HIGH COURT OF GUJARAT

RAIJIBHAI BHIKHABHAI PARMAR & 495 ORS
Versus
INDIAN PETROCHEMICALS CORPORATION LIMITED

Date of Decision: 29 January 2016

Citation: 2016 LawSuit(Guj) 66

Hon'ble Judges: Paresh Upadhyay

Case Type: Special Civil Application

Case No: 5491 of 2014

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 2A(3), Sec 2A(1)

Final Decision: Application allowed

Advocates: P R Thakkar, K S Nanavati, Keyur Gandhi, Nisarg Desai, Nanavati Associates, Utkarsh Sharma, Paritosh Calla

Cases Referred in (+): 37

Paresh Upadhyay, J.

[1] Challenge in this petition is made by a group of 496 workmen to the common order passed by the Labour Court, Vadodara dated 07.02.2014 below Exh.6 in Reference No.100 of 2012 to 124 of 2012 and 126 of 2012 to 605 of 2012, whereby the Labour Court has held that, the said References are barred by limitation.

[2] During the pendency of this petition, the respondent company has filed a Civil Application with the prayer that the petitioners - workmen need to refund the amount received by them under the Voluntary Separation Scheme / Special Separation Scheme, which they now call illegal termination.

[3] It is noted that, Mr.P.R.Thakkar, learned advocate for the petitioners - workmen and Mr.K.S.Nanavati, learned senior advocate for the company have addressed this Court at length on merits of the petition so also the civil application. They have also given written submissions and have referred to number of authorities before this Court.

The written submissions given on behalf of the workmen are noted in para:4, the authorities relied on behalf of the workmen are noted in para:5, the written submissions given on behalf of the company are noted in para:6 and the authorities relied on behalf of the company are noted in para:7. It is further noted that, the points at issue before this Court are noted in para:8 of this order. The findings of this Court, on the points at issue are recorded from para:9 onwards. The operative part of the order is at para:14 of this order.

[4] Mr.P.R.Thakkar, learned advocate for the petitioners - workmen, in support of this petition and to oppose the civil application filed by the Company, has addressed the Court at length. He has also tendered written submissions in the following terms.

4.1 By way of this petition, the petitioners have challenged the legality and propriety of the common order passed below Exh.6 by the Labour Court, Vadodara in Reference Case Nos.100 of 2012 to 124 of 2012 and 126 of 2012 to 605 of 2012, by which the Labour Court has allowed the said Exh.6 filed by the Respondent Company contending that, all Reference cases of the workmen are barred by statutory limitation, in view of amended provisions of Section 2A (2) and (3) of the Industrial Dispute Act, 1947. Thus, as per the petitioners, the question before this Court would be as to whether the Reference cases of the petitioners are barred by statutory limitation in view of the amended provisions of Section 2A (2) and (3) of the Industrial Dispute Act, which came into force with effect from 18th August, 2010.

4.2 While deciding the Reference cases, the Labour Court has given following findings.

a) It is observed by the Labour Court that, the decisions, which are cited at the bar on behalf of workmen, are pertaining to the termination and dismissal, whereas in the present Reference cases, the workmen have been voluntarily retired/ relieved from the service on the basis of VRS/ VSS. The only defence of them is to the effect that the resignations were taken under threats and relieved the workmen, to which a complaint has been lodged against the said threatening.

b) Also it is observed that, it is not stated that which officer has given the threat, and therefore merely by giving reference regarding the threat in the Reference cases, would not make the mix question of law and facts.

c) On acceptance of benefit of Voluntary Retirement Scheme, the relationship of employee and employer came to an end permanently as per the contract, which cannot be construed in any circumstances as termination/ discharge, retrenchment or dismissal.

d) The workmen have nowhere stated, at the time of accepting the benefits of VSS that, the company has made the payment of the said benefits under coercion and the amount have been accepted under protect. Not only that the forms pertaining to the Provident Fund and Pension have been filled up by the workmen themselves and withdrawn the amount of the same.

e) If the Reference cases would be trialled and the workmen would be defeated, then they have no loss as they have already obtained the benefits. Whereas if the company would be involved in the battle, then victory of the company has no gain at all, inasmuch as the company had already paid all the benefits to the workmen in advance.

It is respectfully submitted that the aforesaid findings of the Labour Court is pertaining to the merits of the Reference cases itself and thereby the Labour Court has decided all the Reference cases on merits which is nothing but the premature findings.

4.3 The following issues are emerged in the Reference cases for determination of the Labour Court, including the issue of statutory limitation;

a) Whether the action of the company to accept the VSS application of the workmen, pending the application for withdrawal of VSS application, is legal or not ?

b) Whether the workmen approached the company on 20.03.2007 praying for giving back the Application of VSS submitted by them and thereby prayed for an oral withdrawal of VSS application ?

c) Whether the action of the company to take the decision on VSS application is valid or not, in view of the fact that the said decision has taken during the pendency of withdrawal application and before the date of relieving the workmen from service?

d) Whether the impugned action of the company of giving retirement is legal, though the application for withdrawal of VSS application is pending before the date of unilaterally diverting the amount of retireral benefit directly to the bank account of the workmen, without any intimation ?

e) Whether the scheme was invalid or malafide and sham one?

f) Whether the management of the company has a practice of coercion and threatening the workmen for applying for VSS?

g) Whether the action of the Respondent company is amounting to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 ?

h) Whether the Reference cases ordered u/s. 10 of I.D. Act are barred in view of the amended provisions of Section 2A (1), (2) & (3) of the Industrial Disputes (Amendment) Act, 2010 ?

It is submitted that the Labour Court has erred in deciding the aforesaid all issues, while deciding the application Exh.6 which is only for the purpose of deciding the statutory limitation.

4.4 It is submitted that the Labour Court has misinterpreted the provisions of Section 10 and amended provisions i.e. Section 2A(2) and (3) of the Act.

4.5 It is further submitted that, the learned Labour Court has committed an error in dealing with an application Exh.6, as if the present petitioners have directly approached the Labour Court under the amended provisions of Sec. 2A(2) & (3) of the Act, and ultimately come to the conclusion that, in view of the said amended provisions, the Reference cases of the petitioners are barred by limitation.

4.6 It is also submitted that the amended provisions of Section 2A (2) and (3) of the Act does not repeal Section 10 of the Act and thereby even after the said amendment also, Section 10 remains in the statute book and Section 10 is not struck off by the framer / author of the statute from the statute book. Therefore, it is an error on the part of the Labour Court in holding that as the amended provisions of Section 2A(2) begins with the words "notwithstanding anything contained in Section 10", the petitioner - workmen cannot approach for raising the Industrial Dispute under Section 10 in view of the said no obstinate clause of amended provisions. It is the submission of the petitioner that the amended provision of Section 2A(2) does not take away the remedy available under Section 10 of the Act.

4.7 It is also submitted that, because of no obstinate clause in amended provisions of Section 2A(2), the overriding effect over Section 10 would be to the extent that, the workmen, who were under the inclined circumstances before the amendment, can raise an industrial dispute for Reference to the Labour / Industrial Court for adjudication only through the State Government under Section 10. Now after the amendment, the employee can directly approach the Labour Court / Industrial Tribunal by submitting an application and the Labour Court / Industrial Tribunal should deal with the said industrial dispute as referred by the State Government under Section 10 of the I.D. Act. Thus compulsion to avail the remedy under Section 10 has been now made voluntary and it is for the suitor to select either to

avail the remedy under Section 10 of the Act or to avail the remedy under the amended provisions of Section 2A(2) of the Act. Thus, by way of an amendment, two remedies have been made available to the workman for raising the industrial dispute. Therefore, the Labour Court has committed an error in holding that once the amended provisions of Section 2A(2) came into force, remedy under Section 10 is barred.

4.8 Learned advocate for the petitioner has drawn the attention of this Court that, before the date of amendment in Section 2A, Section 2A(1) was already available in the statute book, whereas Sub Section 2 and Sub Section 3 have been inserted by way of amendment with effect from 18.08.2010.

Thus, the industrial dispute of the individual workman is otherwise referable under Section 10 of the I.D. Act for adjudication. The said right of individual workman prevailing before the date of amendment has not been snatched away by the amendment, otherwise the amended provisions would have certainly stated in a specific terms that the individual workman can raise industrial dispute directly to the Labour Court only and cannot raise the dispute under Section 10 of the Act. Thus, amended provisions of the Act is providing an additional concurrent remedy to the workman and does not take way the remedy of Section 10 of the Act.

