly be applicable.

This court heard both sides and after due consideration, the submissions of the petitioner were rejected.

We have gone through the contents of review petition and do not see any reason to interfere in the matter. This review petition is dismissed.”

9. Despite the submissions made on behalf of the respondent No.1, by the learned Additional Solicitor General, that there was a difference in the proceedings before the Hon'ble High Courts of Patna and Chhattisgarh, Bilaspur, and this Court in as much as the award of learned CGIT was not under challenge before the said High Courts and that the award was in favour of the respondent No.1 and is *sub judice* before this Court and the matters before the High Courts of Patna and Chhattisgarh related only to the recovery to be effected of excessive incentives paid to the workmen, vide order dated 1.4.2019, CM No. 13454/2019 was declined by this Court observing to the effect that for maintenance of judicial comity, it was not considered appropriate to consider the prayer made by the respondent No.1 seeking modification/clarification of order dated 13.12.2017 and 23.10.2018 of this Court not to permit the respondent No.1 to withhold or deposit in

Court the excess amount qua incentives of retiring employees in the present petition.

10. It is also essential to observe that in Writ Petition (C) No. 9260/2016 filed by the Food Corporation of India Handling Workers Union against the respondent No.1, i.e., the Food Corporation of India, vide order dated 6.2.2018 in CM No. 3868/2018 filed by the petitioner/applicant thereof also seeking a restraint against the respondent from initiating any recoveries from the petitioners thereof pursuant to the circular No.8/16 dated 17.8.2016 qua members of the petitioners' union at all India Level pending pronouncement of judgment, in view of the order dated 13.12.2017 in CM No. 44791/2017 in W.P.(C) No. 8495/2016 as aforementioned, the prayer made by the petitioners seeking a restraint from any recovery of incentives paid pursuant to circular dated 17.8.2016 issued by the respondent No.1 and also in relation to circular No. 1/17 dated 17.1.2017 issued by the respondent No.1 from the workmen from the Delhi Region till the date of pronouncement of judgment w.e.f. 6.2.2018 was granted. The said order dated 6.2.2018 of this Court in WP(C) No. 9260/2016 was assailed by the petitioner thereof in LPA 77/2018 and vide judgment dated 22.3.2018 of the Hon'ble Division Bench of this Court, the said appeal was dismissed.

11. Vide order dated 18.5.2017 in all the three petitions it was observed to the effect that as through the proceedings on the record, it appeared that most of the submissions and documents have been placed on the record of W.P.(C) No. 8495/2016, the same was directed to be treated as the lead case.

12. Vide the judgment of the Hon'ble High Court of Bombay, Nagpur Bench, in PIL 84/2014 in case titled as "***Court on its Own Motion v. Union of India & Ors,***" in which the respondent No.1 herein was represented through respondent No.3 its Chairman and Managing Director, Executive Director, Western Zone, General Manager, Maharashtra, Area Manager- Nagpur, it was *inter alia* observed vide para 1 thereof to the effect :

1. One of the learned Judges of this Court noticed a Newspaper item in the daily "The Times of India", wherein it was reported that, in the depots run by the Food Corporation of India (hereinafter referred to as "the Corporation"), some of the departmental loaders were earning as much as ' 4,00,000/- p.m. The News item also reflected abuse of Government funds, inefficiency and reluctance on the part of the Authorities to act sternly against various persons who have indulged in siphoning of the Government funds. It was also reported that some of the loaders of the Corporation clandestinely engage the services of other persons by paying paltry amount to them, when under the incentives Scheme they are getting huge amount from the Food Corporation of India. It was also alleged that this was done in collusion with the Officers of the Corporation. The learned Judge of this Court, therefore, directed the said News item to be treated as a 'Public Interest Litigation'. Accordingly, the present P.I.L. has been registered. Taking into consideration importance of the matter, we requested Mr. S.P. Bhandarkar, learned Counsel to assist us as an amicus curiae. Mr. Bhandarkar graciously accepted our request and with great labour and research, has assisted us in the present petition. ",

and vide para 9(c) thereof to the effect :

“9.C) Though size of the sacks which was originally 95 kg and below has been now reduced to 50 kg. and below and the incentive which was earlier payable at a higher rate is sought to be reduced, the same cannot be implemented on account of departmental labourers approaching the Industrial Courts.”,

which is germane to the present issue, after taking into account a report of the High-level Committee set up by the Government of India, Ministry of Commerce, Affairs, Food & Public Distribution, Department of Food and Public Distribution, New Delhi, which had been set up for removal of functionary causing inefficiency in the Food Corporation of India and for efficient management of food grains and saving costs, it was observed vide para 20 thereof to the effect:

“ 20. We make it clear that we do not intend to pass any order which will have any effect on the service conditions of the departmental labourers employed by the respondent/Corporation. However, it is to be noted that High Level Committee itself has recommended discontinuing practice of departmental labourers. The High Level Committee has noticed that there were about 370 labourers in the respondent/Corporation who had got salaries of more than Rs. Four Lacs per months. The Committee has, therefore, recommended that they should be offered suitable VRS and this cadre be gradually phased out. The Committee has also recommended that there should be a cap on the incentive system, whereby no labourer is allowed to work more than 1.25 times the daily work. It is worth mentioning here that, by now it is a settled law that the incentive does not amount to a condition of service and is an additional payment to be made to an employee in

addition to the salary and wages payable to him as per the service conditions.”

13. Vide para 28 of the said verdict, it was observed by the Hon’ble High Court of Bombay to the effect:

“ 28. We further also fail to understand as to why the Food Corporation of India should not be in a position to change the amount of incentives to be paid to me departmental labourers per sack. When the size of the sacks has been reduced from 95 kg and below to 50 kg and below, there is no reason as to why there should not be proportionate reduction in the amount of incentives paid per sack.” ,

and thereupon directed as under:

“ 29. In that view of the matter, we find that it will be in the interest of justice to issue certain directions to the respondent/Corporation as well as the Union of India so as to ensure that huge amount of public exchequer is not wasted and can be utilized for better purposes.

30. In that view of the matter, we dispose of the present Public Interest Litigation by passing the following order.

(i) The Government of India is directed to decide the representation made by the Food Corporation of India for grant of exemption under the provisions of Section 31 of the said Act within a period of one month from today, in the light of observations made by us hereinabove within a period of one month from today.

(ii) The Government of India shall decide the issue regarding denotification of the depots of the food corporation of India, in respect of which notification is issued u/s 10 of the said Act, within a period of six months from today, in the light of observations made by us hereinabove and the report of M/s.Deloitt Cosnsultancy and the report of

High Level Committee appointed by the Government of India itself.

(iii) We clarify that the respondent/Food Corporation of India would be entitled to transfer the services of departmental labourers from one depot to another subject to protecting their salary and all other service conditions.

(iv) We also clarify that the respondent/Corporation would be at liberty to implement its policy of change in the Scheme of incentives.

(v) The Government of India shall also take a decision regarding abolition of system of departmental labourers in a phased manner or absorbing their services in other establishments as recommended by the High Level Committee.”

14. Vide order dated 31.7.2017 in SLP (C) No. 19218/2016, 19219/2016 and 19220/2016 filed by the Food Corporation of India Workers Union assailing the said judgment of the Hon’ble High Court of Bombay the petitioner of the Writ Petition (C) No.8495/2016, in PIL 84/2015, the said SLPs filed by the Food Corporation of India Shramik Union, who are the petitioners of W.P.(C) No. 9412/16 before this Court and by the Union of the Food Corporation of India Handling Workers Union, who are the petitioners in W.P.(C) No. 3960/16 before this Court, the writ petitions filed challenging the order of the Hon’ble High Court Bombay dated 20.11.2015 were dismissed. However, while so dismissing, it was observed by the Hon’ble Supreme Court to the effect:

“ 1.We do not see any merit in these special leave petitions, which are hereby dismissed. We make it clear that this order shall not prevent the petitioners – Food Corporation of India Workers Union/ Food Corporation of India Shramik Union/ FCI Handling Workers Union, to challenge any order, passed in furtherance of

the directions issued in the impugned order (dated 20.11.2015), in appropriate proceedings before an appropriate Court.

2. In case, such a challenge is raised by the petitioner (s), in continuation of the liberty granted to the petitioner (s), the claim raised by the petitioner (s) shall be considered in accordance with law, uninfluenced by any observations made by the High Court in the impugned order (dated 20.11.2015)."

15. The present petitioners have even submitted that it is pursuant to the order dated 20.11.2015 of the Hon'ble High Court of Bombay, Nagpur Bench, that the award dated 5.7.2016 published on 11.7.2016 in ID No. 195/11 has been passed by the learned CGIT-cum- Labour Court-I, Karkardooma and that it is pursuant thereto that the circulars dated 15.12.2015, 17.12.2016, 17.8.2016 have been issued by the respondent No.1 to the detriment of the petitioners. The petitioners have thus submitted that the workmen were handling the bags i.e. below 66 kg and above 66 kg in terms of the bipartite settlement dated 13.3.1999 till the year 2005 which also continued during the adjudication before the CGIT till its adjudication in 2016.

16. The petitioners have submitted that the Food Corporation of India on 15.12.2005 unanimously came with a revised rate incentive scheme superceding the earlier scheme settled between the workmen and the respondent No.1 vide the bipartite settlement agreement dated 13.3.1999. It has been contended on behalf of the petitioners that the settlement arrived at on 13.3.1999 between the workmen and respondent No.1 reached at is a complete composite whole of the working conditions which goes to the root of the working conditions and cannot be looked at in piecemeal, disjointed from the working

conditions and that the incentive is as much a core component of working conditions as the basic wages and that in a given negotiation between the parties, the basic wage may have been agreed to be based on incentives that were to be granted as a composite whole.

17. It has also been submitted on behalf of the petitioners that the settlement dated 13.3.1999, itself took into account the aspect of the incentives as being part of the overall settlement of wages and even if the incentive is considered to be a bonus, a bonus itself forms part of the wages and thus it is sought to be submitted on behalf of the petitioners that there could have been no change of the terms of employment of the petitioners by the respondent No.1 by issuance of the circular dated 5.12.2005 in as much as by the said circular there has been a substantial modification in the working conditions of the petitioners.

18. It has also been submitted on behalf of the petitioners that the settlement dated 13.03.1999 which provided for the payment of incentives for loading/unloading of bags of food grains has never been terminated and that the circular 18/05 dated 15.12.2005 as issued by the respondent proposed to change the terms of the incentive scheme so as to adversely effect the workmen. It has been submitted on behalf of the petitioners in Writ Petition (C) 9260/16 vide their written submissions that on the opposition of the workmen to this adverse change of incentive scheme, the matter having been so taken up by the Labour Commissioner for Conciliation under Section 12 of the Industrial Disputes Act, 1947 in accordance with Section 33 of the enactment, the change in the service condition was kept in abeyance vide a circular

no.5/06 dated 20.02.2006 issued by the FCI/ respondent. *Inter alia* it was submitted on behalf of the petitioners that there is no reference to the settlement dated 13.03.1999 in the judgment of the Hon'ble High Court of Bombay nor to the circular dated 15.12.2005 issued by the FCI. It has also been submitted on behalf of the petitioners that the learned CGIT has passed the impugned award without application of mind to the settlement in force and the proposed changes brought about by the circular dated 15.12.2005.

19. *Inter alia* it has been submitted that the award cannot be implemented retrospectively, unless it says so expressly and that furthermore, the FCI had not required the Tribunal to make the award retrospective. It has also been submitted on behalf of the petitioner that the settlement remained in force and had never been terminated and continued to operate even at the time of the adjudication by the Tribunal. *Inter alia* it has been submitted on behalf of the petitioners that the impugned award also does not adjudicate as to how the shift from the norm of 105 bags to 135 bags was justified and further submits that there has been a repeated submission made on behalf of the respondent that the settlement dated 13.03.1999 is legally valid and operative even after the making of the award and that the said submission is fundamentally destructive of the case of the respondent, in as much as the payment of incentives made and now sought to be recovered have been made in accordance with the said settlement and if the same is valid and operative, then no deduction can be made from the salaries of the workers. *Inter alia* it has been submitted on behalf of the petitioners that in view of the stand of the FCI i.e. the respondent

that the settlement dated 13.03.1999 is still in force notwithstanding the award, the petitioners seek that the award be quashed, that the recoveries sought to be made be quashed and that a remand should be made to the Tribunal and liberty may be granted to the FCI to raise a dispute under Section 10 of the Industrial Disputes Act, 1947, to alter the incentive schemes and to make the FCI circular dated 15.12.2005 operative to replace the incentive scheme which forms the part of the settlement dated 13.03.1999, only after termination of settlement under Section 19(2) of the Industrial Disputes Act, 1947. It has been submitted further on behalf of the petitioners that the settlement dated 13.03.1999 includes a chart relating to the norms of bags below 66 Kgs and a 50 Kg bag falls within the category of bags below 66 Kgs and if the settlement continues to be valid and operative, the norm of 105 bags to 135 bags, would apply.

