

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 7736 of 2020**  
 With  
**R/SPECIAL CIVIL APPLICATION NO. 7863 of 2020**  
 With  
**R/SPECIAL CIVIL APPLICATION NO. 7864 of 2020**  
 With  
**R/SPECIAL CIVIL APPLICATION NO. 7865 of 2020**  
 With  
**R/SPECIAL CIVIL APPLICATION NO. 7866 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-**

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Approved for Reporting	Yes	No
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MOTHER DAIRY FRUIT AND VEGETABLE PVT LTD  
 Versus  
 DILIPBHAI BHAGVANSINH PADHIYAR

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Appearance:

MR DC DAVE SENIOR COUNSEL WITH MR JIGAR M PATEL(3841) for the  
 Petitioner(s) No. 1

MR GIRISH M DAS(2323) for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

**Date : 18/02/2026**

**COMMON ORAL JUDGMENT**

1. Since similar and identical issues arise for consideration in all the above petitions, with consent of the learned counsels appearing for both the sides, the petitions are heard together and are being decided by this common judgment.

**CHALLENGE:**

2. The petitioner has filed present petitions under Articles 226 and 227 of the Constitution of India r/w the provisions of Industrial Disputes Act, 1947 (*hereinafter* referred to as the "I.D. Act") challenging the impugned orders dated 27.12.2019 passed by the Presiding Officer, Labour Court, Anand (*hereinafter* referred to as the "Labour Court") in Reference (L.C.A) Nos.103 of 2015, 104 of 2015, 105 of 2015, 106 of 2015 and 107 of 2015, whereby the said references came to be partly allowed by the Labour Court and granted reinstatement in favour of the respondents herein on their original posts with continuity of service.

**PRAYER:**

3. The petitioner has sought substantially identical reliefs in all the captioned petitions, the only variation being the respective reference numbers. In order to avoid repetition and for the sake of convenience, the reliefs prayed for in Special Civil Application No. 7736 of 2020 are reproduced herein. In the said petition, i.e. Special Civil Application No. 7736 of 2020, the petitioner has, inter alia, prayed as under:

*"6(A) This Hon'ble Court may be pleased to issue a writ of or in the nature of, Certiorari or any other appropriate writ, order or direction quashing and setting aside the Award dated 27-12-2019 passed by the Presiding Officer, Labour Court, ANAND in Reference (L.C.A.) No.104 of 2015-Annexure"A" and be further pleased to dismiss the aforesaid Reference (L.C.A.) No.104 of 2015 of the Respondent;*

*(B) Pending admission, disposal and final hearing of the present petition, this Hon'ble Court may be pleased to stay*

*the operation, implementation, effect and execution of Award dated 27-12-2019 passed by Presiding Officer, Labour Court, ANAND in Reference (L.C.A.) No.104 of 2015-Annexure"A"*

*(C) Such other(s) and further relief(s) which this Hon'ble Court may deem fit to be granted in the interest of justice."*

**FACTS OF THE CASE:**

4. The facts giving rise to the present petitions are that the petitioner is a company incorporated under the provisions of the Companies Act, 1956. It manufactures, markets, and sells milk and milk products, including cultured products, ice cream, paneer, and ghee, under the brand name "Mother Dairy". The petitioner company also has a diversified product portfolio comprising edible oils, fruits and vegetables, frozen vegetables, pulses, and processed foods such as fruit juices and jams, catering to the daily requirements of households.

4.1 The respondents were initially appointed purely on a contractual basis pursuant to orders dated 28.12.2002 for a fixed term of three months, commencing from 01.01.2003 and concluding on 31.03.2003, which appointments were duly accepted by them. Thereafter, their contractual tenure was extended from time to time during the years 2003-2004. Subsequently, by communication dated 29.07.2004, the petitioner offered them permanent appointments to the posts of Operator-cum-Technician Grade-III / Executive Grade-III at its Neem Biocide Plant, Anand, which offers were duly accepted by the respondents. In terms of Condition No. 6 of the appointment order, their services were liable to transfer, thereby reserving to the petitioner the right to transfer the

respondents to any of its plants in accordance with administrative exigencies and organizational requirements.