4.9 It is also submitted that the Labour Legislation like the Industrial Disputes Act is meant for the benefits of the labourer / workmen and even preamble of the amendment of 2010 also suggests that the amendment is made for the benefit of the workmen and for better and additional facility to raise an industrial dispute, therefore, amended provisions of Section 2A(2) and (3) should not be interpreted against the interest of the workman / employee.

4.10 The overriding effect of amended provisions of Section 2A(2) is only to the extent of withdrawing the compulsion for the workman to raise an industrial dispute only through the State Government under Section 10 of the Act and can now raise such dispute directly to the Court. Thus, the additional concurrent remedy is provided for raising the industrial dispute, but in no stretch of imagination, the amendment has taken away the remedy available under Section 10 of the Act.

Therefore, the learned Labour Court ought not to have dismissed all the Reference cases of the workmen - petitioners, considering the same as barred by statutory limitation contemplated under Section 2A (3) of the amended Act of 2010.

4.11 It is further submitted that, the Labour Court has dismissed all Reference cases only on the ground that it is statutory barred in view of the amended

provisions of Section 2A (2) and (3) of the I.D. Act., and not on the ground of alleged delay and laches or on a ground of stall issue. In support of his submission, the petitioner has relied upon the following decisions.

1) Anilkumar Puri vs. Presiding Officer, Labour Court, Chandigarh, 2000 9 SCC 129

2) Ajaib Singh vs. Sirhind Co.Op. Marketing cum Processing Service Society Ltd., 1999 AIR(SC) 1351

3) Sahaji vs. Executive Engineer PWD, 2005 12 SCC 141

4) 2007 AIR(SC) 3012

It is submitted that considering the aforesaid decision, it is clearly held by Hon'ble the Supreme Court of India that, the relief under the Act cannot be denied to the workmen merely on the ground of delay and the relief can be appropriately moulded while deciding the back wages. It is also held by Hon'ble the Supreme Court of India in a case reported in AIR 2007 SC page 3012 that, "a Tribunal or a Labour Court cannot invalided the Reference on the ground of delay. If the employer makes a grievance that the workman has made a stale claim, then an employer can challenge the Reference by way of writ petition and contend that since the claim is belated and there was no industrial disputes. The Tribunal or a Labour Court cannot strike down the Reference on this ground."

4.12 The petitioner has invited the attention of this Court to the fact that, the respondent company had chosen not to challenge the order of Reference passed by the Assistant Labour Commissioner for a period of more than three years and allow the Reference cases to be proceeded by the Labour Court. In the said Reference cases, the petitioners have already filed the statement of claim. The respondent Company has also filed Exh.6 application, praying for dismissal of the Reference cases on the ground of statutory limitation, which is challenged in this petition. The respondent company, after the period of about three years, pending the present petition, as a counter blast, chosen to file a petition being Special Civil Application No.9467 of 2014 challenging the order of Reference passed by the Asstt. Labour Commissioner before three years. This Court has dismissed the said petition of the respondent company vide order dated 15.07.2014. Aggrieved by which the respondent company has preferred an appeal being L.P.A. No.877 of 2014 before the Division Bench and the same was also dismissed vide order dated 14.08.2014. Thus, the order of Reference passed under Section 10 becomes final between the parties. In these circumstances, in view of the ratio laid down by Hon'ble the Supreme Court of India, the Labour Court could not have dismissed the Reference cases on the ground of limitation, especially when the amended provision of

Section 2A (2) is not applicable to the case of present petitioners, inasmuch as the present petitioners have got Reference under Section 10 of the I.D. Act. Therefore the impugned order and judgment is required to be set aside in the interest of justice and to direct the Labour Court to decide all Reference cases on merits.

4.13 The petitioner is also relying upon different authorities on the issue of interpretation of a statute, wherein it is held that the provisions is to be interpreted as it stands in the statute and nothing is to be added and nothing is to be implied or intended.

4.14 The petitioner has further submitted that, the contentions of the Respondent company that there is inconsistency in Section 10 of the I.D. Act of 2010, with regard to special remedy provided to the individual workman for approaching the Labour Court directly for adjudication of deemed industrial dispute. The later provision would prevail upon the previous provision and thereby there would be implied repeal of Section 10, by amended provision of Section 2A of the I.D. Act. It is submitted that, it is well settled law that there is a presumption against the repeal by implication and the reasons of the said rule is based on the theory that the legislature, while enacting the law, has complete knowledge when it does not provide the repealing provision, the intention is clear not to repeal the existing Legislation. It is also settled law that once the benefit / facilities granted to the workmen under the existing provision of law, it cannot be presumed to have been withdrawn by the amended provisions of law, unless it is specifically withdrawn, inasmuch as both the provisions are employee social oriental Legislation. I also rely upon a judgment reported in Northern India Caterers (Private) Ltd. vs. State of Punjab, 1967 AIR(SC) 1581 regarding the issue of repeal by implication. In the instant case as submitted above, the amended provisions of Section 2A, provides an additional remedy to directly approach the Labour Court, does not by itself would take away the existing remedy available under Section 10 of the ID Act to the workman.

4.15 It is also settled law that merely because the provisions of limitation is absent in the existing provisions like Section 10 of the I.D. Act and there is special provisions of limitation in the amended provisions of Section 2A of I.D. Act of 2010, it cannot be said that there is a repugnancy between the two provisions, by which it can be inferred to have implied repeal of Section 10. The petitioner submits that both the provisions can coexist in the statute book together and workman can be benefited and can bitterly serve by existence of both the provisions.

4.16 The petitioner has submitted that, in amended provisions of Section 2A (2), the non obstinate clause is provided, giving overriding effect over Section 10,

permitting direct root for raising an industrial dispute before the Labour Court, without having aid of reference under Section 10 by the State, while Section 2A (3) prescribes a specific prayer of limitation is not contemplating any obstinate clause, over Section 10, therefore, there would not be any overriding effect over Section 10 with regard to the period of limitation. Therefore, also a remedy of reference can be availed by the workman under Section 10 of the I.D. Act, even after three years subject to rule of prudence to be exercised by determining whether dispute is a stale issue or not.

4.17 The petitioner has further drawn the attention of this Court that, the legislation never intended to discriminate between the Union and the individual workman, inasmuch as such discrimination was removed by an amendment even before 2010. Therefore, Section 2A, as stood before 2010 was introduced and individual workman made to have a reference under Section 10 by putting the individual workman at par with the Union by an amended provision of Section 2A of I.D.Act 2010, the three years limitation is prescribed for raising an industrial dispute, by an individual workman directly to the Labour Court. Thus, if the arguments of Respondent company would be accepted of implied repeal of Section 10, then only Union would be able to raise industrial dispute under Section 10 without any bar of limitation and the individual workman would has never intended to cause such discrimination between the Union and the individual workman for offering the remedy for raising the Industrial Dispute. An amended provisions of 2010 is an additional benefits granted to a workman, which cannot be taken away under the guise of implied repeal of Section 10.

4.18 In the aforesaid circumstances, this petition be allowed in the interest of justice.

4.19 Learned advocate for the workmen has, to contest the application filed by the company, made the following submisisons.

4.20 The respondent company filed aforesaid civil application seeking direction to direct the petitioners - workmen to refund the retireral benefits or to deposit in the court as a precondition to decide the petition on merits.

4.21 This Hon'ble Court was pleased to pass an order upon the said application that the said application is to be heard with the main petition.

4.22 Learned advocate for the petitioners has drawn the attention of this Court that, there were about more than thousands of workmen, who had chosen to withdraw from the VSS Scheme and had initially withdrawn on 20.03.2007, which is the last day of the said scheme which had gone at late evening for withdrawal of

the applications and orally sought for to give back the application for VSS, but respondent company suggested to give written application for withdrawal and there upon on 21/22.03.2007, the said workmen have given written application to withdraw from the scheme. All such workmen have been relieved from the service illegally, without deciding withdrawal application and there upon initially about 464 workmen have filed Special Civil Application No.20727 of 2007 and other cognate applications before this Court, wherein vide order dated 22.08.2007, the said workmen were directed to raise an industrial dispute.

4.23 The other workmen could not approach this Court at the relevant time, but has chosen to approach the company, with a copy to Labour Commissioner.