20. It has also been submitted on behalf of the petitioner that the deductions ordered by the FCI vide the circular dated 17.08.2016 are illegal and unjust and that if the deductions were made in terms thereof, it would result to Rs.15,00,000/- per worker being recovered. *Inter alia* it has been submitted on behalf of the petitioners that in as much as the award cannot be made retrospectively applicable as in terms of Section 17A(1) of the Industrial Disputes Act, 1947 and in terms of Section 17 (4)(a) of the said enactment, the operation thereof is to come into effect from the date of mentioned in the award but where no date has been specified in the award, it shall come into operation on the date when the award becomes enforceable under Section 17 A(1) and the proviso thereto.

21. The petitioners have thus, sought that the impugned award be quashed and the amounts deducted by the FCI directed to be returned by the FCI to raise a dispute for the implementation of the impugned circular 18/05 but only after the FCI terminates the existing settlement dated 13.03.1999 under Section 19(2) of the Industrial Disputes Act, 1947.

22. The FCI through its written submissions as submitted in W.P.(C)9260/16, submitted that the present case relates only to the incentive scheme, which is applicable to departmental labour and that the handling operations were being carried out in bags of 95 Kgs and 66 Kgs till the year 2000 where a new category of bags of 50 Kgs was introduced as per the recommendation of the International Labour Organisation and related instructions issued by the Government of India and since a new category of bags of 50 Kgs had been introduced, the incentive rates needed to be prescribed for the said new category of 50 Kgs bags and that the corporation entrusted the study for the data of the new category of bags of 50 Kgs to the Delhi Productivity Council and that the Delhi Productivity Council studied the matter elaborately keeping in view all the aspects including time and motion study, health of labourers and recommended 155 bags of 50 Kgs as the datum for the category of 50 bags, but that the Labour Unions did not agree to the said datum and that the Saxena Committee was constituted to look into several aspects including the datum of further new category of bags and a report was submitted by the Saxena Committee which included the recommendation for fixing a datum of 135 bags for 50 Kgs. The respondents have submitted that the said Saxena Committee's report

was circulated to the Unions and in fact the FCI Workers Union had written to the Respondent Corporation requesting for the implementation of the Saxena Committee's Report regarding recommendations made in relation to some other aspects.

23. *Inter alia* the respondent has submitted that the learned CGIT had held vide the impugned award that there was no violation of Section 9A of the Industrial Disputes Act, 1947 nor of Section 19(2) of the said enactment. The respondent further categorically denied that the impugned award suffered from non application of mind or that it gave no independent reasons and had merely followed the verdict of the Hon'ble High Court of Bombay, Nagpur Bench. *Inter alia* the respondent has submitted that the verdict of the Hon'ble High Court of Bombay at Nagpur dated 20.11.2015 has been followed by the Hon'ble High Courts of Madras, Allahabad and Bombay.

24. *Inter alia* it was submitted on behalf of the respondent no.1 that the contention raised by the petitioners that the CGIT had not applied its mind and had given no independent reasons and merely followed the judgment of the Hon'ble High Court of Bombay, Nagpur Bench was erroneous as per record in as much as the Tribunal had considered all contentions and the evidence and the judgment relied upon by specifically holding that:-

“(i) Section 9A of the I.D. Act has not been violated (para 25); (ii) Production, bonus or incentive is not part of basic wage (para 27); (iii) Night Shift Allowance is not part of basic wage; (para 28 referring to the judgment in the case of Bharat Electronics); (iv) bags of 50 kgs were not in existence at the time of 1999 settlement and union's witness Shri Pramod Nayak had admitted to the said fact; (v) that only bags of 95 kgs and 66 kgs

were in existence at the time of settlement of 13.3.1999; (vi) that Section 19(2) of the ID Act has not been violated because the settlement of 13.3.1999 is still in place and the said settlement was not revoked or rescinded (para 31); (vii) the question as to whether incentive is a part of basic wage is not a question referred to the Tribunal (para 31); (viii) the only question referred is as to whether the demand of the union is legal or justified; (ix) the concept of the conditions of service in Section 33 of the ID Act is very wide (para 32, 33); (x) since settlement of 1999 is still in operation, the contention that circular dated 15.12.2005 had changed condition of service is wrong and cannot be accepted (para 34); (xi) demand of the union for withdrawal of the circular dated 15.12.2005 is not justified in view of the fact that the said circular was issued in pursuance of Saxena Committee Report and also in view of the recommendations of the International Labour Organization, High Level Committee and M/s. Deloitte Consultancy(para 35), (xii) direction No. (iv) Circular of 2005 does not amount to change in conditions of service (para 34). In other words, the observations of the Nagpur Bench of the Bombay High. Court would also show that there is no justification for the demand of the union to withdraw the circular dated 15.12.2005 (para 35); (xiii) Government and FCI are entitled to take a policy decision regarding norms to be followed in loading and unloading operations (in para 36).”

25. *Inter alia* it was submitted on behalf of the respondents that the contention raised on behalf of the petitioner that the impugned award cannot have retrospective effect since the Tribunal had not stated so, was misconceived and that in the instant case, the Tribunal had not given any such direction that the impugned award would be prospective in nature and rather the Tribunal had only declared that the demand of the Union was neither justified nor legal and that the petitioners were not entitled to any relief and thus confined itself to the reference. It has

been submitted on behalf of the petitioner that the Circular dated 15.12.2005 had always been implemented and the question of validity of the circular and otherwise of the Circular did not arise and as the reference was limited to the justification of the demand of the Union, the question of validity of the Circular or the continuance of the settlement was never in question and that the Circular No.18/2005 was implementable from the date of issuance and that the Corporation had operated the Circular for sometime and thereafter, kept the same in abeyance in view of automatic operation of Section 33(i)(a) of the Industrial Disputes Act, 1947, which operated on the employer i.e. the respondent no.1 and that the status quo got lifted as the proceedings were over.

26. It was submitted on behalf of the respondents that the only option before it was to file an application under Section 33 of the Industrial Disputes Act, 1947 seeking permission to implement the Circular dated 15.12.2005, which application was so filed by the respondent, which was registered as ID No.239/2011 under Section 33 of the Industrial Disputes Act, 1947 before the Tribunal and that the petitioner had sought permission to implement the circular with its written statement and that the learned CGIT had disposed off the said application under Section 33 of the Industrial Disputes Act, 1947 on 07.10.2016 and that the Award had been given on the reference on 05.07.2016 and that the said order dated 07.10.2016 of the learned CGIT-cum-Labour Court in ID No.239/2011 indicates that the application under Section 33 of the Industrial Disputes Act for implementation of Circular No.18/2005 dated 15.12.2005, was disposed of by the learned CGIT observing to

the effect that since the issues involved in the said application were directly connected with the findings rendered by the Tribunal in ID No.195/2011, the applicant/management can be permitted to implement Circular No.18/2005 dated 15.12.2005 as the demand of the Union regarding the non-implementation of the said circular had already been held to be neither legal nor justified under law, the learned CGIT vide order dated 07.10.2016 held that the Government of India as well as FCI can implement the said Circular No.18/2005 dated 15.12.2005 and the said award dated 07.10.2016 was directed to be sent to the appropriate Government as required in terms of Section 17 of the Industrial Disputes Act, 1947 for publication.

27. It was further submitted on behalf of respondents that since the embargo imposed vide Section 33 of the Industrial Disputes Act, 1947 had ceased to exist, the Corporation/ respondent no.1 was free to implement the circular and make recoveries of undue payments drawn by the workmen and that the workmen had notice and knowledge of undue payments as incentive being received by them due to operation of Section 33 of the Industrial Disputes Act, 1947.

28. *Inter alia* it was submitted on behalf of the respondent that the contention of the petitioner that the settlement had been replaced by the award of the Tribunal was erroneous in as much as the settlement dated 13.03.1999 had several other aspects in addition to the Incentive Scheme and that the award of the Tribunal does not modify the terms of the settlement and does not specify any condition to be followed and that the award only declares that the demand of the Union was not justified and that award cannot replace any settlement or any circular.

It has been therefore submitted on behalf of the respondent that the validity of continuance of the settlement was not in question before the Tribunal.

29. *Inter alia* it has been submitted on behalf of the respondent that the contention raised on behalf of the petitioner that the incentive is a part of the wage is not tenable and it is contended that it has been laid down by the Hon'ble Supreme Court in ***Manipal Academy of Higher Education Vs. Provident Fund Commissioner; (2008) 5 SCC 428*** to the effect; (i) that Production above the norm leads to production bonus (ii) Incentive wage paid in respect of extra work done is to be excluded from 'Basic Wages' as they have direct nexus and linkage with the amount of extra output (iii) wages cannot be based on different contingencies and uncertainties and has to be of universal application (iv) leave encashment cannot be included in as a part of wages. It has been submitted further that incentives payable in the present case are production linked.

30. *Inter alia* it was submitted on behalf of the respondent that the Corporation only seeks to recover the unearned amount drawn by the workmen towards incentives and that the workmen during the period in question had withdrawn incentive amounts to which they were not entitled and that the question of payment of incentives arose only after a workman handles bags in excess of the minimum number of bags as per norm or datum and that the workmen would have been entitled to draw incentives after handling 135 bags of 50 kgs but they had drawn the incentive after handling 105 bags of 50 kgs and thus incentives drawn by the workmen for 30 bags was unearned and the payment was in the nature for work not done but rather it was not a case of higher/

lower payment but it was a case of payment for work not done and that the total amount of recovery is around Rs.1500 crores, which is a direct loss to the public exchequer. It was also submitted on behalf of the respondent that it is not a case for the recovery of excess salary or allowances to which the workmen are entitled and that the regular payments (salary and allowances) are made to the workmen and the recovery sought to be made is not in relation to any excess salary or allowances paid to the workmen but is in relation the incentives paid to the workmen which were over and above the regular salary and allowances paid to them and that even now several workmen earn huge amounts towards incentive.

31. *Inter alia* it was submitted on behalf of the respondent that several developments had taken place during the proceedings of writ petition pending before this Court which culminated in the issuance of Circular dated 17.01.2017, which has not been challenged and that the FCI Workers Union made a representation against the Circular dated 08.07.2016 and the Corporation constituted a committee to look into the issues involved and on the direction of this Court, the same was filed as placed in Writ Petition (C) 8495/2016 and that the Corporation also filed in this Court the manner in which the recovery was to be made clearly stating that the recovery was to be made strictly in terms of Section 7 of the Payment of Wages Act and that the Corporation also filed an application seeking directions from this Court regarding withholding of gratuity and the employees contribution towards GPF till the concerned workmen returned the excess amount paid to them and that the Managing Director or the specified Competent Authority

under Regulation 27 of the FCI Contributory Provident Fund Regulations is competent to make deduction of any amount due under a liability incurred by the member of the Corporation and that similar Regulations were framed by ONGC for the subject matter in a case ***Secretary, ONGC Ltd. & Anr. Versus V.U. Warriar; (2005) 5 SCC 245*** in which the Hon'ble Supreme Court upheld the validity of the said regulations in the case.

32. *Inter alia* it was contended on behalf of the respondent that the contention raised on behalf of the petitioner regarding the violation of Section 9 (A) and 19(2) of the Industrial Disputes Act, 1947 were apparently given up during arguments in as much as it has been submitted on behalf of the petitioners that the issuance of circular was not a unilateral action on behalf of the management.

33. It was contended on behalf of the respondent that the contention of the Union that the words "Below 66kgs" would include 50 kgs is wrong in as much as the bags to be handled predominantly are of foodgrains namely paddy rice, wheat etc. and that the weight of bags cannot be prescribed accurately and that it is not possible to have bags of fixed weight as the weight is subject to variable conditions like moisture, rodents, insects, pilferage, defective stitching, etc., which causes losses and as such, a margin has to be kept while prescribing the weight of the bags and that in fact, the weight of the bag itself (tare weight) is variable depending on the strength and texture of the bag and that driage (loss of moisture) also causes loss of weight by 0.5 % and as such, the weight of the bag is prescribed with a margin, which had to be understood in given circumstances like duration of storage, condition of

storage, climatic conditions etc. and that the words “Below 66 kgs” cannot mean 50 kgs. It has further been submitted on behalf of the petitioner that no such issue was framed and no evidence was led and that the petitioners are estopped from raising such question and that an interpretation has to be reasonable with reference to the context and cannot be in absolute and untenable terms of meaning that “Below 66 kgs” would mean even “1kg” or less.

