

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	27/1/2020
Orders pronounced on	28/2/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal Nos.61 and 62 of 2006

Chemplast Sanmar Limited
(previously known as

Chemicals and Plastics India Ltd)

Mettur Dam

Salem District.

...Appellant/Petitioner (in both
the appeals)

Vs

1. The Presiding Officer
Labour Court
Salem.

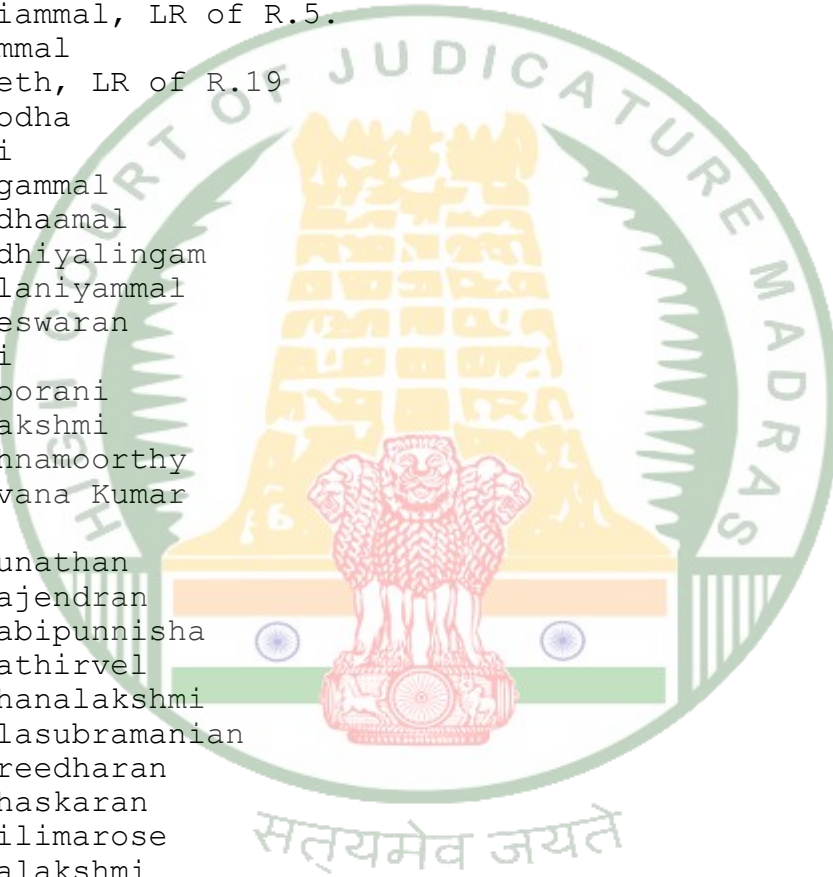
... First respondent in both
the appeals

2. Allimuthu
3. R. Samiappan
4. G. Jayapal (deceased)
5. Chellamuthu (deceased)
6. V. Natarajan
7. N. Rajalingam
8. Marimuthu
9. K. Srinivasan
10. K. Palaniappan
11. C. Palaniappan
12. A.M.Purushothaman
13. V. Chellan (deceased)
14. K. Marimuthu
15. Antony Guruz
16. S. John
17. N. Sengodan
18. R. Kumarasamy
19. Chinnathambi (deceased)
20. S. Thangavelu
21. V. Manickam
22. G. Rangan

23. L. Appusamy
24. I. Manickam (deceased)
25. S. Srirangan
26. Mathappan (deceased)
27. C. Muthumanickam
28. Palaniappan
29. Kaveri (Deceased)
30. Palaniappan (deceased)
31. V. Alagappan
32. Santhappan (deceased)
33. K. Natarajan
34. K. Seviappan
35. Palani (deceased)
36. Duraisamy (deceased)
37. Ammasi (deceased)
38. S. Srinivasan
39. M. Thangavelu
40. S. Iyyankutti
41. K. Ponnappan
42. C. Mathes
43. S. Thangavelu
44. Mohamed Ghouse (deceased)
45. S. Ramasamy
46. Chinnappan
47. P. Pongiannan
48. Chinnamuthu
49. P. Muniyan (deceased)
50. Chinnusamy
51. R. Karuppusamy
52. R. Santhanam (deceased)
53. P. Mathappan
54. P. Kutty Goundan
55. Yesudoss (deceased)
56. P. Ramasamy (deceased)
57. K. Chinnaponnu
58. P. Chidambaram
59. Goundappan (deceased)
60. P. Ramadurai
61. Anantharaman
62. S.P.Govindan
63. K. Natesan
64. Mamoosa
65. Ayyadurai (deceased)
66. O.P.Shanmugam
67. Kandan
68. R. Krishnan
69. G. Kannappan (deceased)
70. Chinnapaiyan
71. V. Marimuthu (deceased)
72. A. Angappan



73. S. Thangavelu
74. P. Kandasamy
75. K. Muthu (deceased)
76. G. Mani
77. R. Srinivasaraghavan
78. S. Kali (deceased)
79. I. Chinnappan (deceased)
80. A. Mathialiairaj (deceased)
81. Pavayee
82. Christinamary
83. Chinnaponnu
84. J.Usha
85. Sentaiammal, LR of R.5.
86. Madhammal
87. Ranjeeth, LR of R.19
88. M.Yasodha
89. M.Rani
90. K.Mangammal
91. P. Madhaamal
92. S. Vadhiyalingham
93. P. Palaniyammal
94. Parameswaran
95. Santhi
96. Annapoorani
97. Jayalakshmi
98. Krishnamoorthy
99. Saravana Kumar
100. Gopi
101. Raghunathan
102. A. Rajendran
103. G. Habipunnisha
104. M. Kathirvel
105. S. Dhanalakshmi
106. S.Balasubramanian
107. S. Sreedharan
108. S. Bhaskaran
109. Mercilimarose
110. Dhanalakshmi
111. Sivakumar
112. Kalpana
113. Kannan
114. M. Lakshmi
115. A. Sundari
116. K. Govindammal
117. K. Murugesan
118. K. Venkatachalam
119. K. Shanmugam
120. Shantha
121. Kala
122. Chinnponnu