4.24 The said group of workmen thereafter filed a complaint before the Labour Commissioner, who has refused to refer the dispute for adjudication to the Labour Court. Against which Special Civil Application No.7102 of 2008 was filed before this Court, which came to be dismissed by the learned single judge vide order dated 13.03.2009. The said group of workmen thereafter has filed an appeal being L.P.A. No.418 of 2009, wherein all contentions regarding taking away of retireral benefits were taken by the Respondent company and prayed for to refuse to refer the dispute to the Labour Court under Section 10 of I.D. Act. In spite of all such contentions, which are being raised in the present Civil Application as well as in a reply to the main petition, which were raised in the that LPA proceedings, the Division Bench has directed the State Government to refer the dispute for adjudication to the Labour Court, without imposing any conditions whatsoever regarding refund of the retireral benefits and unconditional reference was ordered.

4.25 The petitioner has submitted that against the said order of the Division Bench, the respondent Company filed SLP before Hon'ble the Supreme Court of India, which came to be dismissed by order dated 21.01.2011.

4.26 The present petitioners, in the mean time, have approached the respondent company by letter dated 20.03.2009 with a copy to Labour Commissioner, seeking justice for their group.

4.27 The petitioners respectfully point out in the previous group of workmen, on reference to the Labour Court, and after filing the statement of claim, the respondent company filed an application, like present civil application before the Labour Court, seeking direction to deposit or refund the retiral benefits given to the said workmen. The Labour Court allowed the said application, against which Special Civil Application No.13915 of 2012 and other allied petitions were preferred, which were came to be dismissed vide an order dated 19.12.2012. Being aggrieved by it,

the workmen have preferred SLP before Hon'ble the Supreme Court of India, wherein the respondent company chosen to give a consent to set aside the order of the Labour Court as well as of the High Court, and Hon'ble the Supreme Court of India directed to decide the reference on merits without any condition. The references are now being decided on merits for the said workmen.

4.28 The petitioner has submitted that the present case of the petitioners is absolutely identical one to that of the previous group of workmen. The statement of claim of present petitioners is at Annexure-J at page 165 to 195 in the compilation of SCA papers, while the statement of claim of previous group of workmen is at page 181 to 213 in the compilation of the civil application. If both would be compared, it can be seen that both are same and identical one. In such circumstances, there cannot be a different parameters for the present group of workmen like petitioners so far as passing of an order to refund the retiral benefits after the period of more than seven years and no discriminatory treatment should be given to the employee like petitioner who are at par to that of the previous group of workmen.

4.29 The petitioner respectfully pointed out the facts that the judgment upon which the respondent company relying I.e. Rameshchandra Sankala and Maruti Suzuki India , both the cases were relied upon before this Court in the previous group of cases based upon which the this Court had confirmed the order of the Labour Court of depositing the retiral benefits. But Hon'ble the Supreme Court of India, as stated above, has set aside the order of the High Court, in such circumstances, on the basis of the said judgment, the present Civil Application cannot be allowed and after a period of seven years, such prayers cannot be entertained.

4.30 The aforesaid two cases which are relied by the Respondent company, are, in fact, for a issue as to whether the Reference under Section 10 is required to be made conditionally, i.e. with a condition to deposit the retireral benefits or unconditionally. In present case, unconditional References have been ordered by the Division Bench on a same set of facts as the case of the petitioner is there. Even Hon'ble the Supreme Court of India also confirmed the said unconditional References of which order has been challenged by the respondent company upto the Division Bench and the company defeated there. Therefore, the aforesaid two cases would not help the present respondent company and the facts of the said case is different from the present case.

4.31 The petitioner states that the present Civil Application is strategically one which is filed only with a view to prevent the petitioners from entering into the temple of justice by getting the Reference cases decided on merits. It is submitted

that even assuming for the sake of argument that the petitioner would win in the Reference cases, then such victory can be based subject to the appropriate order to be passed regarding the retireral benefits already received by the petitioners and the petitioners would be allowed to eat the fruits of such victory only on a condition to be imposed on deciding the Reference cases on merits. In such circumstances, a balance can be maintained between two rival parties. The respondent company would not in any way be put to a loss on that occasion. If the petitioners lost the matter before the Labour Court, then also respondent company has nothing to do so far as the retireral benefits given to the petitioners are concerned.

Therefore, it is quite necessary to consider the equity from the point of view of the fact that, without bread and butter, the family of the petitioners would not survive if the order of refund would be passed and a meritorious case of the petitioners would not be allowed to be examined by the Court. It would result into the miscarriage of justice. Therefore, the petitioners most humbly request this Hon'ble Court to dismiss the Civil Application, of the Respondent company with costs, and be pleased to treat in the present petitioners, as have been treated in the previous group of workmen by Hon'ble the Supreme Court of India, who are at par with the present petitioners.

4.32 In the aforesaid circumstances, the petition of the present petitioners be allowed and the C.A., of the Respondent company be dismissed in the interest of justice.

[5] Mr.P.R.Thakkar, learned advocate for the workmen has, in support of his submissions noted above, relied on the following decisions.

1. In the case of Northern India Caterers (Private) Ltd. vs. State of Punjab, 1967 AIR(SC) 1581

2. In the case of State of Madhya Pradesh vs. Kedia Leather and Liquor Private Limited, 2003 7 SCC 389

3. In the case of Union of India vs. Venkateshan, 2002 5 SCC 285

4. In the case of Kishorebhai Khamanchand Goyal vs. State of Gujarat, 2004 1 GLH 746

5. In the case of Anilkumar Puri vs. Presiding Officer, Labour Court, Chandigarh, 2000 9 SCC 129

6. In the case of Ajaib Singh vs. Sirhind Co.Op. Marketing cum Processing Service Society Ltd., 1999 AIR(SC) 1351

7. In the case of Sahaji vs. Executive Engineer PWD, 2005 12 SCC 141

8. In the case of Director, Food and Supplier Punjab vs. Gurmit Singh, 2007 5 SCC 727

9. In the case of S.S.Khanna vs. F.J.Dillon, 1964 AIR(SC) 497

10. In the case of Automotive Mfgr Ltd Rajkot vs. Bharatkumar Manilal Shah, 28 GLR 706

11. In the case of P.R.S. Panikar vs. ONGC, 1987 2 GLH 407

12. In the case of Gunvantbhai Mulchand Shah vs. Enton Elis Farel, 2006 AIR(SC) 1556

13. In the case of Arjansingh vs. Union of India, 1987 AIR(Del) 165

14. In the case of Bank of India vs. Lakshimani Das, 2000 1 CutLT 386(SC)

15. In the case of Jai Bhagwan vs. The Ambalal Central Co.Op Bank Ltd., 1984 AIR(SC) 286

16. In the case of N.C.Das vs. Gauhatti High Court, 2012 2 SCC 321

17. In the case of Eastern Coalfields Ltd vs. Sanjay Transport Agency, 2009 7 SCC 345

18. In the case of Union of India vs. Hansoli Devi, 2002 3 GLH 602

19. In the case of Dental Council of India vs. Hari Prakash, 2001 AIR(SC) 3303

20. In the case of Gurudevdatta Vksss Maryadit vs. State of Maharashtra, 2001 AIR(SC) 1980

21. In the case of Orissa State Ware Housing vs. Commissioner of Income Tax, 1999 AIR(SC) 1388

[6] On the other hand, Mr.K.S.Nanavati, learned senior advocate for the company, to contest the petition filed by the workmen and to support the civil application filed by the company, has addressed the Court at length. He has also tendered written submissions in the following terms.

6.1 In this group of Petitions under Articles 226 and 227 of the Constitution of India challenge is made to the order passed by the Labour Court, Vadodara in Reference Case No.100 of 2012 and other allied References, rejecting the References made

under Section 10 of the Industrial Disputes Act on the ground that the References are barred by limitation.