4.2 As the operations carried on by the petitioner at its Neem Biocide Plant at Anand, Gujarat, had become commercially unviable, the petitioner took a conscious decision to close down the said plant and accordingly effected its closure. Such closure would ordinarily have entailed termination of the services of the employees working therein, including the respondents. However, with a view to safeguarding their employment and avoiding termination, the petitioner, instead of dispensing with their services, transferred the respondents to its other plants situated at Budge-Budge, West Bengal/Kolkata and Etawah, Uttar Pradesh vide communications dated 25.09.2014, and to Guwahati/Srinagar vide communications dated 11.09.2014. The respondents were directed to report for duty at their respective transferred locations within a period of six days from the date of communication.

4.3 Thereafter, the petitioner addressed further communications dated 07.10.2014 and 16.10.2014 to the respondents, reiterating its direction and calling upon them to report for duty at their respective transferred locations. Despite such communications, the respondents failed and neglected to comply. Upon it becoming evident that the respondents were not willing to join duties at the transferred places, the petitioner was constrained to issue orders dated 19.12.2014 terminating their services. At the time of issuance of the termination orders, all admissible terminal dues were

duly calculated and paid to the respondents and the respondents were accepted the same.

4.4 After accepting the terminal dues, the respondents raised industrial disputes seeking reinstatement with full back wages before the Assistant Labour Commissioner, Anand, who referred the disputes for adjudication to the Labour Court, Anand. The references were registered as Reference (L.C.A.) Nos. 103 of 2015, 104 of 2015, 105 of 2015, 106 of 2015, and 107 of 2015.

4.5 Before the learned Labour Court, the respondents filed their statement of claim at Exh. 5, contending that their termination was illegal and unjustified. The petitioner, in response, filed its written statement at Exh. 12, specifically denying the allegations and averments made in the statement of claim. Upon hearing the parties and after due appreciation of the oral and documentary evidence on record, the Labour Court partly allowed the references and directed reinstatement of the respondents with continuity of service.

4.6 Being aggrieved and dissatisfied with the impugned orders dated 27.12.2019, passed by the Labour Court, Anand in Reference (L.C.A.) Nos. 103 of 2015, 104 of 2015, 105 of 2015, 106 of 2015, and 107 of 2015, the petitioner has preferred the present petitions.

5. Heard Mr. Dhaval C. Dave, learned Senior Counsel assisted by Mr. Jigar M. Patel, learned counsel for the petitioner company and Mr. Girish M. Das, learned counsel for the

respondents in all the petitions.

**SUBMISSIONS ON BEHALF OF PETITIONER:**

6. Mr. D.C. Dave, learned Senior Counsel appearing for the petitioner, has submitted that the impugned orders passed by the Labour Court are wholly erroneous, illegal, arbitrary and contrary to the facts and evidence on record. It is contended that the Labour Court has travelled beyond the jurisdiction vested in it while passing the impugned orders in favour of the respondents. According to Mr. Dave, learned Senior Counsel, the terms of reference were limited to the question as to whether the respondents were entitled to reinstatement with consequential benefits or not. However, the Labour Court went beyond the scope of the reference and proceeded to examine the issue of non-compliance with the provisions of the I.D. Act in relation to the closure of the unit. It is therefore submitted that, while rendering the impugned orders on such grounds, the Labour Court exceeded its jurisdiction and acted beyond the scope of the reference.

6.1 Mr. Dave, learned Senior Counsel has further submitted that it is well settled by a catena of decisions that the Labour Court cannot travel beyond the scope and ambit of the terms of reference. It is contended that, in the present case, the impugned orders clearly demonstrate that the Labour Court has exceeded the scope of the reference and adjudicated issues not referred to it. It is therefore submitted that, the impugned orders are erroneous, illegal, unjust, arbitrary and capricious, and therefore deserve to be quashed and set aside.

6.2 Mr. Dave, learned Senior Counsel for the petitioner, has submitted that the respondents were initially appointed on a contractual basis sometime in 1997 and were subsequently regularised and appointed to regular posts in or around the year 2004. It is further submitted that owing to financial constraints and the declining operational capacity of the plant, the petitioner company took a decision to close down the said unit. Consequently, orders were issued transferring the concerned workmen to other units of the company which were functional and operational. Learned Senior Counsel has further contended that, since the respondents failed to report for duty at their respective transferred places, the petitioner company was left with no alternative but to issue orders of retrenchment dated 19.12.2014. It is further submitted that the petitioner company duly paid all statutory and retiral dues, including retrenchment compensation, gratuity and other admissible benefits payable to the respondents, and that the said amounts were deposited in their respective accounts and accepted by them without any protest or objection.

