HIGH COURT OF GUJARAT

AHMEDABAD ELECTRICITY COMPANY LIMITED
Versus
ELECTRICITY MAZDOOR SABHA

Date of Decision: 02 September 1998

Citation: 1998 LawSuit(Guj) 471

Hon'ble Judges: S D Pandit

Eq. Citations: 1998 2 CLR 820, 2001 3 LLJ 1161, 1999 LabIC 825, 1999 1 GCD 748

Case Type: Special Civil Application

Case No: 8030 of 1997

Subject: Civil, Labour and Industrial

Acts Referred:
Code Of Civil Procedure, 1908 Sec 11
Contract Labour (Regulation And Abolition) Act, 1970 Sec 2(h), Sec 2, Sec 10

Advocates: Nanavati Associates, A K Clerk

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[1] These two SCAs are preferred originally by the employer-the Ahmedabad Electricity Company (hereinafter referred to as the company) and Labour union representing the workmen of the company viz. Electricity Mazdoor Sabha (hereinafter referred it as EMS) against the award passed in Reference No. 133 of 1992 on 20.9.1997. With the consent of the parties, the main SCAs and the CA are heard together finally. Learned advocates for the respondents in each petition have waived service of notice of rule in all the above said matters.

[2] The EMS raised an industrial dispute in respect of 360 workmen who have shown on record as the workmen working under the contractors contending that the work which these workmen are carrying out is permanent in nature and connected with the general activities of the company and the contracts executed between the company and its contractors to show that those 360 workmen are contract labourers were sham and a comouflage in order to avoid the provisions of the labour laws and to deny those 360 workmen the benefits of the regular employees of the company. Thus it was contended that said 360 workmen were real workmen of the company and the

contracts between the contractor to provide labourers and the company are illegal and camouflage to deny these workmen the rights of the regular employees. They therefore, sought to declare that they were regular employees of the company and that they were entitled to get the same pay and allowances which are being paid to the regular employees of the company.

[3] The company had resisted the claim of the EMS by contending that the demand which the EMS is making of seeking the abolition of contract labour system and the Industrial Court has no jurisdiction to grant the same relief. It is further contended that out of those 360 workmen about 34 workmen had earlier filed applications to get the same and similar reliefs and their applications were rejected by the Labour Court. Consequently they cannot raise the same contention again by raising an industrial dispute through the EMS. It was also contended by the company that out of those 360 workmen the workmen who are working in the township system could not be said to be the workmen of the company and the job which these workmen are doing have no connection with the work of the company. Therefore, those workmen could not claim to be the workmen of the company and they cannot claim and get the declaration of being workmen of the company and other consequential reliefs. It was further contended that out of those 360 workmen who were working as drivers are the personal drivers of the employees/officer of the company and they have no connection with the working of the company. Similarly one of the workman who is driver of the school bus has also no connection with the company. He is engaged by the parents of the students to send the children by the school bus and they arrange to make payment of him and consequently they cannot claim any relief against the company. It was further contended that even after the introduction of the contract labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the said Act of 1970.) There is no bar to engagement of labourers through contractor. It is further contended that the validity of the employment through the contractors could not be decided and considered by the Industrial Court and said Act of 1970 is a complete code and it makes the provision to declare the invalidity of the contract or to abolish contract labour system. Thus it was contended that the reference be rejected. The Industrial Court gave opportunity to both the sides to lead oral as well as documentary evidence and on considering the material before it, the Industrial Court came to the conclusion that from the date of reference i.e. 3.12.1992 all the workmen mentioned in the reference were to be treated as employees of the company and out of them 339 workmen who have joined upto 1990 should be absorbed in the permanent strength of the company on 3.12.1992, 16 workmen should be absorbed from 1.1.1994 and 5 workmen from 1.1.1995. The Industrial Court further issued a direction that if no vacant posts available to absorb them, then the company should create additional permanent posts to absorb them and they should be paid benefits in two equal

quartarly installments within 6 months. The Industrial Courts negatived the contention of the company that the relief sought was of abolition of the contract labour system and consequently the Industrial Court had no jurisdiction to entertain in the reference.

[4] The Industrial Court also rejected the claim of the company that the claim of about 34 workmen was hit by the principles of res judicata. The Industrial Court also negatived the contention of the company that the workmen who were working as drivers and who were working in the township scheme were not workmen of the company.

[5] The company being aggrieved by the said decision has come before this Court seeking the total quashing and setting aside of the award passed by the Industrial Court; whereas the EMS has come before this Court seeking the modification of the award and they want that benefits of permanency and other service conditions ought to have been given to the workmen from 3 years since they joined the service.

[6] Mr. K.S. Nanavati learned Sr. counsel appearing on behalf of the company in SCA No. 8030 of 1997 has contended before me that the award in question amounts to abolition of the contract labour system and the Industrial Court has no jurisdiction to abolish Contract Labour System. He contended before me that in view of the provisions of Sec. 10 of the said Act of 1970, the jurisdiction vests in the appropriate Government to prohibit the Contract Labour System. He contended before me that the object of the said Act of 1970 is to regulate and improve conditions of service of contract labourers and not merely to abolish the contract labour system. He contended before me that said Act of 1970 is a complete code for the same object. He drew my attention to the following observations of the Apex Court in the case of Vegoils Pvt. Ltd. vs. The Workmen, AIR 1972 SC 1942. In paras 40 and 45 the Apex Court has observed as under : "40. The question naturally arises what is the effect of the Central and the State Acts regarding the jurisdiction of the Industrial Tribunal to entertain and adjudicate upon a dispute regarding abolition of contract labour. The Central Act had received the assent of the President on September 5, 1970 before the date of the award, though the said Act has come into force only with effect from, February 10, 1971. The State Act was already in force at the time when the award was passed. Though we are not inclined to accent the extreme contention of Mr. Pai that the Industrial Tribunal in view of these two enactments had no jurisdiction to adjudicate upon the dispute regarding the abolition of contract labour, nevertheless we are of the view that those two enactments, which are now in force have to be taken into account in considering whether the award of the Industrial Tribunal regarding abolition of contract Labour in respect of loading and unloading operations has to be sustained. The Industrial Tribunal acquires jurisdiction to entertain the dispute in view of the reference made by the State Government on April 17, 1967. Admittedly on that date