SHORT FACTS

Date	Particulars
06.03.2007	The Company offered Voluntary Separation Scheme (VSS) to its employees which was to remain open till midnight of 20.03.2007
20.03.2007	All this workmen concerned in the group admittedly submitted Applications to take benefits of the VSS. The Company accepted these Applications
21.03.2007	It is the case of the workmen that they orally and thereafter in writing withdrew their applications. However, Company contends that they had voluntarily, without any coercion or threat applied for the benefits and had not applied for the withdrawal of their application, either orally or in writing and neither before acceptance of the application or after acceptance.
29.03.2007 to 03.04.2007	Concerned workmen applied for withdrawal of P.F. and payment of Gratuity and Income Tax Benefits under the scheme on the ground of severance of employment on acceptance of application for VSS.
03.04.2007	The employees accepted payment of VRS amounts and were relieved. These employees are taking benefits of mediclaim under clause 2.1(b)(i) of VSS and also Life Insurance Scheme under clause 2.1(b)(ii) of the scheme.
March 2011	i. Individual complaints were made before Assistant Labour Commissioner contending that they had applied under VSS as a result of coercion and therefore termination of their service was illegal.
	ii. The dispute regarding termination of their service was referred under Section 10 of I.D. Act.
	iii. Showed their willingness to refund the amounts received by them if reference was made.
12.04.2012	The Additional Labour Commissioner has made separate references of the individual disputes regarding alleged termination of service of the Petitioner by the Company for decision to the Labour Court, Vadodara under Section 10 treating the dispute as Industrial Dispute.
22.03.2013	Company filed Application under Exh. 6 raising preliminary objections regarding maintainability of the reference, inter alia, on the ground that it is barred by limitation as an individual dispute.
07.02.2014	The Labour Court, Vadodara accepted the contention of the

	Company, allowed Application under Exh. 6 and dismissed the Reference as barred by limitation. The contention before the Labour Court are summarised in paragraph 5 of the Order.
	Hence, the present group of Petitions by the workmen. Company has filed CA No. 9087 of 2014 contending that as a condition of hearing these Petitions, this Hon'ble Court may direct the Petitioner to deposit the amounts received by them under the VSS. The Application is heard along with the Petitions.

6.2 The issues which arise in the present proceedings are as under.

(i) Whether, after insertion of Section 2A(2) and (3) by Industrial Disputes (Amendment) Act, 2010 being Act No. 24 of 2010, an individual dispute relating to termination of service of an individual workman can be referred to for adjudication under Section 10 read with Section 2A(1) of the Industrial Disputes Act ?

(ii) Whether a dispute, which is deemed to be an 'Industrial dispute' under Section 2A(1) of the Act, can be referred to under Section 10 of the Act by the State Government also after the expiry of three years being the limitation, as prescribed under Section 2A(3) from the date of alleged termination of service of the workman at the instance of such workman?

(iii) Whether the Petitioners who have admittedly claimed and received and have been receiving the benefits under the VRS Scheme can and ought to be directed to deposit the benefits so received as a condition for hearing the Petitions?

6.3 With regard to Civil Application No. 9087 of 2014, it is submitted as under.

(i) It is well settled that if an employee applies for taking benefits under the Scheme of Voluntary Retirement and accepts benefits thereunder, he cannot resile there from.

(ii) Assuming without admitting that the principle of estoppel may not apply where the contention is that, their consent to the scheme was obtained by coercion. It is well settled that an employee cannot approbate and reprobate and must return the benefits received and retained under the VRS Scheme before he can be allowed to challenge the action of the employee of relieving him from service and is heard on merits of his claim. In support of this submission, he has relied on the decision of Hon'ble the Supreme Court of India reported in Ramesh Chandra Sankla vs. Vikram Cement, 2008 14 SCC 58 (para 90 to 101), wherein the Hon'ble Apex Court has observed as under.

"Even otherwise according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress.

In our considered opinion, they cannot retain the benefits if they want to prosecute claim petitions instituted by them with the Labour Court."

This Judgment has been followed by the Apex Court in Man Singh vs. Maruti Suzuki India Limited, 2011 14 SCC 662 (paras 5 & 6).

(iii) It is further submitted that, in any case, the workers in their complaint to the Assistant Labour Commissioner, Vadodara, seeking Reference, have categorically stated, "The Applicant is prepared to give back the money which was directly transferred by the Opponent Company to the Bank Account behind the back of the Applicant and without intimation", and in the reply filed by the Company to the aforesaid complaint, the Company has inter alia submitted that, if a Reference is made, the direction to deposit the amount must be given as offered by the workmen in the complaint .

(iv) There is no equity in favour of the workmen contending that the direction for deposit cannot be made because they have already used up the money because they were out of job and such direction would deprive them from their right to seek justice from the court of law. By their following conduct, they have deprived themselves of such consideration.

(A) All of them have admittedly applied on or before 20.03.2007

(B) None of them have, either orally or in writing withdrawn their applications.

(C) All the concerned workmen have voluntarily applied for withdrawal of their Provident Fund, their gratuity, taken tax benefits, received and utilised compensation under VRS Scheme which is almost 7 times more than retrenchment compensation payable under the law and are taking mediclaims in terms of the VRS Scheme till 2014 and have been taken benefits of Life Insurance Coverage for the workmen, in case of their death.

(D) Representation made to the management on 20.03.2009 was by only 14 employees requesting the management to give some benefits as may be given to the workmen who had raised a dispute and whose cases were referred for adjudication under Section 10. But even in this representation, there was no allegation of coercion or threat and no challenge that their retirement was not voluntary. On that they had withdrawn their applications for VRS before such applications were accepted by the Company.

(E) No dispute was raised or complaint made under Section 2A till March 2011, nor any reference sought under Section 10.

(F) There are three Trade Unions. All the workmen are members of one or the other Union. None of the Unions have supported the claims of the workmen.

(G) Averment of coercion or threat as made in para 12.2 to

12.4 of the Complaint is no coercion as defined in Section 15 of the Contract Act, and therefore, even if proved cannot vitiate the consent of the workman to VRS.

It is obvious that the present disputes have been raised only with a view to make quick money making a false plea of coercion and threat. There is, thus, no equity in favour of the workmen.

(v) The contention of the workmen is that ;

a. their case is similar to the claim of the workmen in the previous group and that as directed by Hon'ble the Supreme Court of India in the previous group, the Reference of the present group should be decided without condition of depositing the amount.

b. Since in the order of Reference, no condition is imposed, no condition can now be imposed.

(vi) It is further submitted that, the case of the employees in the first group and that of the second group, so far as the issue of deposit is concerned, is not identical.

(vii) Whereas the employees in the first group made complaint before the Assistant Labour Commissioner in Sept. 2007 and they followed up the same by taking legal action, the present group raised no such dispute but received and retained and used the money.

(viii) Eleven workers in the present group made first representation to the Company in March 2009 claiming similar treatment as may be meted out to the workmen of the first group. They neither challenged the legality of the action in their representation to the Company nor raised dispute under Section 2A nor approached the Conciliation Officer under Section 2A(2) nor sought a reference through the Union under Section 10. On the contrary, they continued to enjoy the benefits of the VRS Scheme, as stated in the Affidavit dated 28.04.2014. The workmen in the present group are clearly estopped from raising any dispute regarding the legality of the action of the employer and are not similarly situated.

(ix) It is further submitted that the directions given by Hon'ble the Supreme Court of India is a consent order. It is well settled that order passed on consent of the parties cannot be treated as judicial precedent.

(x) It is submitted that the background in which the question arose before the Apex Court is completely different. In the first group of cases, Company had filed application in the Labour Court and the Labour Court had given directions for deposit of the amount. This was challenged on the ground that the Labour Court has no such jurisdiction since jurisdiction is limited only to the disputes referred under the order of Reference. Since this position was highly debatable, the Company had been advised not to press for the deposit when the matter was heard before the Apex Court. In the present case, the High Court's jurisdiction is unquestionable and in the two precedents relied upon by the Respondents, the concerned Hon'ble High Court has given the directions for deposits.

(xi) It is further submitted that the statement made in the Affidavits as well as in the written submissions that the employees had orally withdrawn their applications on 20.03.2007 and had submitted written applications on 21.03.2007 and 22.03.2007 are completely false. No such applications from the concerned workmen in the present group had been received. This has been pointed out by the Company in their Affidavit. An attempt to mislead this Court has been made by the Petitioner by stating that copies of the Applications submitted by the workmen are annexed to the Affidavit dated 12.08.2014. What is annexed are copies of the Applications allegedly submitted by the workmen of the first group and not the present Petitioners. This has been clarified by the Company in their Affidavit dated 15.09.2014.

It is submitted that in the circumstances, the directions as prayed for in the Civil Application No. 9087 of 2014 deserves to be granted.

6.4 With regard to the merits of the dispute, the following questions are raised by the Company.

1. Whether, after enactment of Amending Act of 2010 introducing Section 2(A)(1) to (3) in the Industrial Disputes Act, the dispute pertaining to termination of service of an individual workman could be referred under Section 10 for adjudication, at the instance of the concerned workman ?

2. Whether Section 2A(1) could be read, independent of sub-section (2), but with Section 10 to seek Reference of dispute after expiry of period of limitation prescribed under Section 2A(3) ?

3. Whether Section 2A, which deals with disputes relating to termination of service of individual workman is a complete code on the question of reference and adjudication of such dispute and excludes application of Section 10 to such dispute at the instance of the concerned individual workman.