34. *Inter alia* it has been submitted on behalf of the respondent that the contention raised on behalf of the FCI Handling Workers Union that since the settlement continues to be in force as per Corporation's stand, the datum stated in the settlement will apply to 50 kg bags also and since 50 kg bags were not in existence at the time of signing of the settlement dated 13.30.1999 and the Tribunal recorded the admission of Union's witness in this regard and that later in the year 2000 the new category of 50 kg bags was introduced and therefore, it became necessary to issue circular dated 15.12.2005 prescribing datum for 50 kg bags and the said circular made it clear that the datum as per settlement would continue for heavier bags and that as such, the continuance of settlement covers the heavier bags and not the 50 kg bags.

35. *Inter alia* it was submitted on behalf of the respondent that the award is well reasoned and suffers from no illegality and warrants no interference in the same by exercising of powers under Article 227 of the Constitution and that whilst exercising powers under Article 227 of the Constitution of India, this Court cannot act as an Appellate Court nor can it appreciate the evidence and record its findings on the

contentious points and that there is no serious error of law nor did the findings recorded suffer from error apparent on the record nor is the award beyond the jurisdiction of the learned CGIT. Reliance has thus been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Iswarlal Mohanlal Thakkar vs. Pashim Gujarat Vij Co. Ltd. & Anr. (2014) 6 SCC 434*** and on the verdict of the Hon'ble Supreme Court in ***Syed Yakoob vs. K.S. Radha Krishan & Ors. AIR 1964 SC 477.***

36. The respondent thus sought the dismissal of the petitions and sought that the award dated 05.07.2016 of the learned CGIT be upheld and the respondent be permitted to recover the excess amount paid towards incentives as proposed.

37. A catena of verdicts has been relied upon on behalf of either side.

38. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. DJ Bahadur and Anr. and Chandrashekhhar Bose and Ors. Vs. Union of India and Ors. (1981) 1 SCC 315*** to contend that a settlement dated 13.03.1999 continued to exist and to contend that even if a notice had been issued by the respondent, which it has been submitted on behalf of the petitioners was not issued under Section 19 (2) of the Industrial Disputes Act, 1947 to terminate the settlement dated 13.03.1999, the settlement did not cease to operate on the expiry of two months from the date of the notice in as much as the terms of the settlement continue to govern the relations between the parties even after the notice of the termination or expiry of two months thereafter in as much as there was no settlement arrived at between the parties, until the settlement be

replaced by a valid contract or an award and reliance in relation thereto was placed on the observations in paras 42, 43 & 44 of the said verdict which read to the effect:

“42. Again, a Bench of four Judges in the Indian oil Corporation case MANU/SC/0365/1975 : (1975)IILL J319SC reiterated the same principle in the context of Section 9A of the I.D. Act although the court did not specifically advert to Chacko's case (supra). In the Indian Oil Corporation case the question turned on . the management seeking to effect changes in the service conditions of the workmen. The Court made observations which have pertinence to the non-extinguishment of the contract of service until a negotiated or adjudicated substitution comes into being. Fazal Ali, J. speaking for the bench observed: MANU/SC/0365/1975 : (1975)IILLJ319SC .

*In the circumstances, therefore, Section 9A of the Act was clearly applicable and the non-compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give jurisdiction to the tribunal to give the award. **If the appellant wanted to withdraw the Assam Compensatory Allowance it should have given notice to the workmen, negotiated the matter with them and arrived at some settlement instead of withdrawing the compensatory allowance overnight.**”* (emphasis added)

This ruling shows (a) that unilateral variation by the management is an exercise in futility, and (b) an award or settlement must take the place of the contract sought to be varied. We have a similar situation in the present case vis a vis the notice under Section 9A and the ruling in the Indian Oil case (supra) is a helpful guide.

43. A passing reference was made to a possible difference between an award and a settlement when it comes to termination of the terms. We have indicated already that a closer study of the scheme of the ID Act shows the distinction, if any, to be no more than between Tweedledum and

Tweedledee. A Division Bench of the Bombay High Court had occasion to examine the effect of a notice under Section 19(2) of the I.D. Act in terminating a settlement and that ruling deserves special mention because it deals with the survival beyond the two-months notice of termination of a settlement (not an award). Tarkunde J, speaking for the Bench and following Chacko's case MANU/SC/0175/1963 : (1964)ILL J19SC (supra) observed in the context of notice to terminate the settlement under Section 19(2): Maruti Mahipati Mullick v. Poison Ltd. 1970 Lab IC 308 (Bom).

*Even if a notice of its intention to terminate the settlement was given by either party, the settlement did not automatically cease to be operative on the expiry of two months from the date of the notice. The legal position is that the terms of a settlement continue to govern the relations between the parties after the notice of termination and the expiry of two months thereafter, **until the settlement is replaced by a valid contract or award between the parties**. This was laid down by the Supreme Court in **South Indian Bank Ltd. v. Chacko** MANU/SC/0175/1963 : (1964)ILL J19SC , while dealing with the binding effect of an award under the provisions contained in Sub-section (6) of Section 19 of the Industrial Disputes Act.' The Authority in the present case was, therefore, not justified in rejecting the workmen's application on the ground that the settlement on which the workmen relied had ceased to be operative. **(emphasis added)**.*

44. A precedent, as Disraeli said, embalms a principle. We have pointed out the principle and cited the precedents. There is more to it than mere wealth of precedents or what Burke called the deep slumber of a decided opinion'. It enlivens industrial peace, avoids labour discontent and helps to set the stage for next negotiations for better terms for workers. Economic freedom of the weaker sections is behind these precedents almost reminding us of Tennyson:

*A land of settled government,
A land of just and old renown,
Where freedom slowly broadens down*

From precedent to precedent.

The law is lucid and the justice manifest on termination notice or notice of change the award or settlement does not perish but survives to bind until reincarnation, in any modified form, in a fresh regulation of conditions of service by a settlement or award. Precedents often broadly guide but when on the same point willy-nilly bind. So here, even if I would, I could not and even if I could, I would not depart from the wisdom in Chacko's case (supra) with consistent case-flow before and after. An aching void, an abhorrent vacuum, a legicidal situation of industrial clash cannot be a judicial bonus when the constitutional command is social justice."

It cannot however, be overlooked that this very verdict lays down that the Industrial Disputes Act, 1947 substantially clothes an award and a settlement with the same legal force.

Reliance was also placed on the observations in paras 34, 35 & 36 of the said verdict, which read to the effect:

"34. The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non-est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under Section 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination under Section 19(2) or (6) the sequence and

consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end-order in society- can it commit functional harakiri by leaving a conflict situation to lawless void ?

35. Now we will move on to the precedents on the point which have been summed up by thus Malhotra, The Law of Industrial Disputes, 2nd Edn. Vol. I. p. 656:

(3) Effect of termination of award under Section 19(6) on rights and obligations of parties.- *Termination of an award by either party under Section 19(6) does not have the effect of extinguishing the rights flowing therefrom. The effect of termination of an award is only to prevent thereafter the enforcement of the obligation under it in the manner prescribed, but the rights and obligations which flow from it are not wiped out. Evidently, by the termination of an award, the contract of employment is not terminated. The obligations created by the award or contract could be altered by a fresh adjudication or fresh contract. Workmen of New Elphinstone Theatre v. New*

Elphinstone Theatre, (1961) 1 Lab L J 105 *Mangaldas Narandas v. Payment of Wages Authority* (1957) 2 Lab L J 256 *Yamuna Mills Co. Ltd. v. Majoor Mahajan Mandal*. MANU/MH/0024/1958 : (1957)ILLJ620Bom .

36. In ***Judhisthir Chandra v. P.R. Mukherjee*** MANU/WB/0218/1950 : AIR1950Cal577 the position as stated above was accepted as correct by the High Court. A Division Bench of the Bombay High Court in *Mangaldas Narandas v. Payment of Wages Authority etc.* (1957) 2 Lab L J 256 (Shah and Gokhale JJ.) came to the same conclusion and neatly summed up the sequence of triple stages and the difference in legal consequences, and upholding the contention that **even after termination of an award under Section 19(6) the terms incorporated in the award continued as a contract between the parties**. So much so, no reversion to the pre-award position was permissible on the part of the employer. The head-note which is sufficiently lucid and luminous, sums up the ratio thus:

Where an award is delivered by the industrial tribunal it has the effect of imposing a statutory contract governing the relations of the employer and the employee. It is true that statutory contract may be terminated in the manner prescribed by Section 19(6) of the Industrial Disputes Act, After the statutory contract is terminated by notice, the employer by failing to abide by the terms of the award does not incur the penalties provided by the Industrial Dispute;; Act, nor could the award be enforced in the manner prescribed by Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950. But the termination of the award has not the effect of extinguishing the rights flowing therefrom. Evidently by the termination of the award the contract of employment is not terminated. The employer and the employee remain master and servant in the industry in which they are employed, unions by notice the employer has also simultaneously with the termination of the award

terminated the employment of the employee. If the employment is not terminated, it is difficult to hold that the rights which had been granted under the award automatically cease to be effective from the date on which notice of termination of the award becomes effective. The effect of termination of the award is only to prevent enforcement of the obligations under the award in the manner prescribed, but the rights and obligations which flow from the award are not wiped out. Termination of the award or lapsing of the award has not the effect of wiping out the liabilities flowing under the award.

*An award has the effect of imposing fresh terms upon the contract of employment between the employer and the employee to which they have been assented. **The termination of such award does not terminate the contract, Even after the award is terminated in the manner provided by Section 19(6) of the Industrial Disputes Act, the obligation created by the award could be altered by a fresh contract or a fresh adjudication under the Industrial Disputes Act, and not otherwise.***

The Industrial Disputes Act has been enacted with the object of securing harmonious relations in the working of the Industry between the employer and the employees by providing a machinery for adjudication of disputes between them; and the object of the legislature would be frustrated if after every few months by unilateral action the employer or the employees may be entitled to reopen the dispute and ignore the obligations declared to be binding by the process of adjudication.”
(emphasis added)

39. On behalf of the petitioner reliance was placed on the verdict of the Hon'ble Supreme Court in *Syed Abdul Qadir and Ors. Vs. State of Bihar & Ors. (2009) 3 SCC 475* to contend that inquiry whilst

exercising judicial discretion, if the excess amount of payment made to any employee is not on account of any misrepresentation or fraud on behalf of the employee, no recoveries of payments made to the employee can be made. Specific reliance was placed on the observations in para 57 & 58 of the said verdict which read to the effect:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.”

40. Reliance was also placed on behalf of the petitioners on the verdict of the Hon’ble Supreme Court in ***Sahib Ram Vs. State of***

Haryana and Ors. 1995 Supp (1) SCC 18 to similar effect to contend that since there has been no representation on behalf of the petitioners/ the workmen, the grant of higher incentives by the respondents to the petitioners is not due to any fault of the petitioners and thus there can be no recovery effected from them.

41. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334*** wherein it has been summarized that recoveries from employees by employers would be impermissible in law in the following situations:-

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

and it has thus been submitted on behalf of the petitioners whilst also placing reliance on the observations in para 16 of the said verdict which read to the effect:

“16. This Court in Syed Abdul Qadir v. State of Bihar (supra) held as follows:

*“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter- affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. **The learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”** (emphasis supplied)*

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of

excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation."

to submit that recoveries of stated excessive incentives paid to the petitioners cannot and ought not to be permitted to be effected.

42. Reliance was also placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in ***Shyam Babu Verma and Ors. Vs. Union of India and Ors. (1994) 2 SCC 521*** also to contend to similar effect that recoveries ought not to be effected qua the stated excessive incentives paid to the petitioners in as much as there was no fault of the petitioners in receiving the same and that the petitioners in

no way were responsible for the same. Specific reliance was placed on the observations in para 11 of the said verdict which read to the effect:

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to 1 (1993) 1 SCC 539: 1993 SCC (L&S) 221: (1993) 23 ATC 657 the fault of the respondents, the petitioners being in no way responsible for the same.”

43. Reliance was also placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in ***B. Radhakrishnan and Ors. Vs. The State of Tamil Nadu and Ors.*** 2015 XII AD (SC) 512 to contend to similar effect that in as much as there was no fault of the petitioners nor have they misrepresented any fact nor indulged in any kind of illegality in securing the stated excessive incentives, there can be no recoveries of the same effected from the petitioners.