none of these enactments have been passed. Even during the proceeding before the Industrial Tribunal, there is no indication that the appellant raised an objection after the passing of the enactments that the Tribunal has no longer jurisdiction to adjudicate upon the dispute. Under those circumstances the Tribunal had to adjudicate upon the point referred to it having due regard to the principles laid down by the Courts, particularly this Court governing the abolition of contract labour. It may be that in future if a reference is proposed to be made or actually made by the authorities concerned regarding abolition of contract labour for adjudication by the Indusrtial Tribunal, it may be open to the persons concerned to resist the reference on the ground that the jurisdiction to consider such matters and prohibit contract labour is now vested with appropriate Government under the Central Act. 45. "The more important aspect to be noted is the provision in the explanation which makes the decision of the appropriate Government final on the quesition, whether any process or operation or the work is of a perennial nature. We have already extracted the whole of Sec. 10 and one of the relevant factions is that contained in Cl. (b) of Sub-sec. (2) in respect of which the Explanation makes the decision of the Appropriate Government final. The appropriate Government when taking action under Sec. 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to include that the jurisdiction to decide about the abolition of contract labour or to put it differently to prohibit the employment of contract labour is now to be done in accordance with Sec. 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not is left to be dealt with by the appropriate Government under the Act. if it become necessary " If the questioned award passed by the Industrial Court is seen then it is very difficult to accept the contention raised by Mr. Nanavati that by the award in question , the Industrial Tribunal has abolished the contract labour system of the petitioner. The Industrial Court has after stating the claims of both the sides in para Nos. 1 to 8 had raised in para 9, in all 8 issues for its determination while passing the award. And on all those issues, the Industrial Court has recorded its finding. Out of those 8 issues the Issue No. 7 and its finding are as under : Issue No. 7 Finding Whether the demand raised by the first party in this reference is with regard to abolition of Contract No. Labour system ? Now apart from the raising of the issue and recording of finding, if the whole of the award of the Industrial Court is carefully read, then it would be quite clear that the Industrial Court had never guided itself to consider the question of abolition of contract labour system. The award passed by the Industrial Court indicates and shows that the Industrial Court had considered and decided the question as to whether the contracts of labour which were entered into by the company with its contractors were genuine or sham and a camouflage to avoid the clutches of labour laws. Mr. Nanvati fairly stated as he is

known for the same that the Industrial Court has got jurisdiction to consider the question as to whether the contract to supply labourers between the company and its contractors were sham and bogus and to decide the said question.

[7] Therefore, in the cricumstances, it is not necessary to go into the questions as to whether the said Act of 1970 is a complete code or not because it was neither the claim of the EMS seeking abolition of contract labour system, nor the Industrial Court had considered the question of abolition of contract labour system. The Industrial Court has found on the materials produced before it that the contracts between the company and its contractors were sham and bogus. Once the Industrial Court reaches to that conclusion then, the natural consequences will follow and the contract labour workmen would become labourers of the company. But merely because of the result of the award, the workmen of the contractors have become workmen of the company of it could not be said that the Industrial Court has abolished the contract labour system. What the Industrial Court has found is that there is no honest and genuine contract labour system. It is therefore, the task to this Court to find out as to whether the Industrial Court was justified in reaching to the same conclusion.

[8] At the cost of repetition it must be stated that it is the claim of the EMS that the labour contracts are sham and bogus and is camouflage to avoid the clutches of labour laws. The learned counsel for the company has cited before the case of Snook vs. London & West Riding Investments Ltd., 1967(1) All England Reports 518 and has drawn my attention to the observations of M.R. Diplok L.J on page No. 528. There observations are as under: "As regards the contention of the plaintiff that the transactions between himself, Auto-Finance, Ltd. and the defendants "sham" it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejoratively word. I apprehend that, if it has any meaning in law, It means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the Court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. One thing I think, however, is clear in legal principle, morality and the authorities (see Yorkshire Railway Wagon Co. vs. Maclure; Stoneleing Finance Ltd. vs. Phillips, that for acts of documents to be a "sham", with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived. There is an express finding in this case that the defendants were not parties to the alleged "sham". So the contention fails. When the documents of either of the two parties to a contract or document contendes before the Court that the contract or the document was a sham

one, what he means is that, the contract or the document does not represent the real intention of the parties and that the real intention and understanding of the parties to a contract or the document was quite different, and distinct than what is represented in the document. But if a party who is not a party to the contract or the document, contends before the Court that a document or contract entered into by the parties is sham and bogus contract or document, he thereby pleads and contends that, that document or contract executed between the two parties was a fraudulent document or transaction and not representing the real state of affairs. When the third party which is disputing the effect of the document or contract entered into by the parties to the document or contract by contending that said a contract or document should not be read as it is and that it affects its right or obligations or liabilities, then he want to contend that said documents is fraudulent document created in order to defeat his rights and benefits. Now when such a contention is raised by a person or party who is not a signatory to the document or contract then the material on record will have to be considered by the Court to find out as to whether the claim of that third party that the contract is fraudulent contract or a fraudulent transaction is acceptable, on the material produced before the Court. When such a situation is there, it must be also borne in mind that when there is allegation of fraud, the Court must remember that generally a fraud is played by deceitful means and there would be hardly any direct evidence or fraud. A fraud is in its very nature is secret in it's origin and inception. Hence it is to be spelt out from the totality of the circumstances produced on record. Each and every circumstances individually will not be in a position to spelt out or disclose the fraud but the Court must take into consideration the totality of the circumstances which are produced on record and then to find out as to whether those totality of the circumstances reveal a fraudulent or dishonest gain. Therefore, hearing this aspect in mind, the award of the Industrial Court and the material produced before the Industrial Court will have to be taken into consideration.

[9] I have already stated that the Industrial Court had not considered the question of abolition of contract labour system. But if the provisions of the said Act of 1970 are considered, then it would be quite clear that the powers under the said Act of 1970 to abolish the contract labour system vests with the appropriate Government and not with any other authority. This is made quite clear by the Apex Court in its decision of Bhel Workers Associations vs. Union of India, AIR 1985 SC 409. Therefore, in the circumstances, it is redundcnt to consider the question as to whether the Industrial Court has got jurisdiction to abolish the contract labour system.