4. If Section 2A(1) is read independent of Section 2A(2), and it is held that a dispute covered by Section 2A(1) can still be referred under Section 10, would period of limitation prescribed under Section 2A(3) be not applicable to such Reference.

6.5 With regard to the above issues, the following submissions are made.

(i) Industrial Disputes as defined by Section 2(k) does not cover a dispute raised by an individual workman unless such dispute is sponsored by a Group of workmen or the trade union. Such dispute, as such, cannot be referred under Section 10 for adjudication.

(ii) The disputes in present references referred for adjudication are admittedly individual dispute raised by individual workman and are not sponsored by the Trade Union. Such dispute would not be covered by Section 2(k) of the Act and therefore, could not have been referred for adjudication under Section 10 read with Section 2(k).

(iii) The dispute raised for adjudication became 'industrial dispute' only by reason of Section 2(A)(1) of the Act which creates fiction that the dispute arising on termination of the service of an individual workman by way discharge, dismissal etc. shall be 'deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.'

(iv) The scheme of adjudication of disputes under the Industrial Disputes Act is very clear. The act divides the disputes into two categories (a) disputes defined by Section 2(k) i.e. disputes sponsored by the Union or group of workmen and (b) individual dispute defined by Section 2A(1).

(v) The first category of disputes is covered by Section 10 and can be referred for adjudication under Section 10 by the appropriate Government if supported by a group of workmen or sponsored by the union. Thus, Section 10 read with Section 2(k) makes a general provision providing for a mechanism governing reference of all kinds of disputes relating to the conditions of service of workmen in general or termination of service of an individual workman provided such dispute is supported by a group of workmen or the union.

(vi) By Act 35 of 1965, Section 2A was added to the statute book. As its objects and reasons show, the provision was added because it was found that the individual workers had no right to seek a reference of their individual disputes pertaining to service. Section 2A therefore was added fiction was created by Section 2A for a limited purpose of treating 'individual dispute' as an 'industrial dispute'.

(vii) This amendment mainly led to following consequences:

(a) Individual workman could avail of the mechanism provided by Section 10 for seeking reference of their dispute to the forums created under the Act.

(b) For seeking reference, the workman still had to go through first the conciliation officer for conciliation and then the appropriate Government for reference.

(c) In absence of any provision prescribing period of limitation for reference of dispute under Section 10, the Courts have taken the view that there was no period of limitation for reference of even an individual dispute regarding termination and reference were sought and made even if termination had been effected years back.

(d) In the background of this experience, the Section 2A was further amended by Act 24 of 2010 and Section 2A (2)& (3) were inserted and original Section 2A was numbered as 2A(1). As the objects and reasons suggest, Section 2A was amended to provide a direct access to the Court to the workman in case of a dispute relating to termination of service and also limitation for raising the dispute as industrial dispute.

(e) It needs to be noted that Section 2A, read as the whole provides for a complete mechanism for redressing the grievance of workmen on termination of his service. It creates a fiction to treat an individual dispute as industrial dispute. Despite existence of Section 12 for conciliation, it provides separately for application to be made to the Conciliation Officer for conciliation of dispute. It further provides for direct application to the Labour Court for relief. It also provides that the Labour Court shall have the same power and jurisdiction to adjudicate in accordance with the provisions of the Act and all provisions of the Act shall apply to such adjudication. It is thus a complete code for adjudication of an individual dispute .

(f) It is well settled that when the Parliament enacts a complete code, the prior general provisions which operated till such enactment were applicable, would stand excluded and cease to apply. It is also well settled that when a subsequent special legislation on the same subject is enacted and is a complete code in itself, it indicates an intention of the Parliament to exclude the earlier general law on the

same subject. This is more so where the subsequent legislation contains a non-obstante clause and they are mutually irreconcilable.

(g) Applying the aforesaid principles, it is clear that Section 2A is a complete code, it is special provision for individual termination dispute (as distinguished from general provision for reference for all disputes under Section 10), is subsequent legislation enacted for this purpose. It is further submitted that the non-obstante clause contained in Section 2A(2) is a clear indication to exclude the applicability of Section 10 to individual disputes applying the principles referred to hereinabove. It is well settled that use of non-obstante clause is intended to override the provisions mentioned therein. It is therefore intended to exclude the applicability of Section 10 for seeking adjudication for individual dispute.

(h) There is also an inbuilt irreconcilability between the two provisions. Whereas Section 10 does not contain any period of limitation, Section 2A(3) specifically provides for a period of limitation. It is also well established principle of interpretation that no construction showed be placed on statutory provision which renders any part thereof meaningless except for compelling reasons. It is submitted that if Section 2A (1) is read in isolation with Section 10 to enable the workmen to circumvent the provisions of limitation for seeking reference of individual dispute by invoking Section 10, that would render Section 2A(3) a surplusage and meaningless. There is no compelling reason for doing so because Section 2A gives a much wider remedy to the workmen and would create a situation where the workmen can raise the dispute regarding the termination of service at his sweet will at any time. This was precisely the situation which prevailed after enactment of Section 2A by amendment of 1965 Act and before Act 24 of 2010 was enacted. The very object of enacting Section 2A (3) would be defeated.

(i) It is an equally well settled principles of construction that a section of the statute must be read as a whole and a part thereof cannot be read disjunctively from the rest. Section 2A(1) cannot be read, independent of Section 2A (2) and (3) to enable a workman to raise the time barred dispute and have it referred under Section 10 to the Court. This would be defeating the very purpose and policy of insertion of Section 2A (3).

(j) In Mohd. Arif vs. Cardio Products Corporation, 2015 2 LLJ 491, while examining the inter play between Section 10(4A) of the Industrial Disputes Act as amended by the Delhi Amendment Act and Section 2A of the Act, the Hon'ble Court has taken a view that Section 2A prevails over Section 10(4A). There is apparent repugnancy between Section 2A on one hand and Section 10 on the other. As held by the Apex

Court in AIR 1996 SC 2384, repugnancy would arise if the legislation covers the "whole field". Here as pointed out, Section 2A is complete code covering the whole field so far as the individual disputes relating to termination of service are concerned. Necessarily the provisions of Section 10 would cease to apply to individual dispute regarding termination of his service by the concerned workman.

(k) The Petitioner so contended that the principles of implied repeal should not be readily applied. The construction of Section 2A suggested by the Respondent Company in no way results in repeal of Section 10 and it does not curtail its applicability. Section 2A is a complete code and operate in its own field independently.

(l) The Petitioner also relied on two judgments Bank of India vs. Lakshimani Das, 2000 1 CutLT 386 (SC) and 1994 AIR(SC) 286 to contend that Section 2A read with Section 10 and Section 2A read with Section 2A (2) & (3) provides with concurrent remedies is fallacious. Remedy is provided in Section 10 in the provisions of the Industrial Disputes Act creating an adjudicatory forum, conferment of power to grant relief, procedure to be followed by such forum. Section 10 provides for a mechanism to invoke the remedy i.e. that is by seeking intervention of the Conciliation Officer and reference by the appropriate Government. Section 2A, on the contrary deals with individual disputes and provides for an independent mechanism to invoke the remedy of approaching the judicial forum. Therefore to call them as concurrent remedies would be a fallacy.

(m) It is further submitted that even if it is held that despite enactment of Section 2A (2) & (3), a workman can still invoke the provisions of Section 10 read with Section 2A to seek reference of the dispute to the forum under the I D Act, the provision under Section 2A (1) ought to be read with Section 2(3) and to a reference under Section 10 read with Section 2A (1) would still be governed by Section 2A(3) would still be governed by Section 2A (3) because otherwise Section 2A(3) would become totally redundant and meaningless.

6.6 It is submitted that the Respondent Company had also filed a separate petition being SCA No. 9467 of 2014 to challenge the Order of reference on various other grounds which were raised before the Labour Court but the Hon'ble Court had not granted relief on the basis of the further contentions raised though those contentions have been discussed. Since the scope of the present petition is limited to bar of limitation under Section 2A(3), the Respondent Company's right to agitate other grounds of challenge in appropriate legal proceedings, after this Hon'ble Court take a decision on this petition filed by the workman, remains unaffected.

[7] Mr.K.S.Nanavati, learned senior advocate for the Company has, in support of his submissions noted above, relied on the following decisions.

