(F) Till the meeting, as stated in (C) hereinabove, is convened, the stay granted by this Court, *vide* order dated 17-9-2009, will remain in operation.

46.1. With the above observations and directions, the petitions stand disposed of. Rule is made absolute to the above extent with no order as to costs. Direct Service permitted.

ORDER IN CIVIL APPLICATIONS

Since, the main matters have been disposed of, the Civil Applications shall not survive. Hence, they also stand disposed of.

(SBS) *Petitions partly allowed.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice H. K. Rathod

BOMBAY MERCANTILE CO-OPERATIVE BANK LTD. v. MEMBER & ANR.*

Constitution of India, 1950 — Art. 141 — "Prospective declaration of law" — Industrial Disputes Act, 1947 (14 of 1947) — Sec. 2(a) — In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with — Supreme Court decisions in *Bharat Co-operative Bank,* (2007 (2) CLR 180 : AIR 2007 SC 2320), holding that in respect of the Bank appropriate Government was the State Government — Contention that in respect of petitioner Bombay Mercantile Bank Reference was invalid as it was made by Central Government — Held, decision in *Bharat Co-operative Bank* was "merely a declaration of law in respect to the petitioner-Bank" — Such declaration of law "would always apply with prospective effect and would not apply to pending cases where decision has already been taken" — Order of Tribunal rejecting application to declare the Reference incompetent, affirmed.

ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૧૪૧ — "કાયદાનું સંભવિત જાહેરનામું" — ઔદ્યોગિક તકરાર અધિનિયમ, ૧૯૪૭ — કલમ ૨(એ) — એવી બાબતો કે, જેમાં કાયદાના આવા જાહેરનામા પહેલાં સિદ્ધાંતો વિરુદ્ધ ચુકાદાઓ લેવાયા હોય તેમાં હસ્તક્ષેપ થઈ શકે નહિ — સુપ્રિમ કોર્ટના *ભારત કો-ઑપરેટિવ બૅંક,* (૨૦૦૭ (૨) સી.એલ.આર. ૧૮૦ : એ.આઈ.આર. ૨૦૦૭ સુ.કો. ૨૩૨૦)ના ચુકાદામાં જણાવ્યા મુજબ બૅંકની બાબતમાં યોગ્ય સરકાર એ રાજ્ય સરકાર હતી — રજૂઆત કે, અરજદાર બૉમ્બે મર્કન્ટાઈલ બૅંકની બાબતનો રેફરન્સ અયોગ્ય હતો, કારણ કે, તે કેન્દ્ર સરકાર દ્વારા કરવામાં આવ્યો હતો — ઠરાવવામાં આવ્યું કે, *ભારત કો-ઑપરેટિવ બૅંકના* નિર્ણયમાં "કાયદાનું જાહેરનામું માત્ર અરજદાર બૅંક પૂરતું જ હતું" — કાયદાનું આવું જાહેરનામું સંભવિત

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*Decided on 7-4-2010. Special Civil Application No. 3557 of 2010, challenging order passed by the Industrial Tribunal (Central) below Exh. 48 in Reference (I.T.C.) No. 1618 of 2008.

અસરથી જ લાગુ થશે અને જેમાં નિર્ણય લેવાઈ ગયો છે તેવા પડતર કેસોમાં લાગુ પડશે નહિ — રૅફરન્સની અરજીને અસક્ષમ જાહેર કરતો પંચનો હુકમ, મંજૂર રાખવામાં આવ્યો.

Initially, respondent-workman had raised industrial dispute before appropriate Government being State Government, as per reply submitted by present respondent against application Exh. 48 before Industrial Tribunal (Central), page 49, specific averment was made that initially complaint under Sec. 2(a) of the I. D. Act, 1947 was filed before Assistant Commissioner of Labour, State Government wherein petitioner-Bank had remained present in response to notice and raised contention before said authority that the petitioner-Bank is having branches outside State of Gujarat, and therefore, Central Government is the appropriate Government and not the State Government. In response to aforesaid contention raised by petitioner-Bank before Assistant Commissioner of Labour, respondent-workman had withdrawn complaint under Sec. 2(A) from the Assistant Commissioner of Labour, State Government and had approached the Assistant Commissioner of Labour, Central Government where also, petitioner-Bank had appeared and made its written submissions but before said authority of Central Government, petitioner-Bank had not raised contention about jurisdiction of said authority of Central Government and it was also not contended by petitioner that the Central Government is not appropriate Government. (Para 6)