[10] The power vests with the appropriate Government under Sec. 10 to prohibit the employment of contract labour. Sub-sec. (2) of Sec. 10 of the said Act of 1970 lays down four factors which are to be required to be considered by the appropriate

Government before issuing prohibitory orders of employment of contract labour. As per the said provisions, it is necessary to consider as to whether the work carried out by the contract labourers is incidental or perennial in nature and whether said work is ordinarily carried out by the regular workmen in the establishment and whether sufficient employees were appoincd by the establishment for the said work. Now in the instant case, the workers union had raised an issue that the work which the 360 workmen are carrying out is of perennial nature and that it was not an incidental work. The material produced on the records also shows that the establishment is having sufficient means to make appointment of regular workmen and the work which these alleged contract labourers are doing is also being carried out by the regular workmen of the estabilshment. The Industrial Court has made the following observation in para 28(3) of its judgment. "Shri Gandhi has submitted that according to the Government Notification the company has strictly adhere to the principles of contract labour abolition in the process. In this notification, the first party union is a party. In nine processes stated in the notification the company has abolished the contracts system with effect from 1.4.1984. Even if this contention is accepted, considering the submissions of the union, proofs, depositions, and the duties enumerated in the reference as stated above the work of taking out coal from the samples bag, crushing the same, mixing the same sorting out according to the formula of mixing, sorting out according to the formula of mixing, sorting out of the crushed coal by mixing the same form time to time, collecting and removing the additional goods (coal) outside the room after finishing the work of crushing in the crusher and loading the same in hand-lorry and shifting it to the coal stock area, is taken from the concerned workmen of this reference. This is clear from the pleadings, evidence and proofs because this work is not only taken from concerned workmen of this reference but is also taken from the other permanent labourers of the company. The company had not proved this aspect. Though the company is able to furnish true and correct facts in this reference, it has not done so. The Secretary of the Union has admitted the details of the working of the concerned workmen in the company in 15 different categories and in their respective departments in his affidavit filed on oath and thereafter in his evidence given on oath. In reply thereto the officer of the company has only state that the concerned workmen are doing the work according to the needs of the company. As this reply of the company is not satisfactory, there is no reason to disbelieve that the concerned workmen of this reference are doing the work of collecting the excess coal sampling goods from the coal sampling section and loading the same in the lorry and thereafter lifting the same to the coal stock area which is the work of perennial nature, and, a part of the power production of the company which is prohibited vide the notification. In the same way the contention that the cleaning work in D station is not taken from the concerned workmen, according to the notification, which is prohibited vide item 6 of the notification with, effect from 1.4.1984 in view of the prohibition of contract

labour, is also not acceptable. The issue of D station was raised in 1984. However, 110 Megavolt 'E' station was commenced in 1985 and 110 Megawatt capacity 'F' station was commenced in 1988 and 60 Megawatt capacity 'C' power station was converted into 44 Megawatt in 1993. Moreover 100 Megawatt gas based 'G' power generating station was commenced at Vatva in 1991. The fact that in all these stations cleaning work is done by the concerned workmen of the reference cannot be denied.Therefore if there was prohibition of cleaning work in 'D' Station in 1984 it cannot be believed, that the conditions of the notification were strictly adhered to if the work of cleaning is taken by the concerned workmen in "F", 'G' and 'C' generating power stations." Then it is also found;that these 360 workmen are continuously working from 6 to 24 years. Even thoguh the contractor is changed the workmen continued to work since long and for more them 240 days in a year and as a matter of fact, the company is continuously working 365 days in a year and the workmen in question are working and are getting the work for all the days except on Sundays. Thus though the contractors are changed, then also the workmen continued in service. This shows that the work of perennial nature is earring out in 38 sections by the workmen as per the needs of the company.

[11] I am aware that said Act of 1970 is not prohibiting contract labour. Its aim and goal is regarding regularising and abolishing of contract labour as per the provisions of the said Act of 1970. I am also aware of the fact that the company establishment can put a condition in the contract for engaging contract labourers that the succeeding contractors must continue with the said workmen. Putting of such a condition is also treated as a benevolent act of the company/establishment for the benefit of the workmen. But in this case, the company has not come before the Court with a claim that they were putting a condition in the contracts that the contractors should continue the workmen who were already in employment for the benefit of the workmen. Sec. 7 of the said Act of 1970 compels every principal employer of an establishment to which the said Act applies shall not employ contract labourers in the establishment in the absence of registration under Sub-sec. (7). The company in this case has got its registration which is produced at Annexure E to the petition. It say that the petitioner company has got registration in the year 1972 and it further says that it had obtained the licence for engagement of 250 person for unloading and loading the coal from wagons and 60 persons for cabling line, digging of pits., erection of street light pole and section pillars. Thus the company had an authorisation/registration for employing only 310 workmen as contract labourers. Said registration was given in the year 1972 but there is no renewal of the said licence by the company at any time subsequent to the issuance of such licence. Then it is not also shown by the company that as per the provisions of Rule 25 necessary return to the Inspector after the completion of the contracts was sent. The prescribed Form No. 1 under Rule 17(1) also lays, down that the company/establishment must give in application the estimated date of