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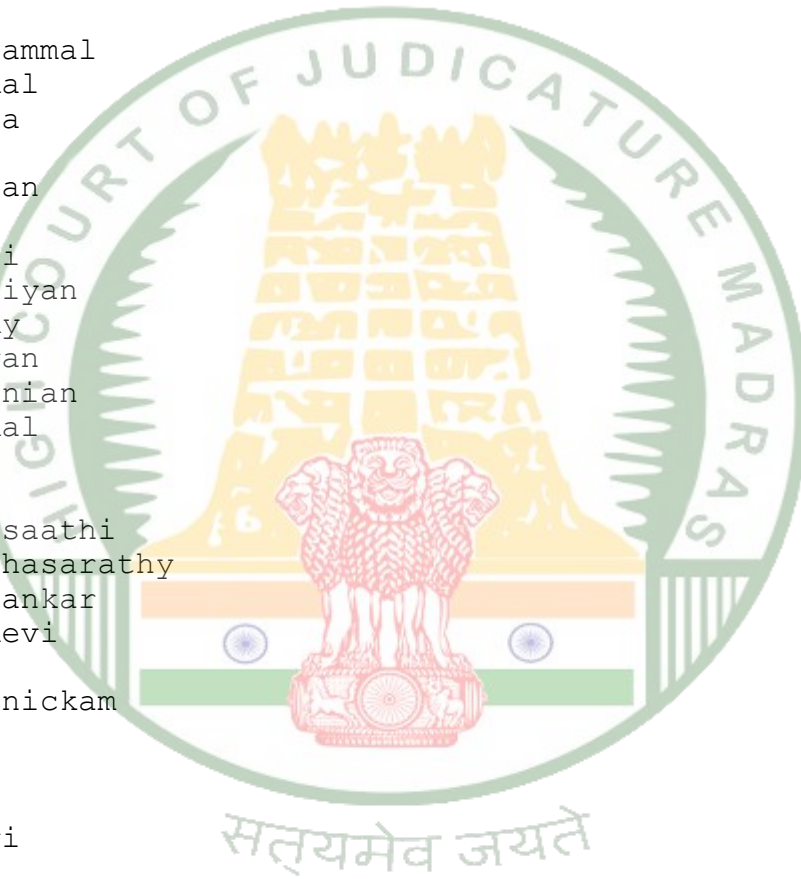
123. M. Kalyanasundaram
124. M. Thangamani
125. M. Rajammal
126. Sundarammal
127. Selvakumar
128. Bama
129. Kausalya
130. C. Madhammal
131. Christinamary
132. M. Antony

...

Respondents in
W.A.No.61 of 2006
a n d

2. K.Angappan
3. N. Perumal (deceased)
4. K. Sengodan (deceased)
5. P. Arusamy
6. T.S.Srinivasamoorthy
7. K. Anai Gounder (deceased)
8. S. Basha
9. P. Perumal
10. V. Ramasamy
11. P. Marimuthu (deceased)
12. S. Thangavelu
13. P. Perumal (deceased)
14. K. Kallappan
15. P. Balasubramaniam
16. C. Chinnannan
17. K. Jayaraman (Deceased)
18. A. Hansar Basha
19. N. Ramachandran
20. K.Sri Rangan
21. N. Arunachalam (deceased)
22. R. Kalyanasundaram
23. C. Alagappan
24. M. Marimuthu
25. V. Chinnaraman (deceased)
26. S.P.Rathinam
27. A. Kandan
28. N. Doraisamy (deceased)
29. V. Madhusamy
30. K. Subramanian
31. P. Chinnapaiyan (deceased)
32. M. Madhappan (deceased)
33. K.G.Mahadevan
34. D. Srinivasan
35. P. Palaniammal
36. P. Krishnamoorthy
37. P. Murugan

38. P. Raja
39. P. Maheswari
40. V. Govindammal
41. V. Murugesan
42. T. Kandammal
43. V. Govindan
44. V. Kandasamy
45. Arami
46. Kaviapal
47. Kaveri
48. Nagappan
49. Mada
50. Amasi
51. Aayiathammal
52. Kannammal
53. Vasantha
54. Santhi
55. Saravanan
56. Amsa
57. Velatchi
58. Manathaiyan
59. Munusamy
60. Chithayan
61. Subramanian
62. Mathammal
63. Venkami
64. Lakshmi
65. M. Sarasaathi
66. M. Parthasarathy
67. M. Ramsankar
68. M. Sridevi
69. Kuppayi
70. Muthumanickam
71. Chandra
72. Alamelu
73. Mani
74. Thandayi
75. Devika
76. Pavayi
77. Chinnakannu
78. Muthukrishnan
79. Selvaraj
80. Jayachitra
81. Venkateswari
82. Minnal Kodi
83. Govindammal
84. Selvam
85. Rajendran
86. Sujitha
87. Jayalakshmi



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88. Thailammal
89. Ranga Gounder
90. Rajendran
91. Mani
92. Ganesan
93. Ranganathan
94. Selvan
95. Pavayi
96. Kuppusamy
97. Rajammal
98. Venkatachalam
99. Subramani
100. Selvam
101. Murugan
102. Chandra
103. Sakunthala
104. M. Rukkumani
105. M. Sekar
106. M. Dhanakumar

... Respondents
2 to 106 in W.A.No.62 of 2006

W.A.No.61 of 2006:

R84 substituted as Lr of R4, R85 substituted as LR of R5, R86 substituted as LR of R13, R87 substituted as LR of R19, R88 substituted as LR of R24, R89 substituted as LR of R26, R90 substituted as LR of R29, R91 substituted as LR of R30, R92 substituted as LR of R32, R93 substituted as LR of R35, RR94 to 101 substituted as LRs of R36, R102 substituted as LR of R37, R103 substituted as LR of R44, R104 substituted as LR of R49, RR 105 to 108 substituted as LRs of R52, R109 substituted as LR of R55, RR110 to 113 substituted as LR of R56, R114 substituted as LR of R59, R115 substituted as LR of R65, RR116 to 121 substituted as LR of R69, RR122 to 124 substituted as LRs of R71, R125 substituted as LR of R75, RR126 to 129 substituted as LRs of R78, R130 substituted as LR of R79, RR131 and 132 substituted as LRs of R80, vide order of Court dated 03.01.2014 made WA MP No.29/2013.

W.A No.62 of 2006:

RR45 to 51 substituted as LRs of R3, RR52 to 56 substituted as LRs of R4, RR57 to 64 substituted as LRs of R7, RR65 to 68 substituted as LRs of R11, RR69 to 73 substituted as LRs of R13, RR74 to 76 substituted as LRs of R17, RR77 to 82 substituted as LRs of R21, RR83 to 87 substituted as LRs of R25, RR88 to 94 substituted as LRs of R28, RR95 to 103 substituted as LRs of R31, RR104 to 106 substituted as LRs of R32 vide order of Court dated 03.01.2014 made in WA.MP NO.30/2013.

Prayer in W.A.No.61 of 2006: Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.5395 of 1996, dated 04.02.2005.

Prayer in W.P.No.5395 of 1996:

Writ Petition filed under Article of 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records connected with the common order made by the first respondent on CP.Nos.106 to 184 of 1995 and to quash the said order dated 18.03.1996.

Prayer in W.A.No.62 of 2006: Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 4/2/2005 in W.P.No.3145 of 1997.

Prayer in W.P.3145 of 1997:

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records connected with the commo order made by the first respondent in C.P.Nos.130 to 160 of 1996 and CP.Nos.192 to 195 of 1996 and to quash the said order dated 06.01.1997.

For appellant ... Mr.Vijay Narayan
Advocate General
for M/s.Sai Raaj Associates

For respondents ... Mr.S.Ayyadurai
for R.R.2, 3, 31, 38 and
R.61 Caveator in W.A.No.61 of 2006

Mr.N.G.R.Prasad
for M/s. Row & Reddy
in W.A.No.61 of 2016 - R.18 (Caveator)
for R.18 in W.A.No.62 of 2016

No appearance for other respondents

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COMMON JUDGMENT

SUBRAMONIUM PRASAD,J

Instant writ appeals have been filed by the appellant, challenging the judgment, dated 4/2/2005 passed by the learned Single Judge, in W.P.Nos.5395 of 1996 and 3145 of 1997, upholding an award, dated 18/3/1996 passed by the Labour Court, Salem, in C.P.Nos.106 to 184 of 1995.