6.3 Mr. Dave, learned Senior Counsel for the petitioner, has submitted that, after having received all statutory and retiral benefits, the respondents, with *mala fide* intent, raised industrial disputes and filed reference cases before the Labour Court. It is contended that the terms of reference did not pertain to the legality of the closure of the unit or to any alleged breach of the provisions of Section 25(o) of the I.D. Act. However, the Labour Court, according to the learned Senior Counsel, travelled beyond the scope of the reference

and took into consideration aspects which were neither relevant nor within the ambit of the issues referred for adjudication while passing the impugned awards. It is further submitted that the material facts and legal position were not properly appreciated by the Labour Court, and therefore the impugned orders passed by the Labour Court are contrary to the settled principles of law and are liable to be quashed and set aside.

6.4 Mr. Dave, learned Senior Counsel for the petitioner, has further submitted that the respondent in Special Civil Application No. 7736 of 2020 has been receiving idle wages without rendering any work pursuant to the interim order passed by this Court dated 24.06.2020. It is further submitted that the other respondents are likewise receiving idle wages in terms of the interim orders passed by this Court dated 03.07.2020, and that such payment of wages has continued till date without any services being rendered by them.

6.5 At this stage, Mr. Dave, learned Senior Counsel, has pointed out before this Court to the fact that, after filing of the present petitions, another reference came to be filed by the Union challenging the closure of the unit. It is submitted that the Union did not follow the statutory provisions of Section 25(o) of the I.D. Act and, without seeking prior permission, raised the dispute, which was thereafter referred to the Labour Court, Nadiad and registered as Reference (I.T.) No. 74 of 2018. It is further submitted that the said reference came to be disposed of vide order dated 26.06.2022, as the Union did not press the issue before the Labour Court.

6.6 Mr. Dave, learned Senior Counsel has placed on record a copy of the said order dated 26.6.2022 passed by the Labour Court in Reference (IT) No. 74 of 2018 which is taken on record.

6.7 Mr. Dave, learned Senior Counsel for the petitioner, in support of his submissions, referred and relied upon the following decisions of the Hon'ble Apex Court and this Court:-

(1) ***Bhogpur Cooperative Sugar Mills Ltd. vs. Harmesh Kumar, reported in (2006) 13 SCC 28.***

(2) ***Oshiar Prasad and Others vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand reported in (2015) 4 SCC 71,***

(3) ***Tata Chemicals Limited vs. Okha Mandal Majoor Sangh reported in 2017 (0) GUJHC 13394.***

6.8 Over and above the contentions raised in the present petitions, the Learned Senior Council urges before the Court that present petitions may be allowed and the impugned orders passed by the Labour Court may be quashed and set aside.

#### **SUBMISSIONS ON BEHALF OF RESPONDENTS:**

7. On the other hand, Mr. Girish Das, learned counsel appearing for the respondents, has opposed the petitions and submitted that there has been a serious breach of the provisions of Section 25(o) of the I.D. Act. It is contended that, upon due consideration of all relevant facts and evidence, the Labour Court has rightly passed the impugned orders

directing reinstatement of the respondents. According to the learned counsel, there is no illegality, infirmity or jurisdictional error in the findings recorded by the Labour Court, and therefore this Court, while exercising its supervisory jurisdiction under Articles 226 and 227 of the Constitution of India, ought not to interfere with the same. It is accordingly prayed that the petitions deserve to be dismissed.

7.1 Mr. Girish Das, learned counsel for the respondents, has further submitted that the respondents are not gainfully employed in any establishment, nor are they receiving adequate remuneration from any alternative employment. It is contended that the petitioner dairy is statutorily bound to pay to the respondents full wages last drawn, inclusive of any maintenance allowance admissible to them, in view of the provisions of Section 17-B of the I.D. Act. Learned counsel has submitted that Section 17-B of the I.D. Act clearly provides that where a Labour Court, Tribunal or National Tribunal, by its award, directs reinstatement of any workman and the employer prefers proceedings against such award before the High Court or the Supreme Court, the employer shall be liable to pay such workman, during the pendency of such proceedings, full wages last drawn inclusive of any maintenance allowance admissible under any rule, provided that the workman has not been employed in any establishment during such period.