44. Reliance was also placed on behalf of the petitioner on the verdict of the Hon’ble High Court of Patna in Civil Writ Jurisdiction Case Nos.1330/2018 titled as ***Bhim Paswan Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director***, 5307/2018 titled as ***Kishori Paswan Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director***, 5348/2018 titled as ***Sunil Kumar Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director***, 5639/2018 titled as ***Md. Mojibul Rahman Vs. The Food Corporation of India Thr. Its Chairman cum Managing***

Director, 5649/2018 titled as *Upendra Mahto Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director*, 5655/2018 titled as *Dayanand Ray Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director*, 5686/2018 titled as *Ashok Kumar Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director*, 6072/2018 titled as *Ram Ratan Prasad Yadav Vs. The Food Corporation of India Thr. Its Chairman cum Managing Director* wherein in relation to the Circular No.18/2008 itself, which is in question in the present petition, it was observed vide paras 16, 17, 18, 19 & 20 which read to the effect:

“16. It would be pertinent to note that while passing the award, the Tribunal has not ordered for recovery of excess wage incentive from the workers paid for handling bags since 01.12.2005. The issue was not even pressed as an ancillary issue by the respondents before the Tribunal. As the respondents themselves stayed the implementation of Circular No. 18 of 2005 vide Circular No. 5 of 2006 dated 20.02.2006, as a result of which, the workmen were getting their wages as was being paid to them prior to issuance of Circular No. 18 of 2005, the wages paid to the workers were neither illegal nor unjustified and the payment was result of a conscious decision of the respondents to continue with the payment to the workmen as was the norms existing prior to issuance of Circular No. 18 of 2005.

17. It is also not the case of the respondents that the workmen had made any misrepresentation or committed any fraud in obtaining the wages for handling bags since 01.12.2005.

18. In State of Punjab & Ors. vs. Rafiq Masih (Supra), the Supreme Court has ruled that such recovery would cause extremely harsh consequences to such employees, who are totally dependent of their wages to run their family. The Supreme Court observed that employees of lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. The

observations made by the Supreme Court in this regard are extracted hereunder :-

“We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.”

19. The Supreme Court further held that the employees’ right to recover has to be compared with the effect of the recovery on the concerned employee and if the effect of the recovery from the concerned employee would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, which would make it iniquitous and arbitrary, to effect the recovery in such a situation the employee's right would outbalance, and therefore eclipse, the right of the employer to recover. While concluding the Supreme Court summarized following few situations wherein recovery by the employers has been held to be impermissible in law:-

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

20. Thus, keeping in mind the ratio laid down by the Supreme Court in State of Punjab & Ors. vs. Rafiq Masih (Supra), in the opinion of the Court, the decision of the respondents to recover so called excess amount paid to the workmen in excess under Piece Rated Incentive Scheme for handing bags since 01.12.2005 would be unfair, wrongful, improper and unwarranted and such deduction from salary or retirement benefits of the workmen would put them in extreme hardship and would make it difficult for them to provide for the need of their family."

to submit that no recoveries as prayed by the respondent can be allowed to be effected.

45. It was also submitted on behalf of the petitioners that an SLP against this judgment dated 18.05.2018 was dismissed by the Hon'ble Supreme Court in SLP (C) 24799/2018, which arises out of LPI No.780/2018 and the said SLP was dismissed.

46. Reliance was placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Siemens Ltd. and Anr. Vs. Siemens Employees Union and Anr. AIR 2012 SC 175*** with specific reference to observations in para 28 & 29 of the said verdict, which read to the effect:

"28. Admittedly, the finding of unfair labour practice against the appellant-company by the High Court and the Labour Court is based on the premise that the appellant-company acted in breach of clause 7 of the agreement. It is well known that an

industrial settlement is entered into between the management and labour for maintaining industrial peace and harmony. Therefore, any attempt by either the management or the workmen to violate such a settlement may lead to industrial unrest and amounts to an unfair labour practice. Here the charge of unfair labour practice against the appellant-company is that it has violated item 9 of Schedule IV of the Maharashtra Act. Item 9 has been set out hereinabove and the purport of item 9 is that any failure to implement an award or settlement or agreement would be an unfair labour practice. In the instant case while considering clause 7 of the said settlement the Courts have not taken into consideration clause 12. Both clauses 7 and 12 have been set out hereinabove. If a harmonious reading is made of clauses 7 and 12 it will be clear that clause 7 cannot be given an interpretation which makes clause 12 totally redundant. Clause 7 contains a prohibition against the employees or officers or members of the staff of the appellant-

company from doing normal production work. But that cannot be read in such a manner as to nullify the purport of clause 12 which reserves the promotional employment potential of existing workmen. So in the instant case if by way of rearrangement of work, the management of the appellant-company gives promotional opportunity to the existing worker that does not bring about any violation of clause 7 of the said settlement rather such a rearrangement of work will be in terms of clause 12. At the same time if some of job of executive officers are the same as is done by the existing worker that does not bring about such a violation of clause 7 as to constitute unfair labour practice.

29. What is restricted under clause 7 is asking the officers to do the normal production work. There is no blanket ban in asking the officers from doing any production work. Therefore, both clause 7 and clause 12 of the said settlement must be reasonably and harmoniously construed to make it workable with the evolving work culture of the appellant-company in facing the

new challenge in the emerging economic order which has changed considerably from 1982.

Even if we assume that 1982 agreement still subsists even then when a challenge is made of unfair labour practice on the basis of violation of a clause of 1982 agreement on the basis of a complaint filed in 2007, the Labour Court and the High Court must consider the said agreement reasonably and harmoniously keeping in mind the vast changes in economic and industrial scenario and the new challenges which the appellant-company has to face in the matter of reorganizing work in order to keep pace with the changed work culture in the context of scientific and technological development. This Court also finds that while adjudicating on the complaint of the union both the Labour Court and the High Court should have taken into consideration all subsequent settlements between the management of the said company and the union in 1985, 1988, 1992, 1997 and 2004. Both the Labour Court and the High Court failed to notice that in its complaint the union has accepted that they are not objecting to the promotion being granted to the workers. However, the said stand of the workers union is not consistent with the nature of the complaint filed before the Labour Court.”

to contend that the settlement dated 13.03.1999 has not been set aside and is applicable in cases where there are bags containing weight more than 65 kgs and the settlement dated 13.03.1999 thus continues to exist in relation thereto.

47. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Secretary ONGC Ltd. and Anr. Vs. V.U. Warriar (2005) 5 SCC 245*** to contend that recoveries as prayed by the respondent be allowed to be effected.

48. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Parry & Company Ltd. VS.***

PC Pal and Anr. AIR 1970 SC 1334 with specific reference to the observations in para 14 of the said verdict, which read to the effect:

“14. It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a tribunal to question its propriety. If a scheme for such reorganisation results in surplusage of employees no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and therefore provided by sec. 25F compensation to soften the blow (1)[1956] 1 L.L.J. 227 of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, therefore, to go into the question whether such a scheme is profitable or not and whether it should have been adopted by the employer. In the instant case, the Tribunal examined the propriety of reorganisation and held that the company had not proved to its satisfaction that it was profitable. The Tribunal then held (a) that the scheme was not reasonable inasmuch as the number of agencies given up in Madras was less than that in Calcutta,

(b) that though development of manufacturing activity was taken up in Madras, no such activity was undertaken in Kidderpore, and (c) that the company should have developed its manufacturing activity in Kidderpore simultaneously with the surrender of the agencies. It is obvious that while reorganising its business it is not incumbent on the company to develop its manufacturing side at the very place where it has surrendered its agencies, namely, Calcutta, nor to do so at the very same time. These

considerations which the Tribunal took into account were totally extraneous to the issue before it and the Tribunal ought not to have allowed its mind to be influenced by such considerations and thereby disabling itself from viewing the issue from proper perspective. It was also beyond its competence to go into the question of propriety of the company's decision to reorganise its business. Having come to the conclusion that the said policy was not actuated by any motive of victimisation or unfair labour practice and therefore was bona fide, any consideration as to its reasonableness or propriety was clearly extraneous. Therefore, its finding that the company had failed to establish that it was profitable was incompetent. It is for the employer to decide whether a particular policy in running his business will be profitable, economic or convenient and we know of no provision in the industrial law which confers any power on the tribunal to inquire into such a decision so long as it is not actuated by any consideration for victimisation or any such unfair labour practice.”

to submit that it is within the managerial discretion of the employer to organize and arrange its business in the manner he considers best and in the facts and circumstances of the instant case, the respondent has issued the Circular dated 15.12.2005 pursuant to the direction in PIL 84/2014 of Bombay High Court, Nagpur Bench and also taking the ILO standards into account, which prevent labour to carry bags containing more than 50 kgs of weights at a particular time.

49. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Hindustan Lever Vs. Ram Mohan Ray and Ors. AIR 1973 SC 1118*** to contend that no notice of

any change was required to be issued under Section 9A of the Industrial Disputes Act, 1947 in the instant case for carrying of gunny bags in as much as there has been no detriment caused to the workmen. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble High Court of Bombay, Nagpur Bench in PIL 84/2014 titled as ***Court on Its Own Motion Vs. Union of India and Anr.***, the contents of which have already been referred to elsewhere hereinabove. Specific reliance was placed on the observations in paras 16, 17, 18 & 22 of the said verdict, which read to the effect:

“16. Perusal of the report would show that, on account of practice of engaging different types of handling systems, there is glaring disparity in the matter of payment, between the similarly circumstanced workers. The workers who are doing the work through contractors are getting approximately 10,000/- p.m.; whereas the salaries payable to the departmental labourers is approximately 80,000/- p.m. Not only this, but the affidavit filed on behalf of the respondent/Corporation would reveal that the payment of about ' Four Lakhs which was referred in the daily "The Times of India " was on account of arrears which were to be paid to the departmental labourers for a period of 2 1/2 years. However, perusal of the affidavit would further reveal that on an average payment made to the departmental labourers is to the tune of 1.41 Lakhs per month. It is stand of the Corporation that higher payment is on account of incentives. It is stated that the work is not of perennial nature. It is further submitted that wherever provisions of section 10 of the said Act are made applicable, the Corporation is left with no other alternative but to engage the services of departmental labourers. It is, therefore, submitted that though salary payable to the departmental labourers is fixed, whenever the railway

rakes arrive, the work is required to be undertaken through the same departmental labourers, which results in payment of higher incentives.

17. It could thus be seen from the report of experts appointed by the Corporation as well as the High Level Committee appointed by the Government of India, that huge cost is required to be incurred by the respondent-Corporation by engaging labourers as per the system of departmental labourers. It is submitted on behalf of the Corporation itself that, in the event the provisions of section 10 of the said Act are not made applicable to its depots, the Corporation would save approximately an amount of 1800 crores per year. The said figures are on the basis of the report conducted during the financial year 2012-13. The figures in the present financial year may even go higher.

18. It could thus clearly be seen that, on account of the respondent/Corporation not being permitted to engage contract labourers, the public exchequer is required to suffer huge losses to the tune of ' 1800 Crores or more.

22. At the cost of repetition, we make it clear that we are not against the labourers getting handsome wages and incentives. However, at the same time, the situation which permits glaring disparities cannot be permitted to exist. On one hand there are persons doing similar work getting 10,000/- p. m., and, on the other hand, there are 370 labourers working with the same Corporation doing the same work who are getting an amount of ' Four Lakhs p.m. (approximately). As already stated hereinabove, we would be happy if every labourer in this country gets a salary of Four Lakhs or more. However, it is a ground reality that, for the same work, one person gets an amount of Four Lakhs and the another person gets

an amount of 8,000/- to 10,000/- p. m. We find that such a position would also be violative of Constitutional mandate. In a salary which one person gets i.e. an amount of Four Lakhs (approximately), 40 such other persons can be accommodated in a country which is facing large scale unemployment and the families of such 40 persons can be maintained in that amount. It will not be out of place to refer to Article 38 of the Constitution of India. Article 38 mandates the State to strive to minimise inequality in income. The present situation permits a huge difference in wages to be paid to two sets of employees, doing same work.”

to contend that it was open to the respondent to organize its working and prevent any mismanagement and the issuance thus of the said Circular No.18/2005 dated 15.12.2005 in no manner can be termed to be detrimental to the petitioners nor did it necessitate the issuance of any notice before they acted upon the same.

50. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***P. Virudhachalam and Ors. vs. Management of Lotus Mills and Ors. (1998) 1 SCC 650*** to contend that the settlement arrived at by the Union with the management by their members is a settlement arrived at during the conciliation proceedings which bound even non-members.

51. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Tata Iron & Steel Co. Ltd. Vs. DR Singh AIR 1966 SC 288*** to contend further that once the time frame under Section 19(2) of the Industrial Disputes Act, 1947 lapses, no notice of change was required to be issued by the employer. Reliance

was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Bridge & Roof Co. (India) Ltd. Vs. Union of India AIR 1963 SC 1474*** to contend that the incentives in the instant case paid for the carrying of bags containing weight were only bounties and furthermore, it has been sought to be contended on behalf of the respondent that incentives do not fall within the ambit of wages and thus do not fall within the ambit of Section 2 (b) of the ID Act, 1947 and thus Section 9A of the ID Act, 1947 cannot apply in the facts and circumstances of the instant case in as much as there is no change in the service condition of the workman in the instant case (and that furthermore, the incentives for carrying bags given by the respondent are not a general feature of industrial concern but are introduced in some concerns and thus for those concerns, it is apparent that Section 9A of the ID Act, 1947 would not be applicable.