2. Respondents in the writ appeals were erstwhile workmen of the appellant. Appellant came out with a notice, dated 10/7/1994, announcing a Voluntary Retirement Scheme. The scheme was applicable to all employees who had put in minimum ten years of service or are of forty years of age as on 1/7/1994 and the compensation payable was to be lower of the amount computed according to formula A and B. Formula A and B read as under:-

FORMULA - A:- Compensation at one and a half months salary/wages basic + PP DA - SFD) for every completed year of service. Salary/wages as on 1/4/1994 will be taken for purpose of computation.

FORMULA - B:- Compensation at equivalent to one month's salary/wages (basic + DA = Spl.FDA + PP) for every month of remaining service salary/wages as on 1/4/1994 will be taken for purpose of computation.

The respondents herein have opted to avail Voluntary Retirement Scheme.

3. On 6/2/1995, a settlement was arrived at between the workmen and the management of the appellant Company under Section 18 (1) of the Industrial Disputes Act, 1947, for revision of wage. At this juncture, it is pertinent to mention that earlier, wage revision was to end on 31/3/1994. The arrears of wage was given to all those employees who were on the rolls on 6/2/1995. The arrears was also payable to such of those persons who had retired on superannuation or had passed away between 1/4/1994 and 6/2/1995.

4. A perusal of the facts show that the period for earlier wage settlement had expired on 31/3/1994 and talks for new wage settlement were under way, and pending. Before the wage revision could be finalized between the management and workmen, the Management decided to issue a notice bringing out a scheme for voluntary retirement. The scheme was to be in force upto 25/7/1994. The wages which the employees were earning on the date when the notice for voluntary retirement scheme was issued was as per the wages which the employees were receiving under the old wage settlement. Terms of Memorandum of Settlement, under 12 (3) which had been entered into between the workmen and Management states that settlement shall apply only to workmen on the rolls of the Company as on the date of signing the settlement. Clause 36 of the Memorandum of Settlement also provided that arrears payable under the settlement will also be paid to permanent workmen who had retired on "superannuation" or died while in service between 1/4/1994 and the date of the signing of the settlement i.e., 6/2/1995.

5. It is pertinent to mention at this juncture that those employees who had opted for voluntary retirement scheme, gave letters of resignation and these letters of resignation were accepted by the management before the memorandum of settlement was signed between the parties.

6. The workmen who opted for the voluntary retirement scheme claimed that since the revised wage settlement came into force on 1/4/1994, and they were in employment on 1/4/1994, they were entitled to the revised wages and therefore, the amount to be paid to them on opting for the voluntary retirement scheme should be as per the wages calculated under the memorandum of settlement arrived at between the parties on 6/2/1995.

7. The respondent workmen filed claim petitions under Section 33(C)(2) of the Industrial Disputes Act, 1947 (for brevity, "the 1947 Act") praying for computation of their wages contending that seeking voluntary retirement by them in no way affected their rights to receive the benefit arising out of the settlement dated 6.2.1995 arrived at between the Union, the terms whereof were admittedly drawn after the workmen had voluntarily retired from their services.

8. The Management resisted the claim on the ground that the settlement was entered into long after the retirement of the workmen and they did not have any existing rights so as to maintain a claim petition under Section 33(C)(2) of the 1947 Act. On merits also the Management relying on the terms of the voluntary retirement scheme contended that the same offered a full and final settlement to the workers and the settlement later on entered into nowhere included any benefits to those who had retired voluntarily. It was the specific case of the Management that as per Clause 36 of the settlement, it was only the permanent workmen, who were existing on the rolls as on the date of the settlement, were entitled to the benefit of the said settlement, including such of the workers who had superannuated or died till the date of the settlement. The contention, therefore, was a superannuated employee did not include an employee who had voluntarily sought retirement that too even long before the date of the settlement.

9. The Labour Court interpreted the terms of the settlement coupled with the manner of calculation under the formula 'A' or 'B' of the voluntary retirement scheme to extend the benefit to those who had sought voluntary retirement on the ground that the wage revision was clearly meant for those who were workmen as on 1.4.1994, the date from which the settlement had been enforced. The Labour Court also came to the conclusion that the respondent

workmen had sought voluntary retirement after 1.4.1994, which was given effect to later on and, therefore, their right to receive the wage revision was preserved by virtue of the formula referred to in the voluntary retirement scheme which did not amount to waiver of any future rights or was not a golden handshake for all times to come.

10. The labour Court, relied on the formula under which the amount had to be paid under the voluntary retirement scheme. The amount had to be paid under two formulas, viz., Formula A and Formula B. In Formula A, the amount that was to be paid was at 1 ½ months salary/wages basic+PP DA + SFD, for every completed year of service, salary/wages as on 1/4/1994 was to be taken for the purpose of computation. Under Formula B, the composition was one month's salary/wages (basic+DA+SPL.FDA+PP) for every month as on 1/4/1994. The labour Court was of the opinion that there cannot be two sets of wages as on 1/4/1994 and since on 1/4/1994, the workmen who had opted for voluntary retirement were in service, the amount to be paid under the voluntary retirement scheme should be calculated in accordance with the wages payable under the settlement arrived at between the parties. The amount under the voluntary retirement scheme therefore, could not be calculated under the old salary which was being paid till the settlement was entered into between the parties. The Labour Court felt that the workmen opted for voluntary retirement scheme on the belief that they would get the benefit of the revised wages under the voluntary retirement scheme, otherwise, the workmen would not have opted for voluntary retirement scheme.

11. The management assailed the award before the learned Single Judge who found that Clause 36 clearly spells out that it applies to all workmen who were in service as on 1/4/1994 and after, subject, of course, to two conditions, namely, that they should have retired on superannuation or died while in service between 1/4/1994 and 6/2/1995. If so, it follows that the settlement is retrospective from 1/4/1994. The learned Single Judge held that it is true that Clause 1 mentions that the conditions of settlement shall apply only to those workmen on the rolls of the company as on the date of signing the settlement and therefore, there is an obvious conflict between the two provisions. The learned Single Judge held that therefore, the effect of both the provisions have to be harmoniously interpreted as far as possible. Clause 36 deals with a specific issue of applying the benefits to the employees who were working from 1/4/1994 and hence, to the extent Clause 1 is inconsistent, Clause 1 has to be ignored. The learned Single Judge held that the Management faced with the clear language under Clause 36, did not press its contention that the settlement should apply only to the employee who were actual

parties and who had signed the agreement. The learned single Judge held that the settlement is retrospective and would apply also to employees who are not actual signatories to the settlement, subject to the limitations contained in Clause 36.

12. The learned Single Judge also relied on a Division Bench judgment of the Karnataka High Court in I.T.I LTD Vs. I.T.I ER/VR EMPLOYEES AND OTHERS (2002-II-LLJ-1101), the learned Single Judge observed as under:-

"34. It is true that Clause 36 uses only the expression "retired on superannuation". It is pertinent to note that it does not also mention "voluntary retirement". It is equally true that it does not specifically mention to restrict superannuation only on reaching the age of retirement.