7.2 Mr. Girish Das, learned counsel for the respondents, has

submitted that Section 2(k) of the Industrial Disputes Act defines an “industrial dispute” to mean any dispute connected with employment or non-employment, or with the terms of employment. It is contended that, in the present case, the Labour Court has examined the terms of employment, particularly Clause 6 of the appointment letter, while adjudicating the reference. According to the learned counsel for the respondents, the contention of the management that the Labour Court has exceeded its jurisdiction is wholly misconceived and contrary to the mandatory provisions of law, and therefore cannot be sustained even for a moment.

7.3 Mr. Girish Das, learned counsel for the respondents, has further submitted that when the respondents did not report for duty at the transferred places, no departmental inquiry was conducted prior to terminating their services. According to him, the record does not disclose that any inquiry was held, and therefore the action of the petitioner in terminating the services of the workmen cannot be said to be legal or justified. It is further submitted that Exh. 6/5, i.e. the transfer order, indicates that the transfers were effected on account of business exigencies and with a view to providing alternative employment. However, the sworn depositions at Exh. 19 and Exh. 25 disclose reasons for transfer which are materially different from those stated in the transfer order.

7.4 Mr. Girish Das, learned counsel for the respondents has also relied upon Section 2A of the Industrial Disputes Act to submit that where an employer discharges, dismisses,

retrenches or otherwise terminates the services of an individual workman, any dispute arising between such workman and the employer in connection with such termination shall be deemed to be an industrial dispute.

7.5 Mr. Girish Das, learned counsel for the respondents, has referred to and relied upon the decision of the Hon'ble Apex Court in ***Babhutmal Raichand Oswal vs. Laxmibai R. Tarta, reported in (1975) 1 SCC 858***. He has contended that even if the Labour Court has committed an error of fact, however apparent it may be on the face of the record, the same cannot be interfered with by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India by converting itself into a Court of Appeal, particularly when the legislature has not conferred a right of appeal and has made the decision of the subordinate court or tribunal final.

7.6 Lastly, Mr. Girish Das, learned counsel for the respondents urges before the Court that present petitions may not be entertained and the same may be dismissed and the impugned orders passed by the Labour Court, may be confirmed.

**ANALYSIS:**

8. I have perused the relevant material and documents placed on record. I have also gone through the impugned orders passed by the Labour Court as well as the decisions cited by both the sides.

9. Considering the facts and circumstances of the case and after hearing both the sides, the issues arise for consideration before this Court are as under:-

*1. Whether the Labour Court exceeded the jurisdiction which is not vested in it and go beyond the scope of the terms of reference, as provided under the provision of Section 10(1) of the I.D. Act?*

*2. Whether the impugned order passed by the Labour Court is sustainable in the eyes of law?*

10. It *prima facie* appears from the record that the Labour Court has travelled beyond the scope of the reference and has committed errors both on facts and in law while appreciating the evidence adduced before it. The findings recorded by the Labour Court thus suffer from serious factual and legal infirmities. The aforesaid decisions of the Hon'ble Apex Court as well as this Court cited by learned Senior Counsel for the petitioner clearly enunciate the ratio with regard to the scope and ambit of Section 10(1)(c) of the I.D. Act. The said Section 10(1)(c) of the I.D. Act reads as under:-

**"10. Reference of disputes to Boards, Courts or Tribunals.—**

*(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,*

*(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication;"*

11. At this stage, it is appropriate to refer the relevant assertions of examination in chief of the respondents:-

12. So far as the respondent of Special Civil Application No. 7736 of 2020 is concerned, the said respondent has stated in his examination in chief that he joined the company on 21.07.1997 as a Fitter and was later re-designated as Attendant Operator. He rendered continuous service until his termination and worked for more than 240 days in every year, including the 12 months preceding termination. His service record was clean and his last drawn salary was Rs. 28,452/- per month. The company was engaged in manufacturing neem-based pesticides and fertilizers at its Anand plant, employing about 80 workers in three shifts. The respondent was performing duties of machinery maintenance and plant operations. The company, registered under the Companies Act, 1956, has its head office at Delhi and several establishments across India employing thousands of workers. From December 2013, the company initiated steps for permanent closure of the Anand plant by stopping budgeting and procurement of raw materials. Production was completely stopped from 01.03.2014 and the plant was locked. Instead of paying retrenchment compensation upon closure, the employees were transferred to different states. The respondent was transferred to Etawah (U.P.) by order dated 25.09.2014. As the respondent did not report at the transferred place, the company terminated his services on 19.12.2014 without conducting any departmental inquiry and without paying retrenchment compensation. After

termination, the respondent made sincere efforts to secure employment at various places but remained unemployed.