1. In the case of the Balasinor Nagrik Cooperative Bank Ltd. vs. Babubhai Shankerlal Pandya, 1987 AIR(SC) 849.

2. In the case of State of Andhra Pradesh thro Inspector General, National Investigation Agency vs. Mohd. Hussain alias Salim, 2014 1 SCC 258

3. In the case of Allahabad Bank vs. Canara Bank, 2000 4 SCC 406

4. In the case of Ghaziabad Zila Sahkari Bank Ltd. vs. Addl.Labour Commissioner, 2007 11 SCC 756

5. In the case of Girnar Traders vs. State of Maharashtra, 2011 3 SCC 1

6. In the case of Ramesh Chandra Sankla vs. Vikram Cement, 2008 14 SCC 58

7. In the case of Man Singh vs. Maruti Suzuki India Limited, 2011 14 SCC 662

8. In the case of Rohit N Vasawda vs. Indian Farmers Fertilizers Co.op. Ltd., reported judgment of this Court recorded on Special Civil Application No.10217 of 2013 dated 03.03.2014

9. In the case of Municipal Corporation of Delhi vs. Gurnam Kaur, 1989 1 SCC 101

10. In the case of Union of India vs. Shiv Raj, 2014 AIR(SC) 2242

11. In the decision of this Court in the case of Essar Oil Limited vs. State of Gujarat recorded on Special Civil Application No.16522 of 2014 dated 17.11.2014.

12. In the case of Ratan Lal Adukia vs. Union of India, 1989 3 SCC 537

13. In the case of Mohd. Arif vs. Cardio Products Corporation, 2015 2 LLJ 491(Del)

14. In the case of Fibre Boards (P) Ltd. Vs. CIT, 2015 10 SCC 333.

[8] Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, though number of submissions are canvassed by both the sides before this Court, what needs to be adjudicated first is, as to whether, in the facts of this case, the Labour Court was justified in holding that the References made by the Appropriate Government (vide order dated 12.04.2012) were not maintainable, being barred by limitation. In the event the challenge made by the workmen against the impugned order is accepted by this Court and consequently the matter is remanded back to the Labour Court, it would also be necessary to decide,

the point raised by the company, as to whether the petitioners - workmen should be asked to refund the amount received by them pursuant to the voluntary retirement, which they are questioning now as illegal termination.

[9] The first point, which is the point at issue in this petition is, as to whether the Labour Court was justified in holding that the References made by the Appropriate Authority of the Government were barred by limitation. In this regard, the following aspects need to be kept in view.

9.1 The Appropriate Authority of the Government passed an order dated 12.04.2012 making Reference to the Labour Court, Vadodara for adjudication of the dispute. The terms of Reference was, as to whether the concerned workmen (who are indicated to be 496 in number) are entitled for reinstatement on their original post with consequential benefits. The alleged termination, which according to the company was voluntary retirement after accepting substantial amount by each workman, was in the year 2007. The said Reference order was passed by the Appropriate Authority of the Government, in exercise of powers under Section 10(1) of the Industrial Disputes Act, 1947.

9.2 After the dispute is referred by the Appropriate Authority of the Government to the Labour Court as aforesaid, what the Labour Court was expected to do, is prescribed under Section 10(4) of the Act, which reads as under.

" Where in an order referring an industrial dispute to [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, [the Labour Court or the Tribunal or the National Tribunal, as the case may be], shall confine its adjudication to those points and matters incidental thereto."

9.3 The scope and jurisdiction of the Labour Court under Section 10 of the Act is deliberated by Hon'ble the Supreme Court of India from time to time. Reference can be made to some of the decisions in this regard, which are as under.

9.4 Hon'ble the Supreme Court of India in the case of Oshiar Prasad vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad,Jharkhand 2015 4 SCC 71, after referring to the earlier decisions of the Supreme Court, has observed as under.

"18. One of the questions which fell for consideration by this Court in Delhi Cloth and General Mills Co. Ltd vs. Workmen, 1967 AIR(SC) 469 was that what are the powers of the appropriate Government while making a reference and the scope and jurisdiction of the Industrial Tribunal under Section 10 of the Act.

19. Mitter, J., speaking for the Bench, held as under: (Delhi Cloth and General Mills case, AIR p.472, paras 89)

" 8. . Under Section 10(1)(d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring 'the dispute or any matter appearing to be connected with, or relevant to the dispute ..... to a Tribunal for adjudication'. Under Section 10(4):

"10 (4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.'

9. From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to those points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word 'incidental' means according to Webster's New World Dictionary: ' happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:' 'Something incidental to a dispute' must therefore mean something happening a a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct [to it]."

22. It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference."

9.5 Hon'ble the Supreme Court of India, in the case of Prabhakar vs. Joint Director Sericulture Department, 2015 9 JT 83, after referring to the earlier decisions of the Supreme Court, has, in para:26 observed as under.

"26. The aforesaid case law depicts the following:

(a) Law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947. (b) The words 'at any time' used in Section 10 would support that there is no period of limitation in making an order of reference.

(c) At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.

(d) Whether dispute is alive or it has become stale / nonexistent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard and fast rule regarding the time for making the order of reference."

9.6 Hon'ble the Supreme Court of India, in the case of Director Food and Supplies, Punjab vs. Gurmit Singh, 2007 5 SCC 727, has observed as under.

"10. ...The jurisdiction of the Tribunal and the Labour Court as the case may be in dealing with an industrial dispute is limited. The point was mentioned in Section 10(4) of the ID Act in National Engineering Industries Ltd. vs. State of Rajasthan and others, 2000 1 SCC 371. It was held that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject matter of reference for adjudication to the Tribunal undr Section 10 of the ID Act. Thus the existence of the industrial dispute is a jurisdictional factor. Absence of jurisdictional fact results in invalidation of the reference. The Tribunal or the Labour Court under Section 10 gets jurisdiction to decide an industrial dispute only upon a reference by the appropriate government.

11. The Tribunal or the Labour Court cannot invalidate the reference on the ground of delay. If the employer makes a grievance that the workman has made a stale claim then an employer can challenge the reference by way of writ petition and contend that since the claim is belated there was no industrial dispute. The Tribunal or the Labour Court cannot strike down the reference on this ground. .....The long delay for making the adjudication could be considered by the Adjudicating Authority while moulding the reliefs. That is a different matter altogether."

9.7 In the present case, what the Labour Court has done is as under. In the pending Reference, the company gave an application (Exh.6) raising various objections, including preliminary objections against the maintainability of the References, including on the ground of limitation prescribed under Sub-section (3) of Section 2A of the said Act [as amended in the year 2010]. On the said

application, the Labour Court framed an issue, as to whether the References in question were barred by limitation in view of the provisions of Sub-sections (2) and (3) of Section 2A of the said Act. The Labour Court fell in error in framing the issue like this. The concerned workman had not moved the Labour Court by filing an application under Section 2A of the Act. The Labour Court was examining the dispute referred to it by the Appropriate Authority of the Government under Section 10(1) of the Act.

Whether the Labour Court has answered the question correctly or otherwise is irrelevant, since the Labour Court had posed a wrong question to itself. Answering a wrong question, even correctly, is no answer to the error committed by the Labour Court. The Labour Court had misdirected it, in this regard.

9.8 Keeping in view the above factual background and the proposition of law, this Court finds that denial of relief to the workmen by the Labour Court on the ground of delay, or moulding the relief appropriately on that ground, is different than holding the Reference to be not maintainable by the Labour Court, on the ground of delay. It was neither open to the Labour Court, nor was it justified in the facts of this case, to hold that the References made by the Appropriate Authority of the Government [vide order dated 12.04.2012] were barred by limitation. The impugned order therefore needs to be quashed and set aside. While holding so, it is recorded that, as noted above, the case in hand is of the References made by the Appropriate Authority of the Government under Section 10 of the Industrial Disputes Act, 1947 and not an application made by the concerned workman to the Labour Court under Sub-section (2) of Section 2A of the Act. It is also noted that, various submissions are made with regard to interpretation of Section 2A of the Act, and the effect thereof on the proceedings under Section 10 of the Act, but since the only point at issue before this Court in this petition is, as to whether the Labour Court was justified in holding that the References made by the Appropriate Authority were barred by limitation, and since it is held that, the Labour Court had misdirected itself and further that it was neither open to the Labour Court nor was it justified in the facts of the case to hold that the References made by the Appropriate Authority were barred by limitation, the other questions of law noted in this paragraph, or the other submissions noted above, are not gone into by this Court and are kept open, to be gone into in appropriate proceedings.