35. In my opinion, there is no variation between the expression "retirement" and "superannuation". Both mean the same. Retirement could result either on reaching the age of retirement or by compulsory retirement or by voluntary retirement, which involves the necessity of consent between both parties. While the age of retirement is automatic on completion of age, compulsory retirement is a unilateral action of the employer in terms of the parties, one party making the offer and the other party accepting the same, without waiting for the completion of the age.

36. Though it is within the powers of the employer to prescribe the age of retirement, it is settled proposition that most of the terms of employment are contractual in nature, including the fixation of the retirement age. When an individual is appointed, one of the terms under which the employer offers the employment is that he shall retire on attaining the age of retirement. The employee accepts the contract of service, one of the terms of the contract being that he will retire on attaining the age of superannuation. In the case of voluntary retirement also, both parties agree that the employee shall retire even earlier to the date of retirement subject to the conditions as may be agreed to between the parties. That these are matters in the realm of contract, is not disputed by the Management. In one of the judgments of the Supreme Court relied on by the Management itself, it is clearly brought out that the offer and acceptance of the proposals of voluntary retirement is a contractual issue vide

BANK OF INDIA AND OTHERS Vs. O.P.SWARNAKAR (2003-I-LLJ 819) supra.

37. Therefore, voluntary retirement is no more and no less than an accelerated form of retirement or superannuation on agreement between both parties. It follows that voluntary retirement is also superannuation from service. The only difference, if any, is that superannuation is accelerated on agreement by parties instead of the employee reaching the age of retirement.

38. In the said background, I am inclined to hold that if the intention was to exclude employees under the Voluntary Retirement Scheme from the benefit of the settlement, it should have been specifically stated in Clause 36 expressing exclusion of the employees who have left the service on voluntary retirement on and after 1/4/2004.

.....

43. In conclusion, I am inclined to hold that the expression "retire on superannuation" would include also cases of voluntary retirement. The said conclusion is arrived at not only on the basis of the above discussion, but also the fact that various issues of dispute between the Management and Labour were admittedly under negotiation between the Unions and the Management at the time when V.R.S was formulated, the earlier settlement having lapsed. It is only in those circumstances, Clause 36 was made applicable to the employees who were in service even as on and from 1/4/1994. There is no explanation as to why the Management had to accept the said condition of applying the settlement retrospectively from 1/4/1994. The settlement was a culmination of a prolonged negotiation, taking into account the rights of the employees who were on the rolls as on 1/4/1994 and subsequently. That being so, there is no justification to deny the benefits to the claimants."

13. The Management is in appeal against the order of the learned Single Judge.

14. Mr.Vijay Narayan, learned Senior Counsel appearing for the Management has submitted that consequent to the notice of the voluntary retirement scheme, the respondent workmen tendered their letters of resignation voluntarily accepting the terms and conditions of the scheme and all their dues accordingly were

paid off. This clearly resulted in a full and final settlement of all claims of the respondent workmen who could not have claimed any further revision of wages on the basis of a settlement that came to be entered into long thereafter on 6.2.1995. The settlement as per Clause 1 read with Clauses 36 and 37 thereof nowhere stipulates any benefit to an employee who had sought voluntary retirement or had resigned as a sequence thereof. Thus, any computation was impermissible and, therefore, an application under Section 33(C)(2) of the 1947 Act was not maintainable.

15. The contention, therefore, is that the respondent workmen in an indirect way were raising an industrial dispute pertaining to the interpretation of the terms of the settlement read with the voluntary retirement scheme which ought to have been disputed before the Industrial Tribunal whereafter only any application for computation could have been filed.

16. In this background, the learned Senior Counsel submits that the learned Single Judge as well as the Labour Court both committed an error in construing the inclusion of the respondent workmen also within the terminology of the settlement that only included those who had superannuated or had died. There was no scope for introducing a third category or a class of workmen for extending the benefits of the wage revision and thus the Labour Court as well as the learned Single Judge have exceeded in their jurisdiction in doing so.

17. The learned Senior Counsel has urged that the settlement read as a whole clearly excludes any other class of workmen and in the absence of any pre-existing right, there was no occasion for the Labour Court or the learned Single Judge to have interpreted the transactions otherwise. The Labour Court as well as the learned Single Judge have completely misconstrued the voluntary resignation tendered by the respondent workmen and there was no other possible view once the voluntary retirement sought by the respondent workmen, as offered by the management, had been undisputedly accepted by them resulting in a full and final settlement of their claims thereby estopping them to raise any such claim in future.

18. Mr. Vijay Narayanan, learned Senior Counsel has relied on the following judgments on the issues so raised:

- i. Municipal Corporation of Delhi v. Ganesh Razak and another, reported in (1995) 1 SCC 235;
- ii. State Bank of India v. Ram Chandra Dubey and

- others, reported in 2000 (2) LLJ 1660;
- iii. State of Uttar Pradesh and another v. Brijpal Singh, reported in (2005) 8 SCC 58;
- iv. Everestee v. District Labour Officer, reported in 1999 (2) LLJ 851;
- v. EID Parry (India) Ltd v. MN Padmanabhan and another, reported in 2008 (3) LLJ 687;
- vi. Vijay Kumar and others v. Whirlpool of India Ltd. and others, reported in (2008) 1 SCC 119;
- vii. ITI Limited v. ITI Ex. VR Employees Officers Welfare Association and others, reported in (2010) 12 SCC 347;
- viii. HEC Voluntary Retd. Employees Welfare Society and another v. Heavy Engineering Corporation and others, reported in (2006) 3 SCC 708;
- ix. Officers and Supervisors of IDPL v. Chairman and MD, IDPL and others, reported in (2003) 6 SCC 490;
- x. A.K. Bindal v. Union of India and others, reported in (2003) 5 SCC 163;
- xi. Hindustan Machine Tools Ltd. and another v. MS Kang/PN Kashyap, reported in (1997) 11 SCC 186; and
- xii. P. Mathappan v. Deputy Commissioner of Labour and Management of Chemplast Sanmar Ltd., reported in Manu/TN/0665/2008.

19. Mr. Vijay Narayanan contended that the judgment of the learned Single Judge is unsustainable, in view of the later pronouncement of the Hon'ble Supreme Court. He would first state that as against the order passed by a learned Single Judge of the Karnataka High Court, ITI Limited preferred an appeal before the Hon'ble Supreme Court in ITI Limited Vs. ITI EX/VR EMPLOYEES/OFFICERS WELFARE ASSOCIATION AND OTHERS {(2010) 12 SCC - 347 and the judgment of the High Court was reversed. He would place reliance on the judgment of the Hon'ble Supreme Court in HFC VOLLUNTARY RETD. EMPLOYEES WELFARE SOCIETY AND ANOTHER Vs. HEAVY ENGINEERING CORPN LTD AND OTHERS {(2006) 3 SUPREME COURT CASES - 708}, wherein also there was a voluntary retirement scheme which was floated and after the voluntary retirement scheme came to an end, there was a wage revision and the issue therein also was that whether the revised wages could be extended to those employees who had opted for voluntary retirement scheme. The arguments in that case also was that the wage settlement was to be given only to workmen who had either

attained the age of superannuation or had died between the period wage revision was come to operation to the date when the settlement was actually arrived at. The Hon'ble Supreme Court, ultimately, held as under:-

"18. The Voluntary Retirement Scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.