13. So far as the respondent of Special Civil Application No. 7863 of 2020 is concerned, the said respondent has stated in his examination in chief that he joined the petitioner company on 06.03.1997 and remained in continuous service despite change in the name of the company. Though his last designation was Assistant Manager (Sales and Marketing), he did not perform supervisory or managerial functions. His duties were limited to promoting products, coordinating with farmers and dealers, collecting payments, and submitting required forms, without any authority to fix prices, grant facilities, or make policy decisions. He had worked for more than 240 days in every year, including the 12 months preceding his termination. The Anand plant was permanently closed from early 2014 after stoppage of budgeting and procurement of raw materials. He was transferred to Srinagar by order dated 11.09.2014, and thereafter his services were terminated on 19.12.2014 without conducting any departmental inquiry and without following the procedure under Section 25(o) of the I.D. Act.

14. So far as the respondent of Special Civil Application No. 7864 of 2020 is concerned the said respondent has stated in his examination in chief that he joined the petitioner company on 01.08.1997 and continued in uninterrupted service despite change in the name of the company. At the time of termination, he was designated as Executive Grade-3;

however, he was never assigned any managerial, administrative, or supervisory powers. His duties were limited to procurement and market support activities relating to neem-based raw materials, collecting market data, preparing prescribed forms, coordinating inward entries, sampling, and documentation of finished goods. All decisions regarding purchase, pricing, payment terms, or sales were taken by superior officers. No employee worked under him and he had no authority to place orders or take independent decisions. His service record was clean and he worked for more than 240 days in every year, including the 12 months preceding termination. The Anand plant was permanently closed in early 2014 after stoppage of budgeting and procurement of raw materials. The company did not follow the procedure under Section 25(o) of the I.D. Act. He was transferred to Kolkata by order dated 25.09.2014 and thereafter terminated on 19.12.2014 without any departmental inquiry.

15. So far as respondent of Special Civil Application No. 7865 of 2020 is concerned the said respondent has stated in his examination in chief that he joined the petitioner company on 15.07.1997 as an Operator and continued in uninterrupted service despite change in the name of the company. Though later designated as Marketing Executive and Assistant Manager, he did not exercise any managerial, administrative, or supervisory powers and no such authority was ever conferred upon him. His duties were limited to field work, promoting neem-based fertilizers and pesticides, coordinating with farmers and dealers, forwarding dealership forms, and

collecting payments. He had no authority to appoint dealers, fix prices, grant discounts, or decide payment terms. No employee worked under him. His last drawn salary was Rs. 52,000/- per month. His service record was clean and he had worked for more than 240 days in every year, including the 12 months preceding termination. The Anand plant was permanently closed in early 2014 after stoppage of budgeting and procurement of raw materials. Instead of following the procedure under Section 25(o) of the I.D. Act, employees were transferred. The respondent was transferred to Guwahati by order dated 11.09.2014 and subsequently terminated on 19.12.2014 without any departmental inquiry.

16. So far as respondent of Special Civil Application No. 7866 of 2020 is concerned the said respondent has stated in his examination in chief that he was appointed on 21.03.1997 as an Attendant Operator and continued in uninterrupted service despite change in the name of the company. His designation and duties remained the same throughout, and his service record was satisfactory. He had worked for more than 240 days in every year of service, including the 12 months preceding his termination on 19.12.2014. At the Anand Unit, neem-based fertilizers and pesticides were manufactured, and he was working as a Plant Operator. The company, registered under the Companies Act, operates several dairies and processing plants across India employing thousands of workers. The Anand plant was permanently closed in early 2014 after stoppage of budgeting and procurement of raw materials, and production was completely halted. Instead of

obtaining prior permission and properly retrenching employees, all employees were transferred to distant states. The respondent was transferred to Baj Baj, West Bengal by order dated 25.09.2014. As the transfer was illegal and no equivalent work was available, he did not report there. Consequently, his services were terminated on 19.12.2014 without conducting any departmental inquiry. Though retrenchment compensation was paid, one month's notice pay was not paid and prior permission of the State Government was not obtained.