It is also contended on behalf of the respondent that incentives do not fall within the ambit of service conditions and change in the payment of incentives cannot be termed to be change of service conditions.

52. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Muir Mills Co. Ltd., Kanpur Vs. Its Workmen AIR 1960 SC 985*** also to contend that incentives do not fall within the ambit of wages and thus Section 9A of the ID Act, 1947 cannot apply in the facts and circumstances of the instant case and thus it cannot be termed that there had been any change in the terms of settlement dated 13.03.1999 by the respondent by issuance of the Circular No.18/2005 issued on 15.12.2005. Reference in this regard was

made on the observations in para 14 of the said verdict, which reads to the effect:

"It is important to notice that while the learned counsel is undoubtedly right in saying that a bonus related to production was described in this case as in the nature of an incentive wage, the Court was equally emphatic in laying down that such bonuses form no part of wages as ordinarily understood and again that these are in addition to basic wages. Can it be reasonably said that even such "incentive wage" though not forming part of basic wage' as ordinarily understood was intended to be included in the consolidation of wages which cl. 8 speaks of? The answer must be in the negative. While it is true that the word " consolidated wage " taken away from the context would import the inclusion of every kind of wage, we have to remember that here it is basic wage which is being defined. It will be unreasonable to think that in defining basic wage the Government would include something which is always understood to be outside the ordinary concept of basic wage. Remembering as we must that it is basic wage which is being defined here it is reasonable to think that only such emoluments which are receivable by the workmen generally, as a normal feature of their earnings and therefore satisfy the characteristics of "basic wage", are intended to be covered by the consolidation. It is because dearness allowance does not satisfy this characteristic that this has been expressly excluded. Mr. Pathak's argument that when in the case of dearness allowance an express exclusion has been made, everything else in the nature of wages has to be included would have been of great force but for the fact that when "basic wage" is being defined the presumption must be that anything which is

essentially different and distinct from basic wage was not intended to be included.”

53. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in “**Syed Yakoob Vs. K.S. Radhakrishnan and Ors.**” AIR 1964 SC 477, though a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals, these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions, a writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides questions without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. However, as observed by the Hon'ble Supreme Court in the said verdict vide para 7 thereof, though, a writ of certiorari is under a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be and that in regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the

impugned finding and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari and that a Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings by a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court and that it is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

54. It was further observed by the Hon'ble Supreme Court vide para 8 of the said verdict, which reads to the effect:-

“8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is

experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

55. The verdict of this Court in **“Parshuram Shah Vs. Govt. of NCT of Delhi and Anr 2008 LLR 256”** also likewise observes to the effect:-

“7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising

jurisdiction under Article 226 of the Constitution, to reappraise evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review. Reliance in this regard can be placed on the following judgments of the Supreme Court:

(i) Harbans Lal v. Jagmohan Saran AIR 1986 SC 302

(ii) B.C. Chaturvedi v. Union of India (1996) 1 LLJ 1232 SC

(iii) Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union AIR 2000 SC 1508

(iv) P.G.I. of Medical Education and Research Chandigarh v. Rajkumar (2001) 2 SCC 54.

(v) Municipal Corporation of Delhi v. Asha Ram and Anr. 117 (2005) DLT 63.”

and thus, in that case where it was observed that that findings of the Labour Court were based on an appreciation of the material placed on the record which findings were neither perverse nor arbitrary nor capricious, it was held that it did not warrant any interference.

56. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in *Iswarlal Mohanlal Thakkar vs. Pashim Gujarat Vij Co. Ltd. & Anr. (2014) 6 SCC 434* to contend to similar effect that there was no infirmity in the impugned award

warranting any interference by this Court. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in *Secretary, ONGC Ltd. & Anr. vs. VU Warriar (2005) 5 SCC 245* with specific reference to observations in para 17 of the said verdict, which read to the effect:

“17.The learned counsel for the appellant contended that the High Court was clearly wrong in allowing the petition and in directing the Commission to pay the amount of gratuity to the respondent with interest at the rate of 6% per annum. According to the counsel, it was perfectly within the powers of the Commission to deduct the amount of liquidated damages towards unauthorized occupation of quarter by the respondent. Such action cannot be said illegal, unlawful or otherwise improper. The Commission is a statutory Corporation established by an Act of Parliament and in exercise of statutory powers it has framed regulations. Those regulations, therefore, are statutory in character, they are having force of law and are enforceable. It was also submitted that the provisions of Payment of Gratuity Act would not apply to the respondent. The counsel urged that sufficient quarters are not available to the Commission in cities like Delhi and Bombay. If the employees who had been allotted quarters do not vacate even after their retirement, it would create serious problems to the Commission as well as its employees. In the instant case, admittedly the respondent retired on February 28, 1990. He was allowed four months' time up to June 30, 1990 to vacate the quarter. His prayer for retention of quarter was duly considered and rejected expressly informing him that in view of several officers waiting for quarters it would not be possible to accede to the request and he must vacate the quarter by June 30, 1990. He was specifically intimated that in case he did not vacate the accommodation within the stipulated

time, penal rent would be charged from him. He ignored all those letters and continued to occupy the quarter. So much so that eviction proceedings had to be initiated against him. It was only thereafter that the respondent gave an undertaking and vacated the quarter. The counsel also submitted that the respondent applied for loan for residential accommodation at concessional rate which was given to him. He had constructed a house. He let that house to the Commission at the rate of Rs.880 per month as against Rs.205 per month which he was paying towards rent. Considering the fact that the respondent had retired on February 28, 1990 and was to vacate the quarter allotted to him by the Commission by June 30, 1990, the possession of the quarter belonged to the respondent and let out to the Commission was given back to him on June 3, 1990. In spite of that, the respondent did not vacate the quarter. In the circumstances, the High Court was wholly wrong in granting relief to the respondent. The High Court was also wrong in not reviewing the order passed ex parte observing that no 'sufficient cause' had been made out for condonation of delay. It was, therefore, submitted that the appeal deserves to be allowed by quashing and setting aside the order of the High Court and by upholding the order passed by the Commission."

to contend that the recovery of excess incentives paid to the petitioners has necessarily to be recovered from them in as much as the incentives paid cannot be bounties in as much as the payment of incentives ought not 'right accrued'.

57. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Nava Bharat Ferro Alloys Ltd. vs. Transmission Corporation of A.P. Ltd. and Ors. (2011) 1 SCC 216*** to contend that merely because during the interregnum of the

pendency of the industrial dispute before the Industrial Tribunal, which was finally adjudicated vide the impugned award dated 05.07.2016, published on 11.07.2016, the respondent itself vide its Circular dated 20.02.2006 bearing No.5/2006, had kept the implementation of Circular No.18/2005 dated 15.12.2005 with regard to the payment of incentive wages as per revised norms paid to the workers in abeyance till the dispute was pending before the learned RLC (C), New Delhi and then till the adjudication of the dispute by the Industrial Tribunal and that due applicability of Section 33 (2) of the ID Act, 1947, in view of the final adjudication of the dispute by the Industrial Tribunal vide the award dated 05.07.2016 in I.D. No. 195/2011, in favour of the respondent and has held the demand of the petitioner/workman to be illegal and unjustified, it is apparent that the petitioners cannot take benefit of the period of interregnum that the industrial dispute remained in abeyance and thus excess payments of incentives made to the petitioners are undoubtedly recoverable.

58. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors. (2012) 8 SCC 417*** to contend that recovery of an amount paid without authority of law can always be recovered and that the law imposed an obligation on the payee to repay the money which would amount to unjust enrichment and contending to the effect that the ailment of fraud or misrepresentation is insignificant and what has to be ascertained is whether any excess money has been paid or not or whether there was a bona fide mistake

and it is submitted whilst placing reliance on the observations in para 14 of the said verdict, which read to the effect:

“14. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

that there is no extreme hardship that would be effected in the instant case which would affect the workmen adversely in as much as vide the Circular No.5/2006 dated 22.02.2006 itself it had been mentioned that in terms of the provisions of Section 33 of the ID Act, 1947 in as much as the Regional Commissioner (Central), New Delhi was then seized of the industrial dispute and had drawn the attention of the management to the provisions contained in Section 33 of the ID Act, 1947, the implementation of Circular No.18/2005 dated 15.12.2005 had been kept in abeyance and had been served on the FCI Handing Workers Union

i.e. the petitioners and that there was notice enough to all the workmen of Circular No.05/2006 dated 22.02.2006 vide which it had been informed to the FCI Workers Union also that the implementation of the Circular No.18/2005 dated 15.12.2005 with regard to the payment of incentive wages as per revised norms to the Department/workers was stayed till the pendency of the dispute, which was then pending before the Conciliation authority and then continued to remain pending before the Industrial Tribunal was notice enough to the workmen that in the event of their claims not succeeding, the recoveries in terms of the revised norms dated 15.12.2005 vide Circular No.18/2005 would become recoverable in view of the unjust enrichment to the workers.

59. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Col. (Retd.) B.J. Akkara Vs. Govt. of India & Ors.; (2006) 11 SCC 709*** to contend that the recoveries of excess incentives paid to the workmen whose cases were espoused by the present petitioners were to be effectuated in as much as there was unjust enrichment to the workmen and specific reliance was placed on the observations in para 27 & 28 of the said verdict, which read to the effect:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled [Vide Sahib Ram vs.

State of Haryana [1995 Suppl.1 SCC 18], Shyam Babu Verma vs. Union of India [1994 (2) SCC 521], Union of India vs. M. Bhaskar [1996 (4) SCC 416], and V. Gangaram vs. Regional Joint Director [AIR 1997 SC 2776] :

a) *The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*

b) *Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery. ”

to contend that the excess payment of incentives paid to the workmen was recoverable.

60. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Manipal Academy of Higher Education Vs. Provident Fund Commissioner AIR 2008 SC 1951*** to contend that the incentive wages paid in respect of extra work done is to be excluded from the basic wages unless it has been so held by the learned trial Court. Reference was made thus on behalf of the respondent with specific reliance on the observations in paras 10, 11 & 12 of the said verdict, which read to the effect:

"10. In the view we have taken of the scheme in this case, the petition succeeds partly. We direct that the petition of the payment which is made by the petitioner for production above the "norm" would be production bonus and would be covered by the judgment of this Court in Bridge and Roof Company, but that portion of the payment which is made by petitioner for production up to the quota as well as production between the "quota" and the "norm" is basic wage within the meaning of that term in the Act. The petition is therefore partially allowed as indicated above. In the circumstances we pass no order as to costs."

8. It is to be noted that in the case before the Bombay High Court the factual scenario was somewhat peculiar. There the employer was including the amount of leave encashment as emoluments for the purpose of calculating provident fund dues from the employer as well as employee's contribution. When the Employees' Union took up the issue to the Commissioner it was informed that the

provision does not provide for deduction of provident fund on leave encashment.

9. On the strength of the letter dated 3.7.1991 of the Commissioner, Hindustan Lever Ltd. decided to make provision for deduction. It was this direction of the department which was challenged by the Union. In this context the High Court has held that the Commissioner's letter/circular was illegal and leave encashment dues should be included for provident fund contribution. In fact it was the understanding of the parties over the period that leave encashment will be included in the wages.

10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.

(c) Conversely, any payment by way of a special incentive or work is not basic wages.

(Emphasis supplied)

11. In *TI Cycles of India, Ambattur v. M.K. Gurumani and Ors.* (2001 (7) SCC 204) it was held that incentive wages paid in respect of extra work done is to be excluded from the basic wage as they have a direct nexus and linkage with the amount of extra output. It is to be noted that any amount of contribution cannot be based on different contingencies and uncertainties. The test is one of universality. In the case of encashment of leave the option may be available to all the employees but some may avail and some may not avail. That does not satisfy the test of universality. As observed in *Daily Partap v. Regional Provident Fund Commissioner* (1998 (8) SCC 90) the test is uniform treatment or nexus under-dependent on individual work.

12. The term 'basic wage' which includes all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in accordance with the terms of the contract of employment can only mean weekly holidays, national holidays and festival holidays etc. In many cases the employees do not take leave and encash it at the time of retirement or same is encashed after his death which can be said to be uncertainties and contingencies. Though provisions have been made for the employer for such contingencies unless the contingency of encashing the leave is there, the question of actual payment to the workman does not take place. In view of the decision of this Court in *Bridge Roof's case* (supra) and *TI Cycles's case* (supra) the inevitable conclusion is that basic wage was never intended to include amounts received for leave encashment."

submitting *inter alia* to the effect that though undoubtedly, the Industrial Disputes Act, 1947 is a beneficial statute, the concept of beneficial legislation becomes relevant only when two views are possible and that in the instant case, there was no question of two views

in as much as payment of incentives does not fall within the category of payment of wages in terms of Section 2 (b) of the ID Act, 1947.

61. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Ouseph Mathai and Ors. Vs. M. Abdul Khadir (2002) 1 SCC 319.***

62. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Kunhayammed and Ors. Vs. State of Kerala and Anr. AIR 2000 SC 2587*** to contend that the mere rejection of the Special Leave Petition by the Hon'ble Supreme Court does not suffice to make the rejection applicable to the facts and circumstances of the present case in relation to which reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Kusum Ingots and Alloys Ltd. vs. Union of India (UOI) & Ors. (2004) 6 SCC 254*** to contend that in as much as the award dated 05.07.2016 published on 11.07.2016 applied to the entire territory of India, the matter having been challenged before this Court, this Court would have the jurisdiction over the entire country and it has been submitted on behalf of the petitioner that the writ court, it is well settled would not determine a constitutional question in vacuum and the writ would lie throughout the country.

63. Reliance was placed on behalf of the petitioners of W.P.(C) No. 9214/2016 on the verdict of the Supreme Court in ***ITC Limited Workers' Welfare Association & Another v. Management of ITC Limited and Another; (2002) 3 SCC 411*** and placing reliance on the observation in paragraph 23 of the said verdict which reads to the effect:

“ 23. What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of the conciliation proceedings. The settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum.”,

to contend that the Tribunal could not have substituted its own views unless reflected in the settlement dated 13.3.1999. Reliance was also placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in ***Harbertsons Limited v. The Workmen of Herbertsons Limited and Others***; (1976) 4 SCC 736, to contend that even if the bipartite settlement dated 13.3.1999 had not been signed by all the unions, benefit of settlement having been enjoyed by all the workmen and the settlement being a result of collective bargaining would apply to all the workmen and it could thus not be contended by the respondent that the petitioner herein was not a party to the settlement dated 13.3.1999 and could seek no relief in relation to the circular dated 15.12.2005 put forth wherein revised handling norms for carrying of bags below 66 kg. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Consumer Education & Research Centre and Others v. Union of India and Others***; (1995) 3 SCC 42 to contend that all the workmen of the petitioners have a right

to health, medical aid to protect their health and vigour while in service as also at the post retirement stage as a fundamental right under Article 21 read with Article 39(e), 41, 43, 48-A and all related Articles and fundamental human rights to make the **life of the person meaningful and purposeful with dignity of person as held therein.** Specific reliance was placed on behalf of the petitioner on the observations in paragraph 24 and 25 of the said verdict which read to the effect:

“24. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State government or an industry, public or private, is enjoined to take all such action which

will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Art.21.

The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts.38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

25. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

64. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in the in case titled ***The Management of Indian Oil Corporation Ltd. V. Its Workmen***; (1976) 1 SCC 63, to

contend that the grant of incentives as per the handling norms was part of the wage structure of the workmen of the respondent No.1 and could not have been changed unanimously in terms of Section 9A of the Industrial Disputes Act, 1947. Reliance was thus placed on the observation in paragraphs 5 and 9 of the said verdict, which read to the effect:

“5. As regards the first contention that the concession of the compensatory allowance was granted to the workers by way of a temporary measure and would not amount to a condition of service, we find absolutely no material on the record to support the same. There is no evidence to show that the management before granting the concession of the compensatory allowance had in any way indicated to the workers that this was only a stop-gap arrangement which could be withdrawn after the housing subsidy was granted. Even before the unilateral withdrawal of the concession granted by the appellant no notice was given to the workers nor were they taken into confidence, nor any attempt was made to open a dialogue with them on this question. Indeed if the circulars of the Central Government are admittedly not binding on the Corporation, then we are unable to appreciate the stand taken by the appellant that the management unilaterally withdrew the concession merely because of the Central Government circulars. So far as the compensatory allowance is concerned it was given in order to enable the workers to meet the high cost of living in a far-off and backward area like Assam. It had absolutely no causal connection with the housing subsidy or house rent allowance which was a different

type of concession. Furthermore, the grant of compensatory allowance by the appellant was indeed a very charitable act which showed that the employers were extremely sympathetic towards the needs of their workers. In these circumstances we have no hesitation in holding that the grant of compensatory allowance was undoubtedly an implied condition of service so as to attract the mandatory provisions of s.9A of the Act which runs thus:

"No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:
Provided"

An analysis of [s. 9A](#) of the Act clearly shows that this provision comes into operation, the moment the employer proposes to change any condition of service applicable to any workman, and once this is done twenty- one days notice has to be given to the workmen. This admittedly was not done in this case. By withdrawing the Assam Compensatory Allowance the employers undoubtedly effected substantial change in the conditions of service, because the workmen were deprived of the compensatory allowance for all, time to come.

6.

7.

8.

9. Reliance was placed on a decision of this Court in *Hindustan Lever Ltd. v. Ram Mohan Ray and others*(2) for the proposition that

withdrawal of the concession of the compensatory allowance did not adversely affect the service conditions of the workmen. In this case this Court observed as follows:

"As regards item 11 it was urged that as one department out of three has been abolished, this item applies. Though to bring the matter under this item the workmen are not required to show that there is increase in the work-load, it must be remembered that the 4th Schedule relates to conditions of service for change of which notice is to be given and section 9-A requires the employer to give notice under that section to the workmen likely to be affected by such change. The word 'affected' in the circumstances could only refer to the workers being adversely affected and unless it could be shown that the abolition of one department has adversely affected the workers It cannot be brought under item 11. The same consideration applies to the question of change in usage under item 8." It is true that this Court held on the facts of that case that the Company had abolished one department, but as the work-load was not increased the workers were not adversely affected and the abolition of one department could not be brought under item 11. The contingency contemplated in the aforesaid case, however, cannot be equated with the present case by virtue of the unilateral deprivation of the compensatory allowance which was received by the employees by the withdrawal of which they were undoubtedly prejudiced. It cannot be contended that the sudden withdrawal of a substantial concession in the conditions of service would not materially or adversely affect the workmen. We are, therefore, of opinion that

the aforesaid case also does not support the contention of the learned counsel for the appellant.

65. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Wellman (India) Pvt. Ltd. V. Employees State Insurance Corporation***; (1994) 1 SCC 219; to contend that the incentives that were being paid to the workmen of the petitioner, fell within the ambit of wages and that there could be no modification of wages which formed the service conditions in terms of Section 9A of the Industrial Disputes Act, 1947.

66. On behalf of the respondent reliance was placed on the verdict of the Hon'ble Supreme Court in ***M/s New India Motors (P) Ltd. New Delhi V. K.T.Morris***; AIR 1960 SC 875 to contend qua the applicability of Section 33 of the Industrial Disputes Act, 1947.

ANALYSIS

67. On a consideration of the entire available record and rival submissions made on behalf of either side, it is essential to observe that apart from the prayers made by the three petitioners, i.e., FOOD CORPORATION OF INDIA WORKERS UNION, FOOD CORPORATION OF INDIA HANDLING WORKERS UNION and FOOD CORPORATION OF INDIA SHRAMIK UNION of the three Writ Petitions, i.e., W.P.(C) No. 8495/2016, W.P.(C) No. 9260/2016 and W.P.(C) No. 9412/2016 seeking quashing of the award dated 5.7.2016 published on 11.7.2016 as passed by the CGIT-cum-Labour Court-01, Karkardooma Court in Industrial Disputes No. 195/2011, the prayers made by the petitioners also seek quashing of the circular dated

17.8.2016, and during the pendency of the petition, the prayer has also been made for seeking a restraint against implementation of circular dated 17.1.2017 whereby pursuant to the award in ID no. 195/2011 recoveries of incentives paid to the workmen in terms of the bipartite settlement dated 13.3.1999 in view of the circular No. 18/2005 dated 15.5.2005 were sought to be effected from the time of implementation of circular No.18/2005 onwards from the workmen of the respondent No.1. The bipartite settlement dated 13.3.1999, under Section 18 (1) of the Industrial Disputes Act, 1947, between the Workers' Union and the respondent No.1 *inter alia* related to the piece rate incentive scheme for handling norms of Foodgrains of bags weighing 66 kg. or bags weighing above 66 kg details of which bipartite settlement have already been cited herein above.

68. The said bipartite settlement as already observed herein above is dated 13.3.1999. Vide circular dated 15.12.2005 circular No. 18/05 issued by the respondent, the details of which are also reproduced elsewhere herein above of the present judgment states that at the time when the piece rate incentive scheme for handling of bags weighing above 66 kg and below 66 kg dated 10.5.1999 or circulated by the respondent No.1, the size of majority of the Foodgrain bags in use was 95 kg or so and only a small quantum of bags of 66 kg or below were being handled in the Corporation and that specifically, the size of the Foodgrain bags was reduced to 50 kg. each on ILO recommendations and now the majority of the Foodgrain bags are of 50 kg. almost throughout the country and thus need was felt to have separate handling norms (Datum) for handling 50 kg bags also by the Department

Workers and a Committee i.e. the Saxena Committee was set up for evolving suitable handling norms in respect of the foodgrain bags weighing upto 50 kg each and on the recommendations of the committee, a piece rate incentive scheme also for handling bag each weighing upto 50 kg. by the departmental workers in inland godowns/depots were approved for implementation w.e.f. 1.12.2005. The said circular made it expressly clear that the existing piece rate scheme for departmental workers working in inland depots would remain operative 'as it is' for handling of bags weighing above 50 kg each.

69. Significantly, except for the petitioners of W.P.(C) No. 9412/2016 none of the petitioners of the other writ petitions seek quashing of the circular No.18/05 dated 15.12.2005. As also observed herein above, vide letter dated 22.8.2016, the petitioners of W.P.(C) No. 8495/2016 i.e. the Food Corporation of India Workers Union vide it letter to the respondents had stated that:

*“Now coming to the guidelines contained in the cited circular dated 12.07.2016 we find that the handling norm has been extended from 105 to 135 for Departmental workers. **This union does not challenge the justification of the unilateral decision taken by the management enhancing the work norm in depots under departmental systems and in the interest of corporation this union will accept and adhere to the revised work norms in the respective depots.** Apart from that in respect of DPS workers also the norm to be adhered to from 85 to 115 bags per day in the interest of management.....”*

though on 6.10.2016, it was submitted on behalf of the petitioner thereof that a letter had been sent to the respondent communicating to the respondent that the revised work norms were not acceptable to the Union, and to similar effect was the submission made of 6.10.2016 in W.P.(C) No. 9412/2016 on behalf of the petitioner thereof i.e. the Food Corporation of India Handling Workers Union that the revised norms were not acceptable to them. On behalf of the petitioner has been placed a copy of the memorandum of settlement dated 24.5.1984 between the Food Corporation of India Workers Union representing the workmen and the employers to contend that the incentive earning had been agreed to be treated as wage for the purpose of gratuity and provident fund. Clause 4 of the said settlement reads to the effect:-

<i>“4. Inclusion of incentive earning for the purpose of gratuity and provident fund</i>	<i>The incentive earnings would be treated as “wage” for the purpose of gratuity and provident fund”</i>
---	---

70. In terms of Section 18(1) of the Industrial Disputes Act, 1947, it is apparent that the terms of the said settlement, undoubtedly, apply to the parties thereto i.e. the respondent No.1 and the Food Corporation of India Workers Union represented in W.P.(C) No. 8495/2016. The impugned award is however applicable to all workmen employed in the establishment of the respondent No.1 in as much Section 18(3)(d) thereof provides to the effect:

“18. Persons on whom settlements and awards are binding.-

<i>[(1)]</i> <i>[(2)]</i>	<i>.....</i> <i>.....</i>
---	---

[(3)] A settlement arrived at in the course of conciliation proceedings under this Act⁵ or an arbitration award in a case where a notification has been issued under sub- section (3A) of section 10A] or⁶ an award⁷ of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

(a)

(b)

(c)

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

71. In terms of Section 19 of the Industrial Disputes Act, 1947 which provides as follows:-

19. Period of operation of settlements and awards.-

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the

parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A]: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it⁵ to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal] for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be] on such reference shall, be final.

(5) Nothing contained in sub- section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub- section (3), the award shall continue to be binding on the parties until a

period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.]”

72. In terms of Section 19(2) of the Industrial Disputes Act, 1947, thereof, the settlement arrived at in terms of Section 18 of the Industrial Disputes Act, 1947, is binding for such a period as is agreed upon by the parties and if no such period is agreed upon, the period from the date on which the memorandum of settlement was signed by the parties to the dispute and was to continue to be binding on the parties after the expiry of the said period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement was given by one of the parties to the other party or parties to the settlement.