commencement of the date of contract work and estimated date of termination of employment of contract labour under each contract. If the said condition of the form prescribed is taken into consideration then it would be quite clear that the contract labour could be employed for a fixed period and not for continuously for unlimited period. The EMS had called upon the company to produce the contracts entered into by the company with the contractors for engagement of contract labourers. The Company has no doubt produced few work orders and has not produced all the contracts for the period during which the workmen in question had worked. The Industrial Court had commented much on the said conduct of the company and had also gone to the extent of drawing adverse inference for non production of the said contracts. It is true that adverse inference could be drawn against a party for non production of the documents if the said documents are proved to be in the custody of the party. But when the union of the workmen has gone before the Industrial Court with a case that the contracts are sham and bogus and that they are the real employees of the company it was incumbent on the compnay to produce all the material to enable the Court to come to a just and proper conclusion as regards the controversy between the parties. Here what could be said from the material on record is that the company was given sufficient opportunity to produce all the necessary material to come to a right and proper conclusion. But in spite of the same the original documents were not produced before the Court. The documents which are produced before the Court will have to be considered very carefully in veiw of the controversy between the parties. The first document is at Exh. 100 on page 338. It is a letter addressed to Karsandas Valji and Co. dated 13.7.1990. But it is not clear from the said letter as to what is the period of contract. But clause 19 of the said letter says that the contract will be effective form 1.4.1990. In the natural course of human conduct, if there is real and genuine contract, then the contract will have to be taken place and even work order would have been booked prior to the beginning of the work but in any case within reasonable time from the date of commencement of the work. But here the work order is coming into existence after nearly 3-1/2 months and that fact creates a doubt in the mind regarding the genuineness of the contract. The second document is at page 341. It is again as work order issued in favour of the same Karsandas Valji & Co. on 27.3.1990. It is a work order for handling of 12000 wagons per year at the rate of Rs. 36.80. Here again, there is no mention as to for what period the contract was to remains in force. The term No. 7 of this work order indicates that the contract labourers are to work under the direct supervision of the supervisors of the company. Next document is the work order dated 13.7.1990 at page 344 issued in favour of Associated Labour Corporation and the contract would be effective from 1.4.1990. Thus this work order is exactly as per Exh. 100 at page 338. Next document is the work order at Exh. 107 at page 347 issued in favour of M/s Daniel R. Thakker for supplying of labourers to carry out general gardening work in the power house with effect from 1.11.1990. Next work

order document is at page 348 dated 24.11.1998 issued in favour of Danniel R. Thakker for supplying of labourers for lifting coal and coal ash from B.C.D. station and misc. work with effect from 10.11.1990. The work order at page 349 is dated 17.12.1991 and the same is also issued in favour of Danniel R. Thakker for supplying of contract labourers for cleaning work in ash station area with effect from 1.12.1991. The work order dated 18.6.1992 is issued in favour of Danniel R. Thakker for supplying of contract labourers to carry out the general cleaning and house keeping job in power house with effect form 1.6.1992. Said work order also shows that quotations were given by the contractors on 15.6.1992. The work order at page 351 is in favour of M/s Sakraji P, dated 15.7.1989 for supplying of labourers for cleaning of trenches in each station, beasement with effect from 1.7.1989. The work order dated 6.11.1990 in favour of M/s Sakraji P. is for supplying of drivers and labourers for driving dozers to make a pond at ash pit area of the French well but there is no mention as regards the duration of contract and when the work was to begin. The work order at page 353 is in favour of the same contractor date 17.12.1991 for supplying of labourers and drivers to carry out the general cleaning work in the power house with effect from 1.12.1991. The work order dated 26.12.1991 in favour of the said contractor M/s Sakraji P. is in respect of supplying the workmen for carrying out general cleaning work at E station from 1.12.1991. The work order at page 355 dated 22.1.1992 is in favour of the same contractor for supplying of workers to carry out general road cleaning work and drivers to remove garbage by truck in D and E station area with effect from 1.11.1992. The work order at page 356 is in favour of M/s Nagjibahi & Sons dated 7.11.1989 supplying of labourers to carry out general sanitation work in power house with effect from 1.10.1989. The work order at page 357 dated 6.2.1990 is in favour of the same M/s Nagjibhai & Sons for supplying of labourers to carry out the general sanitaiton work in power house with effect form 1.1.1990. The work order dated 18.12.1991 is in favour of the said contractor to supply labourers to cart out coal and coal ash from C, D, E, and F station basement and firing floor and it does not show since when the work was to be carried out and the duration of the work. The work order at page 359 is in favour of the same contractor dated 21.12.1991 is for supplying of labour to carry out general sanitation work in power house with effect from 1.12.1991. The work order at page 360- is dated 22.1.1990 is in favour of same M/s Nagjibhai & Sons for supplying of labourers for carrying out general sanitation work in power house with effect from 1.1.1992. The work order at page 361 is dated 3.11.1989 is in favour of M/s Hirji Bhagwanji and sons for excavation and refilling of earth in any kind of soil for attending undergound waterleakage, replacing of pipe and to instal new pipeline. Here again there is no mention as to when the work was to commence and what should be the duration of work. The work order at page 362 dated 21.11.1990 is in favour of M/s Hirji Bhagwanji and Sons for supplying of labour for cleaning water logged nalas of C station turbine house, root to attend the leakage. Here agian there in no mentions as

to when the work was to commence and the duration of work. The work order at page 363 dated 11.12.1991 is in favour of same M/s Hirji Bhagwanji & Sons for preparing ramp at fire water pumping house at F station and to carry out other misc. civil work in power house area. Here again, there is no mention as to when the work was to commence and the duration of th1e work. The work order at page 363 dated 11.1.1992 is for supplying labourers for dismantiling or RCC structure in D station switch yard. In this work order, it is mentioned that (the work was carried out by the company. The work order at page 365 dated 15.12.1989 is in favour of M/s D.N. Plumber for supplying of labourers for misc. civil work near the triple crusher house, nere Tippler crusher house and various other places in civil station area. Here again there in no mention as to when the work was to be commenced and what was the duration of the work. The work order at page 366 is in favour of M/s D.N. Plumber dated 23.11.1990 for supplying of labourers for cleaning ashline area 13 number to Kolsy Tekra Acher with effect from 24.10.1990. The work order at page 367 is in favour of M/s D.N. Plumber for supplying of labourers for removing extra debris and filling the ground on both the sides for the road from gate No. 5 to petrol garage. Here again, there is no mention as to when the work was to commence and what should be the duration of work. The work order at page 368 is dated 7.1.1992 for supplying of labourers for carrying out general civil work and other misc. work but there is no mention as to when the work was to be carried out. The work order at page 369 is in favour of M/s Popatji Vastaji dated 3.11.1989 for supplying of labourers for levelling and dressing or earth around F. Station with effect from 1.10.1989. The work order at page 370 dated 12.12.1989 is in favour of the same contractor for supplying labourers for cleaning work and to carry out misc. work in F & C stations. Both these work orders do not show when the work was to be effective and what should be the duration. The work order at page 371 dated 19.11.1990 is in favour of the same contractor for supplying labourers to carry out the cleaning work around F station with effect from 15.11.1991. The work order at page 372 is in favour of the said contractor for suplying labourers for general gardening in F station with effect from 1.2.1991. The work order at pages 373 and 374 dated 15.2.1991 and 24.1.1992 are for supplying labourers with effect form 1.2.1991 and 1.1.1992 respectively. The work orders at page Nos 374 to 376 are in favour of M/s Viramji Rebbaji but the do not show when the work was to be commenced the work orders at page 377 dated 14.10.1989 is in favour of M/s Hiraji Devji for supplying labourers s'upplying and arranging misc. store spares in the stores and cleaning scrap yard. It does not show when the work was to be commenced and what is the duration. The work orders which are produced from pages 382 to 401 are regarding manufacturing of bricks blocks and slabs and they are also similar as earlier discussed work order. If the above details given in the contract by way of giving work order is considered then it would be quite clear that these documents are prepared in order to make a show that the labourers are contract labourers and to deprive them

the benefit of benevolent labour legislation. If the above details of the work orders are seen then it would be quite clear that in the ordinary course of nature of business there could not be such contracts if those contracts were genuine and true ones.