17. So far as the cross examinations of the all the respondents are concerned, they have admitted that despite receiving letters dated 07.10.2014 and 16.10.2014 directing them to report for duty at the transferred place, they neither reported for duty nor gave any written reply, and had not raised any written objections to the transfer (though they claim to have raised an oral objection). They have also admitted that due to their failure to report, the company had to make alternative arrangements and by letter dated 19.12.2014 their services were terminated and that all service benefits, including notice pay, gratuity, leave encashment and other dues, were calculated and deposited in their bank accounts, and that they have not returned the said amounts. They have also admitted that they have not made any written application for alternative employment.

18. So as to deal with the issues arise for consideration, it would be appropriate to briefly refer to the facts of the case in

order to determine whether the Labour Court has properly appreciated the same or not.

19. That all the respondents herein were appointed purely on contractual basis somewhere in 1997. In continuation of that, order dated 28.12.2002 came to be issued by the petitioner for a period of three months commencing from 1.1.2003 and ending on 31.3.2003 and the said order of appointment was duly accepted by the respondents. Thereafter, the petitioner extended the services of the respondents till 2003-2004 and then, their services were regularized and they have been appointed on regular different posts vide appointment orders dated 29.7.2004. The appointment orders dated 29.4.2004 are placed on record and clause No. (6) of the said appointment orders read as under:-

*"(6) As an employee of the Neem Biocide Plant, you can be posted at Anand or transferred to any other place in India from time to time at the sole discretion of the management."*

20. Due to financial constraints, the manufacturing activities of the plant were closed, and consequently, the company decided to shift all its workers to different places where its other units were functioning. Accordingly, transfer orders were issued in favour of all the respondents. However, the respondents chose not to join at their respective transferred places and neither responded to the transfer orders nor furnished any explanation. Ultimately, the petitioner company passed orders of retrenchment after paying retrenchment compensation and all other legal dues payable to the respondents.

21. It is an admitted position that the respondents accepted the amounts towards retrenchment compensation and other legal dues, and in their oral evidence it has been admitted that, till the date of their deposition, they had not returned the said amounts which were deposited in their respective accounts by the company. Thereafter, they raised an industrial dispute contending that their services had been terminated and that they were entitled to reinstatement with all consequential benefits. The terms of reference to that effect were forwarded by the Assistant Labour Commissioner, as reflected in the impugned award.

22. However, the Labour Court travelled beyond the scope of the terms of reference, which is wholly illegal and contrary to the settled principles of law laid down by the Hon'ble Apex Court. Therefore, in my opinion, the Labour Court exceeded its jurisdiction and enlarged the scope of the reference while deciding the same and passing the impugned orders. All these facts have been admitted by the concerned respondents in their affidavits in lieu of examination-in-chief and have been further confirmed in their cross-examinations.

23. At this stage, it is appropriate to refer the decision of the Hon'ble Apex Court in the case of ***Bhogpur Cooperative Sugar Mills (supra)*** wherein, the Hon'ble Apex Court has held as under:-

*"D. Labour Law-Industrial Disputes Act, 1947-Ss. 10 and 25-G-Terms of reference under S.10-Binding nature of Consideration of question of compliance with S.25-G, when reference was only as to whether termination of services was*

*justified-Impermissibility.*

*7. The Labour Court derived its jurisdiction from the terms in reference. It ought to have exercised its jurisdiction within the four corners thereof.*

*8. The principal question which was referred by the State Government was as to whether the termination of services of the respondent was justified. The Labour Court was, therefore, not required to go into the question as to whether the appellant was bound to take the services of the respondent in all subsequent seasons or not."*

24. Yet, in another decision of the Hon'ble Apex Court in the case of **Oshiar Prasad (supra)**, the Hon'ble Apex Court has held as under:-

*"B. Labour Law - Industrial Disputes Act, 1947 - S. 10 - Powers of appropriate Government to make reference - Jurisdiction of Tribunal while answering reference - Scope - Reference pertaining to absorption/regularisation of appellants and others whose services were terminated long back - Validity - Held, appropriate Government is empowered to make reference only when "industrial dispute exists" or "is apprehended between the parties" - Further held, Tribunal while answering reference has to confine its enquiry to question(s) referred and has no jurisdiction to travel beyond or/and terms of reference*