73. The bipartite settlement dated 13.3.1999, undoubtedly, does not stipulate the period of time for which it was to continue further in relation to the revision of the piece rate incentive scheme in respect of departmental workers, it had been mentioned at Sub-clause (2) to the effect:

***“REVISION OF PIECE-RATE INCENTIVE
SCHEME IN RESPECT OF DEPARTMENTAL
WORKERS.***

It was agreed that existing norm of 90 bags per day per worker for determining the labour strength etc.

would continue while considering the demand for revision of datum for the purpose of the incentive place-rate scheme in respect of departmental workers. Accordingly a mutually agreed incentive scheme placed at Annexure- 'A' will be implemented w.e.f. ____-4-1998. With regard to the demand of the Union for lumpsum grant in lieu of incentive payment on the ground that the scheme was liable to be implemented from the year 1975, it was agreed that both the Management and the Union would abide by the final decision in the pending litigation."

74. Vide Annexure 'A' attached to the said settlement which is comprises of the incentive scheme vide clause '7' thereof reads to the effect:

" (vii) Adhoc norm of handling gunny bales. Silo operation as in vogue in terms of Hqtrs. Letter No. _____ dated _____ or as in vogue as per practice in the field offices shall continue till the regular norms of above operation and other misc. operations settled in consultation with the Union."

it is apparent that the regular norms in relation to the handling of the gunny bags were to be formulated.

75. The circular No. 18/05 dated 15.12.2005 issued by the respondent No.1 is a clear intention of the respondent No.1 to bring forth the revised norms in relation to the weight carried by the workmen i.e. in relation to the bags which were below 66 kg and above 66 kg. Clause 8 of the said circular No. 18/05 dated 15.12.2005 is categorical that the existing piece rate incentive scheme for departmental workers working in inland depots/godowns would remain operative as it is for handling of bags weighing above 50 Kg.

The norms for handling bags upto 50 kg have been put forth by the respondent No.1 pursuant to the Saxena Committee report and the ILO recommendations as also the verdict dated 20.11.2015 of the Hon'ble High Court of Bombay, Nagpur Bench, in PIL No. 84/2014.

76. The absence of any specific period in the bipartite settlement dated 13.3.1999 for which it was to operate, the factum that the incentives scheme annexed to the same as Annexure 'A' spoke of regular norms to be settled, coupled with the communication of the Food Corporation of India Workers Union dated 22.8.2016, reference No. F.C.I.W.U/02/2016/179 to the respondent bring forth that the said petitioner of W.P.(C) No.8495/2016 had stated that it did not challenge the justification of unilateral decision taken by the management enhancing the work norm in depots under departmental systems and in the interest of corporation, the said union would accept and adhere to the revised work norms in the respective depots coupled with the factum that the settlement dated 25.4.1984 which sought that the incentives will be forming part of the gratuity was to operate only for a period of four years and as is well settled, incentives do not form part of wages, thus the modification of the incentives scheme does not amount to change of service conditions in terms of Section 9A of the Industrial Disputes Act, 1947,

77. Undoubtedly, during the course of submissions that have been made in the hearing of the present petitions on 6.10.2016 a submission has been made on behalf of the petitioners to the effect that another letter had been sent to the respondents communicating to them that the revised work norms were not acceptable to the Union. Though there

have been communications exchanged in relation to the revised work norms as brought forth vide circular No.18/05 dated 15.12.2005, i.e., the circular No. 18/05 itself brings forth that the petitioners had ample notice qua the revised norms sought to be implemented vide the circular no.18/05 dated 15.12.2005 and apparently from 15.12.2005 onwards 12.2016 as indicated vide circular no. 5/06 dated 20.2.2006 of the respondent, the implementation of the said circular No. 18/05 was stayed in view of the pending dispute before the Regional Labour Commissioner, Central, New Delhi, (RLC (C), New Delhi). The CGIT in terms of Section 33 of the Industrial Disputes Act, as is also indicated vide circular No. 6/2006 dated 22.2.2006 to similar effect.

78. As held by the Hon'ble Supreme Court in ***Indian Link Chain Manufacturers Ltd. v. Their Workmen***; (1971) 2 SCC 759, it is not the requirement of Section 19(2) of the Industrial Disputes Act, 1947, that there should be a formal notice terminating a settlement and such notice can be inferred from correspondence between the parties. The circular No. 18/05 dated 15.12.2005 having been communicated to the workmen, in the circumstances of the case taking into account also the communication dated 22.2.2006 of vide circular No.6/2006 of the respondent, it is apparent that there was a sufficient notice to the workmen in relation to the revised norm for incentives for bags weighing upto 50 kgs. which the industrial dispute was also raised before the Conciliation Officer.

79. As also already observed herein above, the period of the settlement dated 13.3.1999 in terms of Section 19(2) of the Industrial Disputes Act, 1947 had long since lapsed. The contention raised on

behalf of the petitioners to the effect that with the long usage of the terms of the settlement dated 13.3.1999, the said incentives as per the settlement dated 13.3.1999 became part of wages and any modification in relation thereto without compliance of Section 9A of the Industrial Disputes Act, 1947 would render the same to be violative of Section 9A of the Industrial Disputes Act, 1947, cannot be accepted. Further more, in relation to this submission, it is essential to observe as has rightly been observed by the learned Industrial Tribunal that the piece rate incentives do not form part of wages and thus do not form part of service conditions for which the requisite notice under Section 9A(a) of the Industrial Disputes Act, 1947 was required to be issued.

80. Taking the said aspect thus into account that there is no violation of Section 9(A) (1) nor of Section 19(2) of the Industrial Disputes Act, 1947, and that the settlement dated 13.3.1999, as per the circular No.18/05 dated 15.12.2005, is as per clause 8 thereof in existence for bags weighing above 66 kg, coupled with the factum that the revised handling norms in relation to bags below 66 kg., were to continue to be in existence as per circular No.18/05 and also the factum that the revised norms are in view of the ILO standards for maintenance of human dignity of the workmen so that they do not carry load beyond 50 Kgs. at a given time, it is apparent that the reference made to the extent, ***“whether the demand of the Union in withdrawing the new incentive scheme announced vide Circular No.18/2005 dated 15.12.2005 is legal and justified?”*** has been correctly answered by the impugned award holding to the effect that the demand of the Food Corporation of India Workers Union for withdrawing the new incentive scheme

announced vide circular No. 18/05 dated 15.12.2005, was neither legal nor justified under the law.

81. As regards the second limb of the reference which, “*if not, to what relief is the workman entitled*”, vide the impugned award, apparently, was not answered by the impugned award dated 5.7.2016 published on 11.7.2016. In ID no. 239/2011, however, the said question was answered vide award dated 7.10.2016, in which ID No.239/2011, issues had been framed to the effect:

- “(i) *Whether the applicant can be permitted to implement circular dated 15.12.2005?*
- (ii) *Whether the application has been moved with a view to frustrate the pending dispute?*
- (iii) *Relief.*”

to the effect that in as much as the said Tribunal had already taken a view after considering the comparative merit of the case as well as the evidence on record that the demand of the workers union for withdrawing the present incentive scheme announced vide the circular No. 18/05 dated 15.12.2005 was held to be neither legal nor justified under the law there was no need to discuss the evidence in detail and thus the Food Corporation of India could implement the circular No.18/05 dated 15.12.2005.

82. Though there is no separate challenge before this Court to the award dated 7.10.2016 in ID No. 239/2011, taking into account the factum that the said aspect of the relief to which the workmen were entitled to in the event of their demand being held to be not legal and justified, had essentially to be answered by the learned CGIT-cum-

Labour Court-01, Karkardooma Courts, Delhi, at the time of the adjudication of the reference vide award in ID No. 195/2011 itself, and taking into account the prayer clause in all the three petitions, i.e., W.P.(C) No. 8495/2016, W.P.(C) No. 9260/2016 and W.P.(C) No. 9412/2016, made by the petitioners herein seeking that the recoveries in terms of the circular dated 18/05 dated 15.12.2005 and the subsequent circular issued dated 17.8.2016 be not effected coupled with the factum that the Food Corporation of India has sought that the said circular No.18/05 dated 15.12.2005, Circular No. 8/16 dated 17.8.2016 and the circular No. 1/17 dated 17.1.2017 be allowed to be implemented, it is apparent that the aspect of the consequential effect of the award dated 5.7.2016 published on 11.7.2016 has essentially to be considered by this Court in this *lis* despite the factum that the award dated 17.10.2016 in ID No. 239/2011 is expressly not under challenge before this Court but, in fact, the implementation of the award dated 5.7.2016 published on 11.7.2016 is sought on behalf of the respondent and is sought to be restrained on behalf of the petitioners i.e., the three unions of the workmen and the matter is thus being considered.

RECOVERIES OF EXCESS INCENTIVES PAID

83. The avowed contentions of the petitioners as already observed elsewhere herein above is to the effect that the petitioners have committed no fraud and being at no fault whatsoever, recoveries in terms of the circulars No. 18/05 dated 15.12.2005, 8/16 dated 17.8.2016 and 1/17 dated 17.1.2017 and the award dated 5.7.2016 published on 11.7.2016 and the award dated 7.10.2016 in ID No. 239/2011 cannot be effected. It is also the contention raised on behalf of the petitioners that

the Hon'ble High Courts of Calcutta, Gujarat and Rajasthan have stayed the said recoveries in terms of the said circulars and the Hon'ble High Court of Guahati has also stayed the operation of the said circular vide an interim restraint. *Inter alia*, as already observed elsewhere hereinabove, a catena of verdicts has been relied upon on behalf of the petitioners in respect of their contentions.

84. On behalf of the respondents, it has been submitted that the recoveries in terms of circular No.18/05 dated 15.12.2005, Circular No. 8/16 dated 17.8.2016 and the circular No. 1/17 dated 17.1.2017, have essentially to be effected in view of the award dated 5.7.2016 passed in ID No. 195/2011 published on 11.7.2016 as also the award dated 7.10.2016 in ID No. 293/2011 passed by the CGIT-cum-Labour Court-01, New Delhi, which have to be given their consequential effect, submitting further to the effect that the workmen who have espoused their case through the petitioners have earned unearned bounties which they are expected to refund back to the respondents. As observed elsewhere hereinabove, a catena of verdicts in relation thereto was also relied upon on behalf of the respondents.

85. A consideration of the available record makes it amply clear that the Hon'ble High Court of Patna in Civil Writ Jurisdiction Case Nos. 1330/2018, 5307/2018, 5348/2018, 5639/2018, 5649/2018, 5655/2018, 5686/2018 and 6072/2018 vide judgment dated 18.5.2018 in terms of the verdict of the Hon'ble High Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer)***; (2015) 4 SCC 334, has quashed the circular No.8/16 dated 17.8.2016 and circular No.1/17 dated 17.1.2017 issued by the respondents to effect recovery of excess

wage incentive paid to the workers of handling bags since 1.12.2005. The Hon'ble Division Bench of the High Court of Judicature at Patna in Letters Patent Appeal Nos. 780/2018, 786/2018, 788/2018, 794/2018, 795/2018, 796/2018, 815/2018 and 835/2018, vide judgment dated 5.7.2018 has dismissed all the said Letters Patent Appeals filed by the respondents herein as the appellants therein against the said judgment dated 18.5.2018 aforementioned. Vide order dated 5.10.2018 in SLP(C) No. 24799/2018 filed by the respondents herein against the judgment dated 5.7.2018 in LPA No. 780/2018 of the High Court of Judicature at Patna had been dismissed. Vide order dated 26.3.2019 of the Hon'ble Supreme Court, in Review Petition (C) No. ____ of 2019 arising out of Diary No. 45414/2018 in relation to the order dated 5.10.2018 in SLP(C) No. 24799/2018 has been dismissed as already observed elsewhere hereinabove.

86. The Hon'ble High Court of Gauhati in W.P.(C) No. 2133/2017, vide order dated 25.04.2018 has also stayed the operation of the circular dated 17.8.2016 qua the recovery of disbursed incentives from the workmen, as an interim measure. The Hon'ble High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Writ Petition No. 2412/2017 has also stayed the recoveries from the workmen pursuant to circular No. 8/16 dated 17.8.2016 as an interim measure. The High Court of Chhattisgarh, Bilaspur, in Writ Appeal No. 148/2019 has dismissed the appeal against the order dated 16.11.2018 of the learned Single Judge whereby it had been held that no recovery could be made from the workmen on the basis of the withdrawal of the circular relating to the grant for carrying excess load of gunny bags above 50 kg. which

were paid to the workers in terms of the circular in existence prior to 15.12.2005. The Hon'ble High of Gujarat at Ahmedabad in R/Special Civil Application no. 7859/2018 has likewise permanently restrained the Food Corporation of India from effecting any recovery of the incentives paid to the workmen and has rather directed that in the event of any of the recoveries having been effected, to refund the said amount to the workmen, though the said verdict relates to circular No. 03/15 dated 27.4.2015 as issued by the Food Corporation of India, it substantially relates to the same issue in relation to recovery of amounts sought after passage of time for reasons not attributable to the workmen having been held to be unfair and iniquitous in the absence of any established act of misrepresentation or mis-statement or any culpability on the part of the labourers.