19. It is not in dispute that the effect of such Voluntary Retirement Scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

20. We have indicated hereinbefore that before floating such a scheme both the employer as also the employee take into account the financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercises as regards the financial implication thereof. If a large number of employees opt therefor, having regard to the financial constraints, an employer may not accept offers of a number of employees and may confine the same to only a section of optees. Similarly when an employer accepts the recommendations of a Pay Revision Committee, having regard to the financial implications thereof it may accept or reject the whole or a part of it. The question of inclusion of employees who form a special class by themselves, would, thus, depend upon the object and purport thereof. The appellants herein do not fall either in clause 3.2 or 3.3 expressly. They would be treated to be included in clause 3.2, provided they are considered on a par with superannuated employees. They would be excluded if they are treated to be discharged employees.

21. We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the

opinion that neither are they discharged employees nor are they superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the aforementioned expression, provided it was so stated expressly in the Scheme.

22. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the Voluntary Retirement Scheme is governed by contract. By such contract, they can opt out of such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.

23. The question came up for consideration before the Division Bench of this Court in A.K. Bindal v. Union of India [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] wherein this Court took notice of the fact that in implementation of such a scheme a considerable amount has been paid to the employee ex gratia besides the terminal benefits in case he opts therefor. It has further been noticed that the payment of compensation is granted not for doing any work or rendition of service and in lieu of his leaving the services of the Company. (See also Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L. [(2003) 6 SCC 490 : 2003 SCC (L&S) 916])

24. In State of A.P. v. A.P. Pensioners Assn. [(2005) 13 SCC 161 : JT (2005) 10 SC 115] this Court

categorically held that the financial implication is a relevant criterion for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be extended.

25. It will also be germane for such a purpose to take into consideration the question as to whether those who are no longer on the rolls of the Company should be given the benefit thereof."

(emphasis supplied)

20. Mr.N.Vijay Narayanan also placed reliance on {(2008) 1 SUPREME COURT CASES - 119 (VIJAY KUMAR AND OTHERS Vs. WHIRLPOOL OF INDIA LTD AND OTHERS) wherein again the same issue arose for consideration wherein the Hon'ble Supreme Court relying on an earlier judgment of the Hon'ble Supreme Court in A.K.BINDAL Vs. UNION OF INDIA {(2003) 5 SCC - 163}, after quoting the provisions observed as under:-

"10. A bare reading of the abovequoted portion clearly shows that the settlement covered only cases of existing employees. The question of any erstwhile workman attaining specified production target does not arise.

11. At this juncture, it would also be appropriate to take note of what has been stated by this Court in some cases.

12. In A.K. Bindal v. Union of India [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] it has been stated as under: (SCC pp. 186-87, para 34)

"34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the

business world it is known as 'golden handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

13. In CEAT Ltd. v. Anand Abasaheb Hawaldar [(2006) 3 SCC 56 : 2006 SCC (L&S) 461] it has been held as under: (SCC p. 60, para 10)

"10. According to learned counsel for the appellant, a complaint of unfair labour practice can be made only by the existing employees. Under Clause (5) of Section 3 of the Act the expression 'employee' only covers those who are workmen under Clause (s) of Section 2 of the Industrial Disputes Act, 1947 (in short 'the ID Act'). The expression 'workman' as defined in Clause (s) of Section 2 of the ID Act relates to those who are existing employees. The only addition to existing employees, statutorily provided under Section 2(s) refers to dismissed, discharged and retrenched employees and their grievances can be looked into by the forums created under the Act. In the instant case, the complainants had resigned from service by voluntary retirement and, therefore, their cases are not covered by the expression 'workman'. On the factual scenario, it is submitted that after 337 employees had accepted VRS I, others had raised disputes and had gone to

court. Order was passed for paying them the existing salary and other emoluments. This went on for nearly two years and, therefore, with a view to curtail litigation a memorandum of understanding was arrived at in 1994. This basic difference in the factual background was not noticed by either the Industrial Court or the High Court."

21. Reliance was also placed on IFCI LTD Vs. SANJAY BEHARI AND ORS {(2019) 12 SCALE 522}, wherein the Hon'ble Supreme Court observed at paragraph Nos.23, 24, 25 and 27

"23. In the present case, VRS-2008 has received consideration right till the Supreme Court and attained finality on the issue of benefits and incentives sought to be claimed beyond the Scheme, in P.P. Vaidya³ case. Interestingly, some of the respondents, apparently, are common between that case and the present case. Thus, not having succeeded on one aspect, another aspect is now sought to be agitated.

24. We may usefully refer to the judgment in A.K. Bindal v. Union of India⁴, which set forth the very rationale of introducing a scheme for voluntary retirement, i.e., to reduce surplus staff and to bring in financial efficiency. It is in this context that it is referred to as the 'Golden Handshake'. Ex gratia amounts are paid, not for doing any work or rendering any service, but in lieu of employees leaving services of the company and foregoing any further claims or rights in the same. It is optional, not compulsory. It is a take it or leave it situation. Thus, anyone availing of a VRS does so with his eyes wide open. On having availed of the benefits under the scheme, if there are future changes, which may give any of the monetary benefits, the same cannot be read into the scheme. This would defeat the very purpose of having a VRS, i.e., to bring in financial efficiency, as it would not be possible that despite having paid the amounts, the organization can be lumped with further financial liability arising from re-thoughts by such persons, who have already availed of the VRS. The VRS cannot be frustrated in this manner.

25. We have already discussed the terms of the Scheme, which are quite clear. The benefits under VRS-2008 are many, in terms of the financial package. Pension is only one of the items of that package, while calculating the amounts as per clause 7.2 of the Scheme. There is no ambiguity left by the propounders of the Scheme while setting out the prohibitive clause against any further compensation, in clause 9.4, or while stating that no revision shall be made in the voluntary retirement amount on account of pay revision, as per clause 9.12. The latter, in our mind, leaves no manner of doubt. The plea of the private respondents that there were certain aspects on which the Scheme was nebulous and, thus, the benefits on those accounts must be available to the respondents (Bank of India v. K. Mohandas⁵) is, hence, without any basis.

27. It is trite to say that the aforesaid principle really applies to a retiree, and not to one who terminates his relationship with the employer earlier, often for greener pastures, and takes a complete package of various financial benefits, pension being only one of them."

22. Management therefore states that the settlement would apply only to those workmen who were on the rolls of the Company on the date the settlement was entered into and it was extended to such of those persons who had attained the age of superannuation between the date on which the wage revision was come into force till the time the settlement was actually entered into and such of those workmen who had passed away in the interregnum. According to him, since voluntary retirement is not superannuation, the wage settlement cannot be extended to the claimants.