*- In instant case, services of appellants and those at whose instance reference was made were terminated long back prior to making reference - Thus, they were not in service either of contractor or/and respondent BCCL - Consequently, question of their absorption or regularisation did not arise nor could have been gone into on merits since it is not possible to direct absorption/regularisation employees not in service - Absorption/Regularisation can be claimed and/or granted only when contract of employment subsists- Hence, only dispute which existed for being referred to Tribunal was in relation to appellants' employment and its legality/validity - Reference made to examine issue of absorption, was thus, misconceived and was incapable of being answered in favour of appellants.*

*18. One of the questions which fell for consideration by this*

*Court in Delhi Cloth and General Mills Co. Ltd. v. Workmen was that what are the powers of the appropriate Government while making a reference and the scope and jurisdiction of 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 8-9*)

*“(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 as 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.....”*

20. *The same issue came up for consideration before three Judge Bench in a case reported in Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd., Justice Y.V. Chandrachud, the learned Chief Justice speaking for the Court laid down the following proposition of law: ( SCC pp. 764-65, paras 10-11 )*

*“10. Two questions were argued before the High Court: Firstly, whether the tribunals had jurisdiction to question the propriety or justification of the closure and secondly, whether they had jurisdiction to go into the question of retrenchment compensation. The High Court has held on the first question that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and that the Tribunal cannot go beyond the terms of the reference made to it. On the second question the High Court has accepted the respondent’s contention that the question of retrenchment compensation has to be decided under Section 33-C(2) of the Central Act.*

*11. Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent’s decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references [pic]being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management.”*

21. The abovesaid principle of law has been consistently reiterated in *Firestone Tyre & Rubber Co. of India (P) Ltd. v. Workmen*, *National Engg. Industries Ltd. v. State of Rajasthan*, *Mukand Ltd. v. Mukand Staff & Officers' Assn*, and *State Bank of Bikaner & Jaipur v. Om Prakash Sharma*.

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.

23. Coming now to the facts of this case, it is an admitted case that the services of the appellants and those at whose instance the reference was made were terminated long back prior to making of the reference. These workers were, therefore, not in the services of either Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that "existed" or "apprehended" in relation to appellants' absorption in the services of the BCCL on the date of making the reference.

24. Indeed a dispute regarding the appellants' absorption was capable of being referred to in reference for adjudication, had the appellants been in the services of Contractor or/and BCCL. But as said above, since the appellants' services were discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularization in the services of BCCL, as claimed by them, did not arise and nor this issue could have been gone into on its merits for the reason that it was not legally possible to give any direction to absorb/regularize the appellants so long as they were not in the employment.

25. It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes

*to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.*

*26. In our considered opinion, the only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of appellants' employment and - whether it was legal or not? It is an admitted fact that it was not referred to the Tribunal and, therefore, it attained finality against the appellants.*

*27. In our considered opinion, therefore, the reference, even if made to examine the issue of absorption of the appellants in the services of BCCL, the same was misconceived."*

25. In the decision of this Court in case of **Tata Chemicals Limited (supra)** this Court has held as under:-

*"Head Note:- Service and Labour - Constitution of India - Art. 226, 227-Industrial Disputes Act, 1947-S. 2(rr), 10(1) - Contract Labour (Regulation and Abolition) Act, 1970-Contract Labour (Regulation and Abolition) Rules, 1972-R.25-46 workmen employed by respondent No. 2 Contractor, charter of demand was raised for paying them the pay-scales of unskilled workmen - respondent No. 2 Contractor contended that Tribunal had no jurisdiction to entertain the subject matter of reference - held, Deputy Labour Commissioner has referred the dispute to the Industrial Tribunal wherein five demands raised by the Union are mentioned in the schedule and the said order of Reference was not challenged by the Company or the workmen - if schedule referred to Industrial Tribunal is carefully examined, there is no reference in the said schedule that the Union has demanded a particular amount on the basis of amount paid to workmen of Company -there is only reference with regard to payment of Rs. 12.10 daily with amount of DA of Rs. 39.80 as revised from time to time to the skilled workmen (pumpmen) other demands were also made by the Union which has been referred to the Tribunal under the Schedule there is no reference with regard to the allegation that the contract entered into between the Company and the Contractor is sham and bogus - further, from Schedule referred to Tribunal, it cannot be said that there is any reference with regard to similar type of work performed by the workmen of the Contractor and principal employer and*