[12] Before the Industrial Court Form No. 21 prescribed by Rule 103 of the Factories Act was produced. In the said Form No. 21 initially, the name of the petitioner company was shown as the name of contractor and as well in the name of principal employer and all these forms were typed and filed by the petitioner company by describing the petitioner company as the employer and the workman.

[13] At Exh. 46 a notice issued by the company for inviting application for the post of section engineer was produced. In the said notice it is mentioned that the selected candidate was required to carry out the bill checking and supervising and controlling execution of the contract works of the captial and maintenance work. They had also produced another notice issued on 17.1.1990 inviting application for the post of Overseer and in the said advertisemnt it was also mentioned that there were to supervise the work of labourers engaged by the contractors. If these two advertisement are taken into consideration then it would be quite clear that the labour contractors in question were under the direct control and supervision of the comapny. There is nothing on record to show that any of the contractor had nay supervision or control over the work of the contract labourers.

[14] Xx xx xx

[15] The evidence of the witnesses for both the sides show that the work which the workmen in question was doing is of perennial nature to be done continuously and without any interruption. The material on record also shows that the petitioner company is making lot of profit in it's business. They part of rise is the profit is on account of denial of due wages to the workmen. Inspite of having the continuous and regular work as well as the financial capacity to regularise the workmen and to pay them wages, the petitioner is continuing in dubious Contract Labour System. Though the company is having 100 vehicles it is having only 3 regular drivers on their establishment. This is a clear indication of the dubious Contract Labour System.

[16] If the above discussed circumstances are taken together then there is no difficulty in coming to the conclusion that the contracts entered into by the company were a camouflage in order to deny the workmen regularisation as regular employees of the company. The work which the said workmen were carrying out was of perennial nature. It was a continuous work and the workmen were continuously working for years together. They were doing the work which the similar situated workmen of the company are doing. Therefore, it could be said that the work which the said workmen

were being carried out were of such a nature that the employment of contract labourers was quite natural and in the ordinary course of conduct.

[17] No doubt there were certain workmen who were doing the work in the township. They were doing the work of gardening, cleaning, maintenance of road and driving the cars of the company meant for their officers as well as for the company. The work of the township and the work of gardening could not be said in the ordinary terms and sense as work directly connected with the work of the company, Therefore, a question would arise in the mind whether said work carried out by the workmen in gardening and road maintenance work and township could be said to be work connected with the work of the company. This aspect is considered by the Apex Court in case of J.K. Cotton and Spg. & Wvg. Mills Co. vs. LA. Tribunal of India, AIR 1964 SC 737 and Head Notes (a) and (b) in this case run as under:

> (A) In the modern world industrial operations have become complex and complicated and for the efficient and successful functioning of any indusrty, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidential to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry. The expression 'employed in any industry' in the definiton of workmen in Sec. 2 (s) cannot therefore, be literaly construed and an employee who is engaged in any work of operation which is incidentally connected with the main industry of the employer would be a workman provided the other requirements of Sec. 2 (s) are satisfied.
>
> However, in matters of this kind it is not easy to draw a line, and in dealing with the question of incidental relationship with the main industrial operation, a limit has to be prescribed so as to exclude operations or activities whose relation with main industrial activity may be remote, indirect and far fetched. Thus where certain cotton spinning and weaving mills provided to its officers and directors, under the terms of their contracts, bungalows with attached garden in the colony of the mills and some malis (gardeners) were employed by the mills to look after these gardens, their conditions of service were determined by the mills, their work was supervised and controlled by the mills and the payment was made by the mills. Held that the mills must to be engaged in operations which are incidentally connected with the main indusrty carried on by the mills and were, therefore. workmen within Sec. 2 (s) and also Sec. 2 of the U.P. Industrial Disputes Act, 1947. Held further that industrial adjudication had consistently taken the view that Malis looking after the gardens attached to the bungalows occupied by officers of any

idustrial concern are workmen under Sec. 2 (s), and that the Supreme Court would be reluctant to interfere with the well-established and consistent course of decisions pronounced by the Labour Appellant Court, unless, of course, it was shown that the said decision were patently erroneous.

(B) The expression 'Industrial employees' used in the Notification No. 3754 (LL/XVIII-894 (L)-1948 issued by the U.P. Government on 6th December 1948 is not limited to the class of employees who were employed directly or indirectly for the purpose of manufacturing process carried on by the factory. In considering its scope it is necessary to bear in mind that the Notification has been issued in exercise of the powers conferred by cls. (b) and (g) of A. 3 of the U.P. Act and that clearly means that persons who are workmen under Sec. 2 of the Act are referred to by paragraph 1 arid there would be no escape from the conclusion that the order would apply to such workmen and the industries that employed them. The scheme of the notification is plain and unambigous, to all workmen falling under Sec. 2 the benefits of the order are intended to be extended.