23. Learned Senior Counsel has laid special emphasis on the judgement in the case of HEC Voluntary Retired Employees Welfare Society (supra) coupled with the judgement in the case of A.K.Bindal (supra) to contend that it is no longer legally permissible for an employee having sought voluntary retirement to claim any benefits beyond the same, including pay scale revision, and the said judgments, therefore, clearly come to the aid of the appellant Management and the same have not been correctly appreciated and the said judgments, in his opinion, finally settle the issue. With the aid of the said decisions, it is urged that the word "superannuation" used in Clause 36 of the Settlement dated 6.2.1995 cannot and does not include an

employee who has voluntarily retired. Superannuation, according to him, means one who scales full length of the service provided and thereafter retires from service. Any curtailment of the period of service voluntarily will not amount to superannuation and, therefore, the plea raised by the respondent workmen has been incorrectly accepted by the Labour Court as well as by the learned Single Judge.

24. On the other hand, Mr.N.G.R.Prasad, as stated above, has supported the order of the Tribunal. Apart from reliance on the reasoning given by the Tribunal that there could not be two sets of wages payable to identically situated workmen on 1/4/1994, he would further state that the judgment of the Hon'ble Supreme Court in IFCI LTD Vs. SANJAY BEHARI AND ORS {(2019) 12 SCALE 522}, is actually in his favour because in the scheme in the case of IFCI it was specifically stated that benefits payable under the scheme shall be in full and final settlement of all claims whatsoever, whether arising under the scheme or otherwise to the Officer (or to his nominee in the case of death) and that the Officer who voluntarily retire under the scheme will not have any claim against the IFCI whatsoever and no demand or dispute will be raised by him or on his behalf whether for re-employment or compensation or backwages.

25. He would therefore, state that in the present case, there is no such clause which would bar a person opting for voluntary retirement from taking the benefit of the scheme of wage revision which was in contemplation when the notice of voluntary retirement scheme had been issued.

26. Mr. N.G.R.Prasad would also argue that the facts in the case of HFC VOLUNTARY RETD. EMPLOYEES WELFARE SOCIETY AND ANOTHER Vs. HEAVY ENGINEERING CORPN LTD AND OTHERS {(2006) 3 SUPRME COURT CASES - 708}, and A.K.BINDAL Vs. UNION OF INDIA {(2003) 5 SCC - 163}, would not apply to the facts of the present case because in those cases, the Management Company were financially depleted and had been declared sick and therefore, the financial capacity of the Company was a major factor while deciding as to whether the workmen who had opted for voluntary retirement scheme would be entitled to the wage revision or not. On the other hand, the appellant is a profit making company which is a part of Sanmar group having business in chemicals, Shipping, Engineering and Metals, etc. It has a turn over of 65 billion having manufacturing facilities at various parts of the Country. He would therefore, submit that the judgment of the Hon'ble Supreme Court, relied on by Mr.Vijay Narayanan, would not be applicable in the present case.

27. Replying to the said contentions Mr.N.G.R.Prasad and Mr.S.Ayyadurai, have urged vehemently that the crucial question is of the applicability of the date of pay revision which is to be uniformly applied to all workers who were on the rolls from the date on which the wage revision was enforced, namely 1.4.1994. Their contention is that all the workmen who had sought voluntary retirement were very much on the rolls of the company and were permanent workmen on 1.4.1994. It is for this reason that the voluntary retirement scheme in formula "A" included the date 1.4.1994, as the pay scale revision was in contemplation and the settlement negotiations were going on. Their contention is that there was a clear intention and rather no denial by the Management that such a benefit would be extendable to all such employees.

28. It is urged on behalf of the respondent workmen that the subsequent entering into of a negotiation of voluntary retirement under the said notice did not amount to a conduct on the part of the respondent workmen so as to waive all their future rights in respect of the pay revision, when the settlement that came later on, i.e., on 6.2.1995, had specifically made the revision applicable from 1.4.1994 and both the employer and the employees were fully conscious that such a pay revision would be available to all workers who were on the permanent rolls as on 1.4.1994. It is for this reason that the Management did not insist upon the argument that the settlement would be applicable only on such employees who were on the permanent rolls as on the date of settlement. Rather, such an argument was given up before the Labour Court and it does not even stand today before this Court.

29. It is urged that there is no specific exclusionary clause either in the voluntary retirement scheme or in the settlement dated 6.2.1995 and in the absence of any such exclusionary clause the interpretation should be made in favour of the labour, which has been rightly done by the Labour Court as well as by the learned Single Judge, reading it in favour of the respondent workmen.

30. It is submitted that Clause 1 and Clause 36 have therefore to be read together and in absence of any ouster of claim of those employees who had sought voluntary retirement, a possible equitable view has been taken that should not be altered in appeal as this is a discretionary jurisdiction and the learned Single Judge having exercised discretion in favour of the labour, the same should not be altered.

31. It is the submission of Mr. Prasad that not extending benefit would result in inequality thereby violating Article 14 of the Constitution of India, inasmuch as on the date of the enforcement of the pay scale revision, i.e., on 1.4.1994, there cannot be two pay scales for the same set of employees. The fact that the respondent workers were existing employees on 1.4.1994 being undisputed, there were only one set of employees, including those who retired later on or died later on or even sought voluntary retirement later on. The mere omission of the expression about employees having voluntarily retired in the settlement would not exclude them from the category of employees. He urged that a common denominator should be applied in respect of all employees at par in terms of the settlement itself coupled with the contemplation under the voluntary retirement scheme, where also the date is the same, namely 1.4.1994.

32. There was one contention raised by the Management which needs a special mention, namely that as per Clause 18 of the voluntary retirement scheme, in the event of any confusion or doubt, it was left open to the employees to seek clarification. According to the Management, while setting out its claim in the counter filed before the Labour Court, it had been categorically stated that a clarification had been sought and the workers had been informed through their representatives that the acceptance of the voluntary retirement scheme would amount to full and final settlement and would be a golden handshake. Thus, any doubts stood cleared. Even though this fact has been denied by the respondent workmen, yet the fact remains that the wage settlement was under contemplation and was under negotiation, as the termination of the earlier wage settlement had already arrived on 31.3.1994.

33. The tendering of the resignation and acceptance of the voluntary retirement scheme was only a continuity in relation to the voluntary retirement scheme itself and not a relinquishment of all future rights. Mr. Prasad has referred to the judgement in the case of IFCI Ltd. v. Sanjay Behari and others, reported in 2019 (12) SCALE 522 to contend that the ratio of the said judgment would not be applicable as in that case there was a specific condition of relieving of an employee and the signing of an undertaking with a further condition that all benefits payable under the scheme would be full and final settlement. He submits that the ratio of the said decision turned on the facts of that case, whereas there is no such exclusionary clause herein and, therefore, it is distinguishable.

34. He then invited the attention of the Court to the judgement in the case of A.Satyanarayana Reddy and others v. Presiding Officer, Labour Court and others, reported in (2016) 9 SCC 462 to contend that an application under Section 33(C) (2) of the 1947 Act would be maintainable and further to assert by relying on paragraph 17 of the judgment that unless there is a specifically covering clause excluding the applicability of the scheme, no forum will have jurisdiction to deny the same.

35. He then cited the judgment in the case of The KCP Employees Association v. The Management of KCP Ltd., Madras and others, reported in (1978) 2 SCC 42 to remind the Court that in industrial law whenever there is a doubt in interpretation, then the benefit of reasonable doubt should be extended in favour of the labour. To the same effect he has relied on the judgement in the case of Workmen v. Williamson Magor and Co. Ltd. and another, reported in (1982) 1 SCC 117 that has approved of the ratio in the case of The KCP Employees Association (supra).