87. The contention raised on behalf of the respondents was to the effect that the ratio in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*; (2015) 4 SCC 334, does not apply to the facts and circumstances of the instant case and that the ratio of the verdict of the Hon'ble Supreme Court in the *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*; 2014 (8) SCALE 613, applies to the facts and circumstances of the instant case and that there has been an excess payment of public money i.e., taxpayers money which is essentially to be recovered from the workmen whose case has been espoused by their unions and that the question of the absence of fraud or misrepresentation on behalf of the petitioners/workmen cannot be looked into.

88. As regards the said contention raised on behalf of the respondents, it is essential to observe that the reliance placed on behalf

of the respondent on the verdict of Hon'ble Supreme Court in *State of Punjab and Others v. Rafiq Masih (White Washer) & Others*; (2014) 8 SCALE 613, does not assist the respondents for the reason that in facts identical to the instant case, the review petition filed by the respondents in SLP(C) No. 24799/2018 which special leave petition had been filed by the respondents herein assailing the judgment of the Hon'ble Division Bench of High Court of Judicature at Patna in LPA No. 780/2018 dated 5.7.2018 which upheld the quashing of the very same circulars No. 8/16 dated 17.8.2016 and Circular No.1/17 dated 17.1.2017, which are the subject matter of the challenge in the present petitions had been quashed and the Review Petition seeking review of the order of the Hon'ble Supreme Court dismissing the SLP against the judgment in LPA 780/2018 vide which the said circulars were quashed was dismissed by the Hon'ble Supreme Court.

89. It was sought to be contended however on behalf of the respondents during the course of submissions that had initially been made on 21.2.2019 on behalf of the respondents that the dismissal of the SLP(C) No. 24799/2018 vide order dated 5.10.2018 vide which SLP, the judgment dated 5.7.2018 in LPA No. 780/2018 of the Hon'ble High Court of Judicature at Patna had been dismissed with the following directions:

***“ We find no reason to entertain this Special leave petition, which is accordingly, dismissed.
Pending application (s), if any, shall stand disposed of.”***

it was thus a dismissal in *limine* and could not be held to be an embargo to the application of mind by this Court for considering the prayer made by the respondent to prompt the recovery of excess of incentives paid to the workmen from the period from the date of circular dated 15.12.2005 till the date when the award dated 5.7.2016 published on 11.7.2016 became enforceable.

90. During the course of submissions that have been made on behalf of either side, the petitioner also placed on record copy of order dated 26.03.2019 of the Hon'ble Supreme Court which indicates that the Review Petition No.____/2019 arising out of SLP (C) No.24799/2018, which had been filed by the respondent has been dismissed vide order dated 26.03.2019 of the Hon'ble Supreme Court wherein it was observed to the effect:

*“It is principally submitted in this review petition that some of the employees in category II drew more than Rs.1 lakh per month and therefore recovery of excess payment could not be considered harsh or arbitrary and that ratio laid down in **State of Punjab & Ors. V. Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334** would not strictly be applicable.”*

91. Furthermore, the Hon'ble High Court of Chhattisgarh in Bilaspur in Writ Appeal No.148/2019 has also declined the prayer made by the petitioners herein in Writ Appeal No.148/2019 seeking permission to effect recoveries pursuant to Circular No.8/2016 and 1/2017 dated 17.08.2016 and 17.01.2017 respectively which have both been quashed by the Hon'ble High Court of Patna in Civil Writ No.1330/2018 and in connected writs and it was observed by the Division Bench of the High Court of Chhattisgarh to the effect:

*“5. Since we do not find any distinction either in facts or the issue agitated by the Respondents before the writ Court of Chhattisgarh High Court and since such decision of recovery in the circumstances was held to be bad in law or in teeth of the decision of the Hon’ble Apex Court rendered in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334 which in turn has been upheld by the Hon’ble Apex Court, we find difficulty in interfering with the order of the learned Single Judge. Workmen or employees working under a particular employer cannot be treated differently merely because of geographical location. There has to be one uniform standard by which all workmen must be treated in matters of such policy. Since the Food Corporation of India has failed even before the Apex Court in dislodging the judgment of the Hon’ble Patna High Court in regard to their decision of recovery, merely because a review has been filed by the Food Corporation of India before the Hon’ble Apex Court that cannot become a ground for either keeping the present appeal in abeyance or not deciding the issue on merits.*

6. We do not find any error in the view so taken by the learned Single Judge. He has also stated that the order has been passed keeping in mind judicial discipline and consistency in decision making by Courts in identical matters.”

92. It had been submitted on behalf of the respondent that in terms of Circular No.8/2016 dated 17.08.2016, Circular No.1/2017 dated 17.01.2017 and Circular No.18/2005 dated 15.12.2005 in view of the impugned award dated 05.07.2016, which was published on 11.07.2016, the same is implementable in legislative spirit and recoveries of excess payment of incentives have thus to be effected for the handling of bags of 50 kgs weight as per instructions contained in Circular letter No. IR(L)/4(31)/98, dated 10.05.1999, vide which the Piece Rate Incentive Scheme for handling bags weighing above 66 kgs

and below 66 kgs by the Departmental Workers in the inland Godowns/depots was circulated.

93. During the course of submissions that were made on behalf of the respondent in view of the contentions raised on behalf of the petitioner that the recovery of the stated excess incentive paid to the workman be returned, in all the States all over India qua which vide order dated 06.02.2018 of this Court in CM APPL.3868/2018 in W.P. (C) 9260/2006, this Court had granted a restraint against the recoveries being effected from the workman in the Delhi region pursuant to Circular No.8/2016 dated 17.08.2016, Circular No.1/2017 dated 17.01.2017 limited to the Delhi region, which order was upheld vide judgment dated 22.03.2018 of the Hon'ble Division Bench in LPA 77/2018.

94. In view of the verdict of the Hon'ble Supreme Court in *State of Punjab and Others v. Rafiq Masih (White Washer) & Others* (supra) it is essential to observe that the order dated 5.10.2018 in SLP (C) No. 24799/2018 is categorical to the effect that '*no reasons were found*' by the Hon'ble Supreme Court '*to entertain*' the Special Leave Petition which had thus been dismissed and vide the order dated 26.3.2019 in the Review Petition (C) No. ___ of 2019 filed in SLP No. 24799/2018 which was even not permitted to be numbered, it was expressly observed to the effect that the Hon'ble Supreme Court had ***heard both the sides and after due consideration of the submissions of the petitioner therein i.e., the respondents herein, in SLP (C) No. 24799/2018 had been rejected*** and that it was observed further that the Hon'ble Supreme Court had gone through the contents of the review

petition and found no reason to interfere in the matter qua the review petition having been dismissed.

95. In the circumstances, it is apparent at the outset for maintenance of judicial discipline and comity of Courts, that there can be no consideration now of the prayer made by the respondents seeking recovery of the excess incentives paid to the workmen pursuant to circular No.18/05 dated 15.12.2005 till the date the award dated 5.7.2016 which was published on 11.7.2016 became enforceable.

96. Apart from the same as already observed herein above at the time when the award dated 5.7.2016 was passed in ID No. 195/2011, the question in relation to the recoveries of incentives paid had remained unanswered and was answered only in ID No.239/2011 on 7.10.2016. The respondents themselves had stayed the implementation of circular No.18/05 dated 15.12.2005, circular No. 5/06 dated 20.2.2006 as a result of which the workmen were getting the incentives as were being paid to them prior to the issuance of circular No. 18/05 and, thus, apparently, the workmen had made no misrepresentation nor committed any fraud whilst handling bags since 1.12.2005 onwards and it would be thus unfair to make any deduction from the salary or from the retiral benefits of the workmen working or those who have retired in the *interregnum* from the date of the circular No. 18/05 till the date the award became enforceable in as much as the workmen thus were not at fault for the realization of the said amounts and as observed by the Hon'ble Division Bench of the High Court of Judicature at Patna in LPA No. 780/2018 vide judgment dated 5.7.2018 qua which, the SLP assailing the same and the review petition assailing the dismissal of the

SLP, having been dismissed, by the Hon'ble Supreme Court, has observed to the effect that if the Management of the Food Corporation of India had any intention to recover any amount which was paid pursuant to their circular Nos. 18/05, 7/16 and 1/17 a stipulation to that effect, could have been put forth by the management and that the FCI had implemented the old scheme during pendency of the Industrial Dispute and conciliation proceedings without providing any information to the workers that such payment would be subject to recovery and thus the respondent cannot be allowed to implement the circular No.18/05 with retrospective effect.

97. The recoveries thus sought to be effected by the respondents from the petitioners /workmen as also the retired personnel of the Food Corporation of India whose cases are espoused by the petitioners, thus cannot be allowed to be effected pursuant to the circulars issued by the respondent in in any manner neither from the workmen nor from those workers who have superannuated nor can the respondent No.1 withhold the release of the retiral benefits.

98. As laid down by the Hon'ble Supreme Court in “**Syed Yakoob Vs. K.S. Radhakrishnan and Ors.**” AIR 1964 SC 477, though a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals, these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions, a writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides questions without giving an opportunity to be heard to the party affected

by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. However, as observed by the Hon'ble Supreme Court in the said verdict vide para 7 thereof, though, a writ of certiorari is a supervisory jurisdiction the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be and that in regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari and that a Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings by a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court and that it is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

99. It was further observed by the Hon'ble Supreme Court vide para 8 of the said verdict, which reads to the effect:-

“8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to

correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

100. The verdict of this Court in “*Parshuram Shah Vs. Govt. of NCT of Delhi and Anr*” (supra) also likewise observes to the effect:-

“7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising jurisdiction under Article 226 of the Constitution, to reappreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review. Reliance in this regard can be placed on the following judgments of the Supreme Court:

(i) Harbans Lal v. Jagmohan Saran
(ii) B.C. Chaturvedi v. Union of India
(iii) Indian Overseas Bank v. I.O.B. Staff
Canteen Workers? Union AIR 2000 SC 1508
(iv) P.G.I. of Medical Education and Research
Chandigarh v. Rajkumar (2001) 2 SCC 54.
(v) Municipal Corporation of Delhi v. Asha
Ram and Anr.”

and thus, in that case where it was observed that that findings of the Labour Court were based on an appreciation of the material placed on the record which findings were neither perverse nor arbitrary nor capricious, it was held that it did not warrant any interference.

101. Further more, in view of the verdict of the Hon’ble Supreme Court in **Wander Limited & Another V. Antox India (P) Ltd.** (1990) SUPP (1) SCC 727, it is not considered appropriate to interfere with the exercise of discretion by the CGIT in as much as there is nothing to indicate that the discretion had been arbitrarily and capriciously or perversely exercised by the CGIT-cum-Labour Court-01, Karkardooma Courts, Delhi qua ID No.195/2011.

102. Furthermore, it is essential to observe that the recommendations 1 to 8 of the International Labour Organization vide clause 6A(14) thereof specifies where the maximum permissible weight which may be transported manually by one adult male worker is more than 55 kg., measures should be taken as speedily as possible to reduce it to that level.

103. As laid down by the Hon’ble Supreme Court in **Vishaka and Ors. v. State of Rajasthan and Ors.:** AIR 1997 SC 3011, in terms of Section

2(d) of the Protection of Human Rights Act, 1993 which provides as follows:

“human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”,

that international covenants and norms are to be read into the meaning and content of fundamental right guaranteed under the Constitution of India in the absence of enacted domestic law.

104. In terms of the verdicts of this Court in ***Neelam Katara v. Union of India & Ors.*** : ILR (2003) II DELHI 377, also it has been laid down that in the absence of domestic law occupying the field, any international convention not inconsistent with the fundamental rights and the harmony with its spirit may be read into the municipal law.

CONCLUSION

105. Taking the same into account and on a consideration of the entire record, it is held that there is no infirmity in the impugned award dated 5.7.2016 published on 11.7.2016 in ID No. 195/2011. However, the recoveries sought to be effected by the respondent No.1 from the petitioners /workmen as also the retired personnel of the Food Corporation of India whose cases are espoused by the petitioners, cannot be allowed to be effected pursuant to the circulars No.18/05 dated 15.12.2005, circular No.8/16 dated 17.8.2016 and circular No. 1/17 dated 17.1.2017, issued by the respondent No.1 in any manner nor can the respondent No.1 withhold the release of the retiral benefits to the retired personnel in relation thereto.

106. The petitions and the accompanying applications are disposed of accordingly.

ANU MALHOTRA, J.

MAY16, 2019/SV/NC/VM