[10] When the finding on the point at issue in this petition is as noted above, the next point at issue is, whether the petitioners - workmen should be asked to refund the amount received by them pursuant to the voluntary retirement, which they are questioning now as illegal termination. In this regard, the following aspects need to be noted.

10.1 At the outset it is noted that, in view of the finding of this Court on the point at issue as noted above, the References are getting revived by this very order and the merits of the same would be required to be gone into by the Labour Court and therefore it would not be proper for this Court to go into the merits of the matter, however at the same time, this issue needs to be gone into at least to the limited extent to adjudicate the Civil Application filed by the company. Keeping this balance in view and for this limited purpose, the following aspects are noted by this Court.

10.2 It is not in dispute that, each workman is paid compensation / benefits flowing from the Voluntary Separation Scheme, in the year 2007, which led to the discontinuance of service of each workman. The said discontinuance is subsequently alleged to be illegal termination by the workmen.

The company has, on the other hand, contended it to be lack of bona fide of the concerned workmen.

10.3 Against the above referred discontinuance of service (of the year 2007), the workmen had moved the labour machinery in March, 2011. The said individual complaint / application of the workmen, addressed to the Assistant Commissioner of Labour, Vadodara, requesting for making Reference, specifically reads that the workman is ready to refund the amount received by him under the Voluntary Separation Scheme, which according to him, was deposited in his bank account behind his back. Reference in this regard can be made to the contents of para:12.3 of the said complaint / application, which is placed on record of the Civil Application [at page-269] along with the affidavit on behalf of the company dated 30.11.2015. Acting on the said complaint / application, ultimately the References were made by the Government.

10.4 The case of the company is that each workman is paid much more than what would otherwise have been payable in case of his retrenchment. Reference can be made to the statement in this regard, which is placed on record of the Civil Application [at page-295] along with the affidavit on behalf of the company dated 30.11.2015. The said statement reads as under.

Financial details showing comparison between VRS Payout and Retrenchment Compensation that would have been payable in case of Retrenchment.

Sr No	LCV No.	EC No.	Name	Designation	VRS Payout Amount (Rs.)	Retrenchment Compensation (Rs)
1	118/12	16209118	BHATHIBHAI	Sweep -er	13,30,690	1,31,870

			LAXMANBHAI HARIJAN	Gr-V		
2	107/12	16211376	HARISINH CHHATRASINH GOHIL	Khalasi Gr-V	13,34,653	78,078
3	112/11	16209021	HASMUKH BAILALBHAI VALAND	Khalasi (SG)	14,55,138	1,42,529
4	132/12	16210427	FATESINH RANABHAI NALVAYA	Tech Gr-I (Lab)	16,00,000	1,36,152
5	117/12	16212796	RAYJIBHAI HIRABHAI HARIJAN	Khalasi Gr-V	15,24,113	46,100
6	122/12	16201490	RAMSINH MOTISINH PARMAR	Sr Khalasi (SG)	12,64,390	3,00,630
7	164/12	16211957	GANPATBHI KASNABHAI SOLANKI	Sweep er Gr-V	8,22,411	50,200
8	247/12	16212416	RAMANBHAI CHHOTABHI SOLANKI	Khalasi Gr-V	9,37,684	52,137
9	305/12	16209032	VIVEK VAMANRAI MARATHE	Sr Khalasi (SG)	12,94,345	1,51,288
10	569/12	16207841	MATESING DALSING GUNDIA	Sr Khalasi (SG)	13,20,725	1,57,007

10.5 The company has further contended and has placed material on record to show that, even after retirement, the benefits which are available to the retired employees are also availed by these workmen. It is also pointed out that, necessary forms etc. were also filled in by each workman, including to get their dues from Provident Fund Department, which cannot be termed to be the payment to the workman against his wish, behind his back.

10.6 At this juncture, reference needs to be made to the decision of Hon'ble the Supreme Court of India in the case of Man Singh vs. Maruti Suzuki India Limited, 2011 14 SCC 662. Relevant paras thereof read as under.

"3. A learned Single Judge of the High Court upheld the respondent's contention and while disposing of the writ petition by the judgment and order dated 23112009 made the following directions:

"To make the scales even, the Labour Court will undertake the adjudication on the reference, if only the workman deposits the amount which he has received into court with interest from the date when he has received to the date of deposit calculated at 7.5% per annum. If the deposit is not made within 60 days from the date when the reference was issued to him, the reference made by the Government shall stand annulled.

The writ petition is disposed of in the above terms."

4. The appellant has now brought this matter to this Court. On behalf of the appellant, it is submitted that the High Court in exercise of its writ jurisdiction could not interfere with the reference made by the appropriate Government and the direction to deposit in court the amount received by him under the VRS along with interest @ 7.5% per annum as the condition for the reference to proceed, was quite unreasonable, inequitable and illegal.

5. The submission made on behalf of the appellant is fully answered by an earlier decision of this Court in Ramesh Chandra Sankla vs. Vikram Cement.

6. .

7.

8. The present case is squarely covered by the decision of this Court in Ramesh Chandra Sankla. We, thus, find no merit in the submission made on behalf of the appellant that the High Court had no jurisdiction to make a direction for refund of the entire amount received by the appellant as a condition precedent for the reference to proceed.

9. We, however, feel that the imposition of interest @ 7.5% per annum was a little harsh and unwarranted. Having regard to the fact that the appellant is no longer in service, we feel that the ends of justice would meet if the direction for refund is confined only to the principal amount received by the appellant under VRS. We, accordingly, modify the order of the High Court to this limited extent and direct the appellant to refund the amount received by him under VRS, without any interest. In case the amount, as directed, is deposited by the appellant by 30112011, the reference shall proceed in accordance with law, otherwise it would stand quashed.

10. The appeal stands disposed of subject to the above observations and directions."

10.7 In the facts of this case, the decision of Hon'ble the Supreme Court of India in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub

Division Kota Vs. Mohan Lal, 2013 14 SCC 543 also needs to be kept in view.

Para:19 and 21 of the said decision, read as under.

"19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

20. .

21. In our opinion, the interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000 (one lakh) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum."

10.8 Considering the factual background and the proposition of law, as noted above, ultimately the question would crop up as to whether any relief can be granted to the petitioners - workmen, and if yes, would it be reinstatement or compensation. Since the References are yet to be adjudicated on merits, that aspect is not deliberated further by this Court, however, suffice it to hold that there is no reason not to apply the decision of Hon'ble the Supreme Court of India in the case of Maruti Suzuki , in the facts of this case. 10.9.1 At this juncture, it is recorded that heavy reliance is placed on behalf of the workmen on the order of Hon'ble the Supreme Court of India dated 02.09.2013 in SLP (Civil) No.5945 of 2013 (converted to Civil Appeal No.7703 of 2013) which reads as under.

" Leave granted.

Heard Mr.R.P.Bhatt, learned senior counsel in support of this appeal and Mr.Harnish N. Salve, learned senior counsel for the respondent.

2. In deference to our suggestion Mr.Salve has taken instructions and he states on instructions that the order passed by the Labour Court No.2 Vadodara dated

20.08.2012 on the application of the respondent in Reference (LSV) No.688 of 2010 be set aside.

3. In view of this statement, the appeal is allowed. The order dated 20.08.2012 of the Labour Court No.2, Vadodara as well as the order of the High Court confirming this order are set aside. The reference will proceed without any of the conditions.

4. Needless to say that this order is passed without prejudice to the contentions of both the parties. Hearing of the reference is expedited.

5. We record our appreciation for immediate steps and instructions taken by Mr.Salve, learned senior counsel appearing for the respondent."

10.9.2 So far the above quoted order is concerned, it is evident that, some concession was given on behalf of the company on 02.09.2013 in favour of the workmen who were party to the said proceeding. The above can not be taken as a precedent by this Court. Further, when the decision of Hon'ble the Supreme Court of India in the case of Maruti Suzuki is pressed into service by the company and this Court is faced with the said judgment vis-a-vis the above quoted order, it would be inappropriate for this Court not to follow the judgment, which otherwise applies with full force in the facts of this case. This is in addition to the time gap which would weigh in favour of the company.

10.10 For all the above reasons, the petitioners - workmen need to be put to reasonable terms. Following the decision of Hon'ble the Supreme Court of India in the case of Maruti Suzuki , it needs to be directed that the amount received by the petitioners - workmen, pursuant to the voluntary retirement, which they are questioning now as illegal termination, shall be first deposited by the concerned workman with the Registry of the Labour Court, Vadodara. The said refund would be without interest i.e. only of the principal amount received by the workmen. The deposit of this amount by the concerned workmen shall be condition precedent for proceeding further with the concerned Reference, by the Labour Court.