36. He has then contended that the same should also be read in support of the constitutional goal that has to be achieved in terms of the Directive Principles of State Policy contained in Article 39(d) of the Constitution of India, as held by the Apex Court in Randhir Singh v. Union of India and others, reported in (1982) 1 SCC 618.

37. He has relied on two other decisions to substantiate his further submissions, i.e., (i) Sahu Minerals and Properties Ltd. v. Presiding Officer, Labour Court and others, reported in (1976) 3 SCC 93, and (ii) Bank of Baroda and another v. G.Palani and others, [Judgment dated 13.2.2018 in Civil Appeal No.5525 of 2012].

38. It is, therefore, his submission that there is a constitutional connectivity with the cause of the workmen in this case and, hence, the judgment in the case of HEC Voluntary Retired Employees Welfare Society (supra), as relied upon by the Management, is distinguishable, more so on the facts of the present case, where there is no exclusionary clause.

39. Learned counsel for the respondent workmen further contended that the judgments which have been cited at the bar by the learned Senior Counsel for the appellant Management are all in relation to sick companies, whereas, in the present case, the

appellant Management represents a company which is a blue chip company which has expanded its business far and wide and, therefore, any surplus being earned by it should form part of the reasonable wages to which the respondent workmen are entitled to.

40. We have considered the submissions of the learned counsel appearing for the parties and have perused the documents.

41. As rightly pointed out by Mr. Vijay Narayanan, the issue as to whether voluntary retirement and superannuation are synonymous or not is no longer res integra. The Hon'ble Supreme Court has held that voluntary retirement amounts to cessation of relationship between the employer and the employee and once the employer opts to retire voluntarily in terms of a scheme, he cannot then stake a higher claim on the ground of increase in salary at a later point of time unless the statute provides for it or the scheme specifically postulates for it.

Clause 36 of the wage settlement specifically reads as under:-

"Arrears payable under this settlement will be paid on or before 18th February 1995 (including to these permanent workmen who have retired on superannuation or died while in service between 1/4/1994 and the date of signing this settlement) income tax deductions will be made from the arrears arising out of this settlement."

It extends the benefit of wage settlement only to those persons who were on rolls of the management on the date the settlement was entered into and has been extended only to persons who have attained the age of superannuation or those who have passed while in service between 1/4/1994 and the date of signing the settlement.

42. Retirement on attaining the age of superannuation and voluntary retirement are entirely two different concepts. Under voluntary retirement, an employer enters into a contract with the employee and the employee chooses to leave the organisation on getting certain benefits which he would not have got otherwise. Voluntary retirement therefore, is a contractual termination of employment which arises out of a scheme. On the other hand, a person superannuates on attaining the age of superannuation i.e., the maximum age prescribed by the employer beyond which an employee cannot be retained in service. On

attaining that age, the person automatically ceases to be in employment while continuing in service. It is cessation of service under normal conditions and not a cessation by choice.

43. A person therefore, who opts voluntary retirement decides to leave the organisation on his own free will and in terms of a scheme. In view of this, it is not possible to read voluntary retirement is equivalent to retirement on attaining the age of superannuation as provided in Clause 36 quoted supra.

44. The issue as to whether voluntary retirement is same as superannuation or not is therefore no longer res integra as settled by the Hon'ble Supreme Court in HEC VOLUNTARY RETIRED EMPLOYEES WELFARE SOCIETY AND ANOTHER Vs. HEAVY ENGINEERING CORPORATION LTD AND OTHERS (2006) 3 SUPREME COURT CASES 708, wherein the Hon'ble Supreme Court has categorically stated that voluntary retirement scheme emanates out of a contract whereas superannuation connotes cessation of service on attaining the age prescribed in service conditions. The Hon'ble Supreme Court, while considering an identical case, has held that voluntary retirement cannot fall within the definition of superannuation provided it was so stated expressly in the scheme. In view of the above, the finding of the learned Single Judge that VRS is accelerated superannuation is directly contrary to the judgment of the Hon'ble Supreme Court and deserves to be set aside.

45. Admittedly, when the employees opted for voluntary retirement under the scheme, they knew that there are talks going on for revision of wage. Union was representing all workmen. Union specifically chose not to include those persons who had opted for voluntary retirement to be included specifically in Clause 36. Had the parties intended that the benefit of wage revision should be extended to persons who have opted for voluntary retirement then Clause 36 would have included persons who had opted for voluntary retirement. What has been left out cannot be specifically included and must be presumed to be excluded in the agreement. The finding of the learned Single Judge in equating voluntary retirement to retirement on attaining the age of superannuation is clearly contrary to the law laid down by the Hon'ble Supreme Court. Even though there is no express exclusion of voluntary retirees from getting the benefit of wage revision, but yet the fact that voluntary retirement has not been included in Clause 36 would clearly mean that parties to the settlement had agreed not to include persons who retire voluntarily to extend the benefit of wage revision. The question therefore to harmoniously construe the settlement clauses did not arise, moreso when the proceedings were not an industrial dispute and were a claim for wages under Sec 33C(2) of the Act.

46. When the workmen opted for the voluntary retirement scheme and gave letters stating that they were resigning the job while accepting the voluntary retirement scheme, the jural relationship of master servant came to an end. Such persons were therefore, not in employment on the date when the settlement was entered into between the Management and the workmen on 6/2/1995. The terms of the settlement arrived at between the Management and the Union specifically provides that arrears payable under the settlement would be paid only to persons who are in rolls of the Company on the date of the settlement was entered into and this was extended to those workmen who retired on superannuation or died in service between 1/4/1994 and the date of signing the settlement. The terms of settlement therefore, clearly postulates that Unions did not intend to include such of those persons, who had opted for voluntary retirement scheme to get the benefit of wage revision. Had the Labour Union intended to extend the benefit of the wage revision to employees who had agreed to take voluntary retirement also then it would have specifically mentioned it expressly in the agreement.

47. The contention of Mr.N.G.R.Prasad that unless and until the persons who have opted for voluntary retirement scheme are not specifically excluded from the term settlement they should be understood to be included cannot be accepted. His reliance on the judgment of the Hon'ble Supreme Court in IFCI LTD Vs. SANJAY BEHARI AND ORS {2019 (12) SCALE 522}, stating that in the judgment of the Hon'ble Supreme Court, it had been specifically stated by the employees that they would not be given the benefit of the wage revision and will not have further claims and only based on such a specific clause was their claim to the entitlement of wage revision was denied which is absent here, cannot be accepted.

48. Mr.N.G.R.Prasad has also placed very strong reliance on A.SATYANARAYANA REDDY AND OTHERS Vs. PRESIDING OFFICER, LABOUR COURT AND OTHERS (2016) 9 SUPREME COURT CASES 462, he has placed reliance on paragraph Nos.16 and 17, which reads as under:-

"16. As has been laid down in Pritam Singh Gill [National Buildings Construction Corpn. v. Pritam Singh Gill, (1972) 2 SCC 1] , a claim pertaining to non-payment of suspension allowance could be agitated under the said provision in spite of the employee being dismissed from service. In A.K. Bindal [A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] , the two-Judge Bench has held that after acceptance of the scheme and availing of benefits under VRS an

employee could not claim higher wages. The controversy was different. If the VRS had mentioned about the lay-off compensation, needless to say, the claim would have been covered and the amount received by the workmen would have been deemed to have been covered by the quantum of lay-off compensation. That is not the factual position. Therefore, the controversy that arose in Pritam Singh Gill [National Buildings Construction Corpn. v. Pritam Singh Gill, (1972) 2 SCC 1] and the dispute that emanated in A.K. Bindal [A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill [National Buildings Construction Corpn. v. Pritam Singh Gill, (1972) 2 SCC 1] and A.K. Bindal [A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] .