Held that as certain malis (gardeners) engaged by the mills were held to be workmen within Sec. 2 of the U.P. Act it followed that the Notification would apply to them and that they would be entitled to benefits under the notification." Same view is also taken by the Apex Court in the case of Ahmedabed Mfg. & Calico Printing Co. Ltd. vs. Ramtahel Ramanand, AIR 1972 SC 1598 by holding that the workers in order to come within the definition of "employee" need not necessarily be connected with the main production of the industry and further observing that the problem has to be looked at from the consideration of social justice which has become an integral part of industrial law. The concept of social justice has a comprehensive sweep and it is neither pedantic nor one sided but is founded on socio-economic equality. Then in the case of Saraspur Mills Co. vs. Ramanlal Chimanlal, AIR 1973 SC 2297 it has been held that when the statute lays down a duty on the industry to maintain canteen, the employees engaged by the cooperative society engaged to run the canteen will become the workers of the. mill. Therefore, in view of the above cited decisions, merely because those workmen are working in the township and are looking after the cleaning and maintenance of roads in the township or looking after the garden could not be treated as not workmen of the company. Here again it must be said that the township is not an independent entity created under any law. The members are secretary of the township are not elected but they are nominated by company and they are in the regular employment of the company. There is no evidence that the expenditure of the township is met without any aid of the company. On the contrary it has come on record there the evidence of the company's witness that

the expenses of the township are totally reimbursed by the company. No amount is collected by any authority or township committee or from any person towards the maintenance of the township. The material on record further shows that the work which is being carried out by the company is of such nature that certain percentage of the employees will have to reside in the said township so that their services are made available to the company at any item if they are required. In the appointment orders issued by the company it is mentioned, if the services are of emergency nature, a clause is added that the employee would have to reside within the township and at the residential quarters provided by the company. When that is the position it is but natural to see. that the persons whose services are required by the company at any time is made comfortable and happy so that he can give better service to the company. Therefore with that object the township in maintained by the company and therefore, the contract labourers of the township would be also workers of the company.

[18] As regards the drivers, no material is produced on record to show that the drivers are employed by the officers personally. If at all drivers were employees of the officers then there is no necessity for the company to give labour contract for supply of dirvers. There is no material on record to show that those dirvers are paid directly by the officers concerned out of their pay and allowances and that there is no connection with the payment of wages of the drivers with the company. All the vehicles are of the ownership of the company. Even in case of school bus, the school bus is owned and purchased by the company and the childern of the employees are making use of the said school bus. There is nothing on record to show that the wages of the said drivers are not deducted from the accounts of the company .

[19] Admittedly the provisions of Bombay Industrial Relations Act, 1946 (BIR Act) is made applicable to the petitioner company. Sub-sees. (13) and (14) of Sec. 2 of the BIR Act 1946 gives definition of employee and employer. Sub-sec. (14) of Sec. 2 in clause (e) defines employer as under : "Where the owner of any undertaking in the course of or for the purpose of conduting the undertaking entrusts the execution of the whole or any part of any work which is ordinarily a part of the undertaking, to any person otherwise then as the servant or agent of the owner, the owner of the undertaking ". Sub-sec. (13) of Sec. 2 defines employee as under : "Employee" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, Supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied, and includes-" If the said definition of Sub-sees. (13) and (14) of Sec. 2 are- taken into consideration, then it would be quite clear that the workmen of the contractor would also become the employee of the company. The Division Bench of the Bombay High Court in the case of State of Bombay

vs. Mahanagar Mill, AIR 1951 (Bombay) 68 has held that when the owner of undertaking employs labourers through contractor, the relationship between the owner of the workmen/labourers is one of employer and employee. If the provision of BIR Actl946 and the said Act of 1970 are considered then it would be quite clear that the provision of the two enactments are not at all inconsistent or repugnant to each other. Provisions to Sec. 2(13) and (14) of BIR Act 1946 could not be said to be inconsistent with the provisions of the said Act of 1970. On the contrary, the aim of the said Act, of 1946 is one and the same as that of the said Act 1970. Learned counsel for the petitioner Mr. K.S. Nanavati urged before me that in view of the provisions of the said Act 1970, the provisions of Sec. 2(13) and 2(14) of BIR Act must be treated to have been repealed. But in order to accept said submission of him, it must be shown that said provisions are contrary and inconsistent with any provisions of the said Act 1970. When the said Act of 1970 does not make any provision which is contrary or inconsistent with the provisions of Secs. 2 (13) and (14) of the BIR Act, the operation of said sections will have to be contiuned. The learned single Judge of Bombay High Court in the case of Rama Bala Kata & Ors. vs. Walchand Hirachand Industrial & Ors., 1996(1) LLJ 713 has taken the same view by holding that by virtue of the combined effect of Sec. 2(13) and (14) of the BIR Act and notwithstanding the existence of contractual relation regulated by the provisions of the said Act of 1970 the workmen and contract labourers will be entitled to be treated as employees of the principal employer atleast in so far as the view of the learned single Judge supports my conclusions that on account of the enactment of said Act of 1970, the provisions of sections of Sub-sees. (13) and (14) of Sec. 2 of BIR Act could not be said to be repealed or cancelled. Similarly, in the case of National Eng. Industries Ltd vs. Shrikishan, AIR 1998 SC 329 the Apex Court was considering the provisions of res judicata with regard to the Shop and Commercial Establishment Act, 1958 and Industrial Disputes Act, 1947. In the said case, Apex Court has observed that both acts. tread on the same field and were not inconsistent or repugnant with each other though there may be certain inconsistencies. As a matter of fact I am unable to find out any inconsistency in the BIR Act as well as the said Act of 1970.

[20] Mr. K.S. Nanavati learned Sr. counsel urged before me that out of the 360 workmen, 34 workmen had already filed applications in the year 1980 clamining direct relationship with the petitioner company. Said applcations were rejected by the Labour Court and the appeal preferred by them before the Industrial Tribunal was also rejected and therefore, those 34 workmen could not be given benefits in this original reference as their claim will stand hit by the provisions of res judicata. There is a controversy regarding the production of the document by the present petitioner in this Court. The petitioner had filed a separate CA No. 4474 of 1998 seeking production of documents. The petitioner wanted to produce copies of the original applications filed by those 34

workmen. They also wanted to produce certain other douments like reports of the committees appointed for making report to the Government for taking action under Sec. 10 of the said Act of 1970. As regards the production of copies of the original applications no dobut, the material on record does show that the petitioner before me had sufficient opportunity to product those document but inspite of the same the petitioner had not produced the same. But one thing is quite clear that the certified copy of the judgment deliverd by the Industrial Tribunal against the judgment of the Labour Court by which the original claim of 34 workmen was rejected by a common judgment was produced. Therefore, in view of the presence of the said certified copy of the judgment of the appellate authority I hold that in the interest of justice, the production should be allowed. It could not be said that by the said production any surprise will be played on the other side or that it would also amount to filling of any lacunae. It must be remembered that in order to do justice to the parties the High Court acting under Art. 226/227 can allow the production of any document at any stage of the proceeding. That power of the High Court under Art. 226/227 is unfettered. Therefore the document produced by the petitioner does show that 34 workmen had approached the Labour Court by filing application in the year 1980 seeking creations of relationship of employer and employee between the petitioner and those workmen. Admittedly said attempt made by them has failed. But the question to be considered is as to whether because of said failure there claim could be rejected.