10.11 It is clarified that, what is observed in this order, more particularly in this paragraph 10, is for the limited purpose to decide the Civil Application of the company and the same shall not have any bearing on the adjudication of the References by the Labour Court. The Labour Court is directed to decide the References and / or the application Exh.6 or any other application that may be filed by either party before it, on its own merits and without being influenced by the observations of this Court in this regard.

10.12 For the reasons recorded above, this Court finds that, the Civil Application filed by the company needs to be allowed in above terms.

[11] It is noted that, learned advocates for both the sides have raised various issues before this Court, which are reflected in the submissions noted above, however all those contentions are not gone into by this Court, since the same is not necessary, to be gone into at least in this petition.

[12] 12.1 It is also noted that, the company had already approached this Court earlier by filing Special Civil Application No.9467 of 2014 challenging the order of the Assistant Commissioner of Labour, Vadodara - the Appropriate Authority under the Industrial Disputes Act, 1947, dated 12.04.2012 whereby the dispute in question was referred to the Labour Court, Vadodara for adjudication. The terms of Reference was, as to whether the concerned workmen (who are indicated to be 496 in number - who are present petitioners before this Court) are entitled for reinstatement on their original post with consequential benefits. The said Reference order culminated into References, which are held to be barred by limitation, by the Labour Court by the impugned order, which is being set aside by this Court by this order. The said References thus now get revived. It is also noted that, the challenge to the Reference order by the company in Special Civil Application No.9467 of 2014, was inter alia on the grounds which are pressed into service by the company in this petition as well, which are noted above, and which are not gone into. It is also noted that, the said petition was dismissed by this Court vide order dated 15.07.2014 as not maintainable at the relevant time. The said order reads as under.

"1. The petitioner company has challenged the order of the Assistant Commissioner of Labour, Vadodara the Appropriate Authority under the Industrial Disputes Act, 1947, dated 12.04.2012 whereby an industrial dispute was referred to the Labour Court, Vadodara for adjudication.

The terms of Reference was, as to whether the concerned workmen (who are indicated to be 496 in number) are entitled for reinstatement on their original post with consequential benefits.

2. Various contentions are raised on behalf of the petitioner which are referred hereinafter but at the outset, it needs to be recorded that on behalf of the contesting respondent workmen Mr.P.R.Thakkar, learned advocate has raised preliminary objection with regard to the maintainability of this petition. It is submitted that, this petition is not maintainable on various grounds, which are referred hereinafter. Under the circumstances, though number of contentions are

raised on behalf of learned advocate for the petitioner, firstly it needs to be adjudicated, as to whether this petition is maintainable or not.

3. The objections raised by the respondents against the maintainability are that, not only the impugned order of the Appropriate Authority dated 12.04.2012 is challenged belatedly, it is also after the order of the Labour Court dated 07.02.2014 whereby the said References are disposed off. It is submitted that, thus this petition challenges that order which has outlived its life. It is under these circumstances contended that this petition be not examined on merits.

4. Mr.K.S.Nanavati, learned senior advocate for the petitioner has, in this regard submitted that, the question of delay should not come in the way of the petitioner company, since the very foundation of challenge to the impugned order dated 12.04.2012 is that there was inordinate delay on the part of the workmen themselves and therefore References ought not to have been made. It is submitted that, the contention about nonmaintainability of those References could not have been examined by the Labour Court, and it is only this Court which can go into it. It is submitted that, this petition be entertained on merits. Mr.Nanavati, learned senior advocate has, on merits also, raised various contentions, which are referred to hereinafter to the extent necessary.

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, there are few glaring aspects which need mention. By the impugned order dated 12.04.2012 the Appropriate Authority of the Government made References to the Labour Court. Before the Labour Court, the petitioner company has filed its reply. Not only References are contested, Application Exh.6 was filed in those References requesting that the References be dismissed as not maintainable. The said applications are allowed by the Labour Court vide order dated 07.02.2014. The said order is challenged by the workmen in separate proceedings, being Special Civil Application No.5491 of 2014 and it is pending at admission stage before this Court. This petition is filed on 02.07.2014, when the impugned order dated 12.04.2012 has outlived its life, since References pursuant thereto are already disposed of by the Labour Court on 07.02.2014.

Under these circumstances, entertaining this petition would be an exercise in futility. For these reasons, this petition is held to be not maintainable and it needs to be dismissed.

6. Learned advocate for the petitioner company has, during the course of hearing, made various submissions on merits as well. It is the case of the petitioner that,

what was referred to the Labour Court was not a dispute at all and in any case, it could not have been termed to be an Industrial Dispute. It was further contended that even if it was accepted that it was a dispute and further that, it was an industrial dispute, the References were incompetent in view of the bar of subsection (2) and (3) of section 2A of the Industrial Disputes Act, 1947. Alternatively, it was submitted that even if the said bar was not to operate, considering the facts of the present case, the References ought not to have been made, because it was the application of the concerned workmen for the voluntary retirement, which was accepted by the company, and dues flowing therefrom were paid by the company and were also received by the concerned workmen. Not only that, the Provident Fund amount, for which some actions were required to be taken by the concerned workmen, were also taken by them, and that amount was also paid to them and years thereafter, dispute was raised before the Conciliation Officer and under these circumstances, References ought not to have been made. Mr.Nanavati, learned senior advocate has relied on number of authorities in support of these contentions.

7. After having held that this petition is not maintainable, it would be unnecessary and also improper for this Court to go into the merits of the contentions raised by learned advocate for the petitioner on merits. For this reason, those contentions are not gone into. It is recorded that, number of authorities are also cited by the learned advocate for the petitioner, but since those contentions are not gone into, those authorities are also not referred to in this order.

8. For the reasons recorded in para:5 above, this petition is dismissed."

12.2 Since the said petition was not entertained by this Court only on the ground of the order of the Labour Court dated 07.02.2014 holding the field at the relevant time, and since the said order dated 07.02.2014 is being set aside by this Court by this order, it is clarified that, it would be open to the company to revive Special Civil Application No.9467 of 2014 or to file fresh petition challenging the Reference order dated 12.04.2012, if so advised and it would be open to the workmen also to contest the said challenge on all available grounds. While recording these observations, this Court is conscious of the fact that the order of this Court dated 15.07.2014 dismissing the Special Civil Application No.9467 of 2014 was challenged by the company in Letters Patent Appeal No.877 of 2014 and the said appeal was withdrawn on 14.08.2014. A litigant can not be condemned unheard at both the stages. For this reason, this liberty is granted.

[13] It is also noted that various contentions were raised by the company before the Labour Court in the application Exh.6, on which the impugned order is passed by the

Labour Court, but the Labour Court had allowed the said application only on the ground of limitation, and when the said finding is held to be unsustainable by this Court, and the matter is being remanded back to the Labour Court, it is clarified that, this Court has otherwise not gone into the other objections raised by the company as contained in application Exh.6 or before this Court and those contentions will be adjudicated by the Labour Court after hearing the parties.

[14] For the reasons recorded above, the following order is passed.

14.1 Special Civil Application No.5491 of 2014 filed by the petitioners - workmen is allowed. The impugned common order passed by the Labour Court, Vadodara dated 07.02.2014 below Exh.6 in Reference No.100 of 2012 to 124 of 2012 and 126 of 2012 to 605 of 2012, whereby the Labour Court has held that, the said References are barred by limitation, is quashed and set aside. The matter is remanded back to the Labour Court for fresh consideration. The application Exh.6 shall be adjudicated on its own merits, except for the contention raised by the company that the References were barred by limitation. Rule is made absolute to this extent, subject to observations of this Court noted above. No order as to costs.

14.2 Civil Application No.9087 of 2014 filed by the company is allowed with the direction that, the amount received by the petitioners - workmen, pursuant to the voluntary retirement, which they are questioning now as illegal termination, shall be first deposited by the concerned workman with the Registry of the Labour Court, Vadodara. The said amount would be only the principal amount, which the concerned workman has received from the company and no order is passed with regard to interest so far earned thereon by him. The deposit of this amount shall be condition precedent for the revival of the Reference of the concerned workman. The said amount shall be deposited in the Labour Court, Vadodara within a period of three months from today.

On deposit of the said amount, it shall be invested by the Labour Court in the interest bearing Fixed Deposit in any Nationalised Bank. Civil Application stands allowed in these terms, subject to observations of this Court noted above. No order as to costs.