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

49. A perusal of the above mentioned paragraph does not advance the case of Mr. Prasad. In that case what was awarded to the workers was dues like lack of compensation, subsistence allowance, etc., which could not have been denied to the workmen. In this case, issue as to whether the wage revision which has been given to the workmen on account of a settlement entered into between the parties under the Industrial Disputes Act can be extended to persons who had already opted for voluntary retirement before the wage revision was granted. Reliance placed by Mr. Prasad on the said judgment is of no avail to him.

50. The reliance on the judgment of the Hon'ble Supreme Court in THE K.C.P.EMPLOYEES' ASSOCIATION, MADRAS Vs. THE MANAGEMENT OF K.C.P.LTD., MADRAS AND OTHERS (1978) 2 SUPREME COURT CASES - 42, by Sri Prasad is also not relevant. At paragraph 5, the Hon'ble Supreme Court has held as under:-

5. In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if

there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without overstepping the proved facts, correct the balance sheets and profit and loss accounts of the Central Workshop to the extent justified by the Act and the evidence and finish the lis within three months of receipt of this order. The appeals are dismissed. No costs.

51. In the present case, there is no doubt on the law and the facts of the case. A reading of the wage settlement entered into between the Union and Management shows that the arrears of wages will be paid to such of those workers who were on the rolls of the appellant and the arrears was also to be paid to such of those persons who had either passed away between 1/4/1994, to fill the date of entering of settlement or that who had attained the age of superannuation between the two dates. As stated above, it cannot include persons who had entered into a contract with the Management and had opted to avail the voluntary retirement scheme. If the contention of Mr. Prasad had accepted, then the settlement would read as if it has deemed to be come into force on 1/4/1994. The wage settlement agreement which had been entered into between the Management and the workmen in 1991 was to be in force for a period of three years and it expired on 3/3/1994. A fresh settlement was entered into for the purpose of wage revision which was to be effected from 1/4/1994 and that is why the settlement states that arrears of salary from 1/4/1994 would be paid to such of those persons who were on roll on the date when the agreement was entered into and not to who were on rolls on 1/4/1994.

52. The contention of Mr. Prasad that there cannot be different wages applicable to employees workmen on 1/4/1994 i.e., those who have opted for voluntary retirement and those who not opted for voluntary retirement. He could argue that would result in violation of the principle equal pay for equal work regarding similarly placed employees which is impermissible cannot be accepted. The appellant herein is not a State and in any event, the respondents chose to sever the relationship by accepting compensation which was calculated on the basis of the amount they were drawing on the date of the availing the scheme.

53. The fact that arrears of wages were being paid under Clause 36 of the voluntary retirement scheme to persons in roll and those persons who had either passed away or who had retired or attaining the age of superannuation does not mean that it should be extended even to such of those persons who were not specifically covered under the wage revision scheme rather who have been consciously excluded from the applicability of the scheme. The reliance placed on paragraph 8 of the judgment

referred to in RANDHIR SINGH Vs. UNION OF INDIA AND OTHERS (1982) 1 SUPREME COURT CASES 618, is misplaced. The said decision was passed against the Union of India and cannot be made applicable to private employment.

54. We are not entering into the debate as to whether an application under Section 33 (c) (2) was maintainable in the present case or not because it involves the interpretation of the wage settlement for the reason that we are not in agreement with the judgment of the learned Single Judge.

55. The argument of Mr. Prasad that if the judgment of the labour Court is not perverse then writ Courts must be slow to interfere under Article 226 of the Constitution of India and that this Court while exercising appellate jurisdiction ought not to interfere with the judgment of the learned Single Judge which is a plausible view also cannot be accepted. He would state that this Court ought not to substitute its conclusion to the one arrived at by the learned Single Judge affirming the order of the labour Court. We are afraid that we cannot accept the submission. The order of the learned Single Judge is contrary to the law laid down by the Hon'ble Supreme Court in HEC VOLUNTARY RETD EMPLOYEES WELFARE SOCIETY AND ANOTHER Vs HEAVY ENGINEERING CORPORATION LTD AND OTHERS (2006) 3 SUPREME COURT CASES 708; A.K.BINDAL AND ANOTHER Vs. UNION OF INDIA AND OTHERS (2003) 5 SUPREME COURT CASES 163 and IFCI LTD Vs. SANJAY BEHARI AND ORS {2019 (12) Scale 522}. This Court has no other option except but to set it aside and this Court is of the view that jural relationship of employer and employee snapped on the date when the employee submitted their letters of resignation and therefore, dis entitling them to the benefits of the increase in wages. The wages were increased only from the date of settlement. But since the earlier wage revision ended on 31/3/1994, the employees were given arrears of wages from 31/3/1994. The employees on roll will be given arrears from 1/4/1994 and this benefit was extended only to two classes of workers who were not on roll on the date when the settlement was entered into and to such of those persons who had attained the age of superannuation between the date on which the wage revision was come into force till the time the settlement was actually entered into and workmen who had passed away in the interrugnum. We reiterate that it cannot be said that intention of the employees Union had entered into a settlement was to include persons who had taken voluntary retirement under the Voluntary Retirement Scheme also. Had it been so, it would have been specifically stated in the terms of settlement.

56. The order of the Labour Court is also not sustainable. According to the Labour Court, there cannot be two sets of wages payable to the employees namely, one who had accepted the

voluntary retirement and other who had accepted the wage revision. The Labour Court also held that since the formula for calculating the amount payable under the settlement contemplated the wage as on 01.04.1994, the employees opted for the voluntary retirement scheme otherwise the workmen would not have accepted the voluntary retirement scheme. This ratio is completely based on conjectures and surmises. There is nothing on record to substantiate that the workers opted for voluntary retirement only after they were assured that they would be entitled to the wages that would be agreed upon between the Management and workmen. If the judgment of the Labour Court is accepted, then that would amount to altering the terms of the wage revision settlement because the terms of the settlement arrived at between the Management and the Union specifically provides that arrears payable under the settlement would be paid only to persons who are in rolls of the Company on the date of the settlement was entered into and this was extended to those workmen who retired on superannuation or died in service between 1/4/1994 and the date of signing the settlement.

57. In view of the above, appeals are allowed. Order of the learned Single Judge dated 4/2/2005, made in W.P.No.5395 of 1996 is set aside. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.S.Ayyadurai, Advocate Sr.17485
+1cc to M/s.Row and Reddy, Advocate Sr.17967
+1cc to M/s.Sairaa Associates, Advocate Sr.17809

Writ Appeal Nos.61 and 62 of 2006

mr[co]
srg 17/04/2020