[21] The petitioner is contending that their claim should be rejected on the principle of res judicata. It must be remembered that provisions of Civil Procedure Code are not applicable to the proceedings before the Industrial Authorities. No doubt it is also settled law that though the provisions of Sec. 11 of CPC is not applicable to the proceeding before the Industrial Authorities the general principle analogues to the principles of res judicata are applicable. But in the case of Workmen of M/s Hindustan Lever Ltd & Ors. vs. Management of M/s Hindustan Lever Ltd., AIR 1984 SC 516. the Apex Court has observed in para 23 as under:

> "It is inappropriate to usher in the technical concept of res judicata pervading the field of civil justice into the field of industrial arbitration. But one can safely say that principle analogous to res judicata can be availed of to scuttle any attempt at raising industrial disputes repeatedly in defiance of operative settlements and awards. But this highly technical concept of civil justice may be kept in precise confined limits in the field of industrial arbitration which must as far as possible be kept free from such technicalities which thwart resolution of industrial disputes. The matter can be proceeded on the assumption that an industrial dispute may be rejected on the principle analogous to res judicata. The matter, however, may be looked at from a slightly different angle. The concept of compulsory adjudication of

industrial disputes was statutorily ushered in with a view to providing a forum of compelling the parties to resort to the forum for arbitration so to avoid confrontation and dislocation in industry, A developing country like India can ill afford dislocation in industrial production. Peace and harmony in industry and uninterrupted production being the demands of the, time was considered wise to arm the Government with power to compel the parties to resort to arbitration and as a necessary corollary to avoid confrontation and trial of strength, which were considered wasteful from national and publice interest point of view. A welfare State can ill-afford to look askance at industrial unrest and industrial dispute. The act did not confer till the introduction of Chapters V-A and V-B, any special benefits or enforceable benefits on the workmen. The Act was designed to provide a self contained Code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relation norms so that the forum created for resolution of disputes may remain unhampered by any statutory control and rational norms keeping pace with imperfect industrial relations reflecting and imbibing socio economic justice. If this is the underlying object behind the enactment of the Act, the Court by interpreatative process must strive to reduced the field of conflict and expand the area of agreement and show its preferences for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage".

Therefore bearing the above principles in mind, the question of res judicata raised in this case will have to be considered and decided. One thing is quite clear from the production of the judgment of this Labour Court as well as the Industrial Court that those 34 workmen had not gone before the Labour Court to make out a case of contract by which they were appointed were sham and bogus and camouflage to avoid the clutches of labour laws. On the contrary it was the contention of the workmen that the action of the company was quite contrary to the settlement arrived by under Sec. 2(p) between the applicants and the contractor. There the workmen were concerned only with the question of loading and unloading work and there was admittedly, no prohibition for the said work. The claim of the workmen was considered in the background of those pleadings and that would be clear from the following observations of the Indusrtial Court.

"The applicants are not entitled to get wages and dearness allowances available to the workmen of the company, because, they are not doing the work equal to or similar to the work done by the workmen of the company. In view of that the provisions regarding their working hours, leave and other conditions of service,

wages etc. cannot be equal and in these circumstances, the applicant are not entitled to in any manner the wages and dearness allowance available to the workmen of the company. Moreover, they have in their application also not stated as to what wages and dearness allowances the workmen of the company are getting and to which they are entitled to under the award. The company has also produced in this case the different wage rates rolls vide Exs. 72 and 73. The applicants do not fit in the said wage structure and in this way the learned Judge of the Labour Court has not committed any error in holding that the applicants are the workmen of the contractor and that they are not doing the work in the process of electricity manufacturing. Moreover, because of the settlement Exh. 24/1, arrived at between the applicants and the contractor under Sec. 2(p) of the Industrial Disputes Act also this application cannot be proceeded in the Labour Court. Therein it is clearly stated that the workmen are doing the work of loading and unloading which has no connection with the manufacturing process of the company and therefore, they are not the Servants of the company. No provisions of the award made between the company and its workmen would be applicable to these workmen. On the contrary as stated above as per the award Ex. 24/1 only the workmen get right. It is not proved from the evidence that that by not complying with the conditions of the said award either the contractor or opponent No. 1 has made any illegal change and therefore, the judgment given by the Labour Court is just and proper".

Thus in the earlier proceedings the question which was raised was quite distinct and different questions which are raised in the present proceedings. It must be mentioned that a right or claim which the petitioners are claiming could not be said to be based on a particular question of any title or fact. Therefore, their claim is having continuous cause of action and therefore, if they are in a position to prove and show that the events and circumstances which have come into existence after the earlier decision, proves that the contract of their employement was sham and bogus then they are entitled to get such claim adjudicated and decided in the subsequent proceedings as has been observed by the Apex Court in the above said case of Workmen of Hindustan Lever Ltd., (Supra). In view of the peculiar facts and circumstances of the case in order to achieve the industrial peace it would be proper and just not to implement the general principles of res judicata to the facts of the present case.

[22] Mr. K.S. Nanvati Sr. counsel for the petitioner has stated before me the cases of Bombay High Court, Karnataka High Court, Delhi High Court, Calcutta High Court and Madras High Court to show that the failure of the contractor to comply with the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 will not result into

the employees employed by the contractor to be direct employees of the company. He has also cited before me the case of Dina Nath vs. National Fetrilizer Co., AIR 1992 SC 457 in support of the said submission. At the outset it must be said thet this is not a case in which the Industrial Court has abolished the contract labour system. In the case of Dina Nath, (Supra) the Apex Court has considered the question whether the workmen could be regularised on the abolition of contract labour and has come to the conclusion that it could not be. But in the instant case what is found by the Industrial Court is that the so called contract of appointing the labourers-said workmen of the company is sham and bogus and those workmen are really the workmen of the company. Therefore, all these cases are not applicable to the facts of the case before me.