*there is no reference with regard to disagreement with type of work performed by the workmen employed by the contractor as well as principal employer - Tribunal is having jurisdiction to entertain the dispute referred to it by the Deputy Labour Commissioner - Tribunal has not committed any error Tribunal has also not considered the paying capacity of the Contractor to pay the wages similar to the wages paid by the Company to its workmen there is no finding recorded by Tribunal that Contractor is having the paying capacity to pay the wages equivalent to the wages paid to the workmen of Company Contractor is making payment of minimum wages to his workmen scope of interference while exercising powers under Article 227 of the Constitution of India is limited - however, in present case, when the Tribunal has travelled beyond the terms of the reference and not considered the relevant aspects of the matter, this is a fit case where such powers are required to be exercised Tribunal has committed an error to the aforesaid extent by travelling beyond the terms of the reference and not considering the paying capacity. Wait for my instruction of the Contractor to pay the wages similar to the wages paid to the workmen of the Company-therefore, matter remanded back to the Tribunal for considering the issue afresh-petitions partly allowed.*

*7. Though five demands were referred in the Schedule, in the Statement of Claim, the Union raised 14 demands. The Company as well as the Contractor submitted the written statement and the Tribunal, after considering the oral as well as documentary evidence produced before it, partly allowed the Reference, whereby all the demands except demand no.3 as per the Schedule are allowed and the Contractor is ordered to make the payment as per the said demand within stipulated time limit from the date of Reference. The Tribunal also ordered to pay the revision of such demands from time to time while ensuring that the same shall not be less than the respective benefits which are being paid to the employees of the Company.*

*8. On behalf of the petitioners, mainly it has been contended that the Tribunal has no jurisdiction to decide the dispute because if the claim of the contractor's workmen is for grant of same wages as paid to the workers of the Company, the jurisdiction is with the Commissioner of Labour as per condition no.5 of Licence Agreement. The contention of the petitioners is that the Tribunal has gone beyond the terms of the Reference by making an observation that the contract*

*entered into between the Company and the Contractor is sham and bogus. The third contention of the petitioners is that the Tribunal has not considered the financial capacity of the employer while giving direction to pay the same wages as is being paid to the workmen of the Company. The Tribunal ought to have considered the paying capacity of the Contractor."*

26. The aforesaid observations clearly indicate that the jurisdiction of the Labour Court is limited to the scope of the reference and cannot be expanded beyond the terms framed by the appropriate Government.

27. It is evident that prior to terminating the services of the respondents, the company had paid all statutory and retiral dues, including retrenchment compensation, gratuity and other admissible benefits payable to the respondents. The said amounts were duly deposited in their respective accounts and were accepted by them without any protest or objection. Thereafter, the respondents raised an industrial dispute seeking reinstatement with full back wages.

28. Therefore, in the present case, the Labour Court ought to have decided only the issues that were specifically referred to it. It was not open for the Labour Court to go beyond the terms of reference and examine matters which were not part of the dispute referred for adjudication.

29. By doing so, the Labour Court exceeded its jurisdiction and committed errors in appreciating the facts and the law. The impugned orders are therefore against the settled legal position laid down by the Hon'ble Apex Court and this Court

regarding the limited scope of powers under Section 10 of the I.D. Act. The settled law, as laid down by Hon'ble Apex Court and this Court clearly states that under Section 10 of the I.D. Act, the labour Court must confine itself strictly to the terms of the reference. Since the Labour Court ignored this limitation, the impugned orders are contrary to law and therefore, cannot be sustained.

30. In the facts of the present case, the Labour Court was required to decide only the specific issues referred to it by the appropriate Government. However, instead of confining itself to the terms of the reference, the Labour Court examined questions which were not part of the reference and granted relief beyond what was sought. Thus, the Labour Court travelled outside the scope of its jurisdiction.

31. For the foregoing reasons, the impugned orders cannot be sustained and the present petitions deserve to be allowed. Accordingly present petitions are allowed. The impugned orders dated 27.12.2019 passed by the Labour Court in Reference (L.C.A) Nos.103 of 2015, 104 of 2015, 105 of 2015, 106 of 2015 and 107 of 2015 are hereby quashed and set aside. Rule is made absolute in each of the petition. The condition imposed while granting *interim relief* qua compliance of Section 17B of the I.D. Act vide orders dated 24.06.2020 and 03.07.2020 stands vacated forthwith. No order as to costs.

Sd/-  
**(HEMANT M. PRACHCHAK,J)**

SURESH SOLANKI