[23] Now apart from the above aspect in view of the decision of the Apex Court in the case of Air India Statutory Corporation vs. United Labour Union, AIR 1997 SC 645 the case of Dina Nath (Supra) and all other cases stand overruled. In this Judgment in Para 58 it has been observed as under :

> "The Division Bench in Dina Nath's case (1991) AIR SCW 3026) has taken too narrow a view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which he Act seeks to achieve. The operation of the Act is structured on an inbuilt procedure leaving no escape route. Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen. Gujarat Electricity's case (1995 AIR SCW 2942) being of the coordinate Bench appears to have softened the rough edges of Dina Nath's ratio. The object of the Act is to prevent exploitation of labour. Sections 7 and 12 enjoin the principal employer and the contractor to register under the Act, to supply the number of labour required by the principal employer through the contractor; to regulate their payment of wages and conditions of service and to provide welfare amenities, during subsistence of the contract labour. The failure to get the principal employer and the contractor registred under the Act visits with penal consequence under Act. The object, thereby is to ensure continuity of work to the workmen in strict compliance of law. The conditions of the labour are not left at the whim and fancy of the principal employer. He is bound under the Act to regulate and ensure payment of the full wages and also to provide all the amenities enjoined under Secs. 16 and 19 of the Act and the rules made thereunder. On abolition of contract labour, the intermediary i.e. contractor, is removed from the field and direct linkage

between labour and principal employer is established. Thereby, the principal employer's obligation to absorb them arises. The right of the employee for absorption gets ripened and fructified. If the interpretation in Dina Nath's case (1991 AIR SCW 3023) is given acceptance, it would be an open field for the principal employer to freely flout the provisions of the Act and engage workmen in defiance of the Act and adopt the principal of hire and fire making it possible to exploit the appelling conditions in which the workmen are placed. The object of the Act, thereby gets rudely shattered and the object of the Act easily defeated. Statutory obligations of holding valid licence by the principal employer under Sec. 7 and by contractor under Sec. 12 is to ensure compliance of the law. Dina Nath's ratio falls foul of the constitutional goals of trinity they are free launchers to exploit the workmen. The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Sec. 10 (1) the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the prohibitions of the employer to commit breach of the provisions of the Act put an end to exploitation of the labour and to deter him from acting in violation of the constitutional right of this workmen to his decent standards of life, living, wages, right to health etc".

Same view is again expressed by the Apex Court in Para 66 on page 684 by observing that Dina Nath's case 1991 (AIR) SCW 3026 as held earlier is not correctly laid down law. Then in the earlier decision of Gujarat Electricity Boards vs. Hindu Mazdoor Sabha, 1995 SC 1893, it has been observed on page 1920 as under :

"It is also not correct to say that the Act is a complete Code by itself and therefore, the Industrial Tribunal has no jurisdiction to give a direction to the principal employer to absorb the workmen in question. We have already pointed out that the Act is silent on the question .of the status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate Government. Hence, as far as the question of determination of the status of the workings concerned, it remains open for the decision by the industrial adjudicator. There is nothing in the, Act which can be construed to have deprived the industrial adjudicator of the jurisdiction to determine the same. So long as, therefore, the said jurisdiction has not been taken away from the industrial adjudicator by any express provision of the Act or of any other statute, it will have to be held that jurisdiction which, as pointed out above, has been recognised even by the decisions in Dimakuchi(AIR 1958 SC

353) and Standard Vaccum (AIR 1960 SC 94&) case (Supra) continues to exist. In the exercise of the said jurisdiction, the industrial adjudicator can certainly make a contract between the workmen of the ex-contractor and the principal employer and direct the principal employer to absorb such of them and on such terms as the adjudicat or may determine in the facts of each case...."

[24] Next submission made on behalf of the petitioner is that the Industrial Court was not justified in regularising the workmen prior to the date of the award. In support of the said submission the case of Indian Hume Pipe Co. Ltd. vs. P.S. Malvankar & Anr. Lab I.C. 1954, Bharat Cotton Growers Corporation Spg, Milt Ltd. vs. Miraj Taluka Girni Kamgar Sangh & Ors., 1979(1) LLJ 483 and Jarkhand Calleries Pvt. Ltd. vs. Central Government Industrial Tribunal, 1960 (2) LLJ 71. But all these cases show that whenever there is a demand for DA and other monetary claims, the award granting the same from the date prior to the date of demand was illegal. In the instant case, the reference is of the year 1992 and benefits were given form 3.12.1992 i.e. the date of reference. Therefore, obviously it has been given after the date of demand. But in view of the said decisions the workmen could not be granted benefits of regularisation prior to the date of demand. Therefore, the petition filed by the workmen seeking direction on this Court to direct the company to treat the concerned workmen as their employees since their date of entry in service could be allowed.

[25] Therefore, other prayer to direct the company to implement the award could not be allowed. Thus I hold that the award passed by the Industrial Court is passed on appreciating the material on record. I have already discussed above the material on record which justified the said conclusion arrived by the Industrial Court. Said conclusion arrived at by the Industrial Court could not be said to be either perverse or grossly erroneous resulting into miscarriage of justice. Therefore, there are no grounds to interfere with the said findings recorded by the Industrial Court executing the powers under Arts. 226 and 227 of the Constitution of India. Consequently the petitioner's petition will have to be dismissed and the said is accordingly dismissed. Rule is discharged in SO No. 8030 of 1997 with no order as to cost.

[26] As regards the petition filed by the workmen for getting their claim for regularisation from the date of entry in service could not be allowed, However, the petitioner company i.e. the Ahmedabad Elecricity Company Ltd. is hereby directed to fully, comply with the award passed by the Industrial Court within three months from today but the first instalment as per the award of the Industrial Court should be paid to the workmen on or before 30.9.1998. CA filed by the petitioner stands allowed for the reasons stated earlier Rule is made absolute in CA with no order as to costs. Accordingly Rule is made absolute in the above terms in the SCA No. 5807 of 1998 filed by the labour union-Electricity Mazdoor Sabha with no order as to costs.