Petitioner-Bank has not raised any contention about jurisdiction of Industrial Tribunal (Central) and also not challenged legality and validity of order of Reference referred to for adjudication to Industrial Tribunal (Central) by appropriate Government-Central Government. Not only that but this point was also not raised before this Court in earlier petition by petitioner-Bank looking to observations made by this Court as referred to above. (Para 11)

After referring to the Supreme Court decision in *Bahuram v. C. C. Jacob,* 1999 Lab.IC 2084, the Court observed :

In light of aforesaid decision, where it is made clear by Apex Court that the prospective declaration of law is device innovated by Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation by the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger interest of public so that the subordinate forums which are legally bound to apply the declaration of law made can apply such dictum to cases which would arise in future only. In the matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. Similarly, decision of Apex Court relied upon by learned Advocate in case of *Bharat Co-operative Bank Ltd.*, it is merely declaration of law in respect to petitioner-Bank that the appropriate Government is now State Government and not the Central Government. Such declaration of law would always apply with prospective effect and would not apply to pending cases where decision has already been taken by the competent authority. (Para 21; *See* also Para 22)

Law which is clarified by Apex Court in case of *Bharat Co-op. Bank Ltd.* is a declaration of law apply with prospective effect and not with retrospective effect, therefore, Industrial Tribunal (Central) has rightly decided application Exh. 48 and has rightly considered contentions raised by petitioner-Bank and has rightly considered reply given by respondent Exh. 51 and has also rightly come to conclusion that the decision of Apex Court in *Bharat Co-op. Bank Ltd.,* (2007 (2) CLR 180 : AIR 2007 SC 2320) is not applicable to facts of present case and it applies with prospective effect and has also rightly considered hardship as well as legal harassment which has been caused to workman, and therefore, Industrial Tribunal (Central) has rightly examined matter and has rightly decided application Exh. 48, for that, Industrial Tribunal (Central) has not committed any error which would require interference of this Court in exercise of powers under Art. 227 of the Constitution of India. (Para 23; *See* also Paras 25 and 26)

Cases Referred to :

(1) *Bharat Co-operative Bank Mumbai, Ltd. v. Co-operative Bank Employees' Association,* 2007 (2) CLR 180 : AIR 2007 SC 2320
(2) *General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi*, AIR 2009 SC 3121 : 2009 (7) SCC 205
(3) *M.A. Murthy v. State of Karnataka,* AIR 2003 SC 3821 : 2003 (7) SCC 517
(4) *Indian Oil Corporation Ltd. v. Mahendrabhai R. Patel,* 1987 (54) FLR 490
(5) *International Air Port Authority v. P. K. Srivastava,* 1987 (1) LLJ 242
(6) *Valsad Jilla Sahakari Bank Ltd. v. Assistant Commissioner of Labour and Certifying Officer,* 1990 (2) GLH 269
(7) *Saudi Arabian Airlines v. Shehnaz Mudhatkal,* 1999 (1) CLR 205
(8) *Saudi Arabian Airlines v. Shehnaz Mudhatkal,* 1999 (2) CLR 766
(9) *P. K. Shah v. Gujarat Industrial Co-operative Bank Ltd.*, 2001 (1) LLJ 783
(10) *Steel Authority of India Ltd. v. National Union Waterfront Workers,* 2002 (1) GLR 792 (SC) : 2001 (7) SCC 1
(11) *Bahuram v. C. C. Jacob,* 1999 Lab.IC 2084
(12) *Harjinder Singh v. Punjab State Warehousing Corporation,* 2010 (1) SCALE 613
(13) *State of Haryana v. Manoj Kumar,* 2010 AIR SCW 1990

Nanavati Associates, for the Petitioner.
D. S. Aff. Not Filed (N) for Respondent Nos. 1 and 2.

H. K. RATHOD, J. Heard learned Advocate Mr. K. D. Gandhi for M/s. Nanavati Associates for petitioner-Bombay Mercantile Co-operative Bank Limited.

2. By filing this petition under Art. 227 of Constitution of India, petitioner has challenged order passed by Industrial Tribunal, Ahmedabad in Reference

(I.T.C.) No. 18 of 1995 (Old Number) and 1618 of 2008 (New Number) Exh. 48 dated 16th January, 2010. Industrial Tribunal (Central) has dismissed application Exh. 48 submitted by petitioner-Bank and has fixed further hearing of said Reference on 1st February, 2010. During the course of hearing, prayer was made by learned Advocate for petitioner to amend prayer and has prayed for permitting petitioner for praying to stay proceedings of said Reference and order Exh. 48 both. Such prayer is granted. Petitioner is directed to amend accordingly.

3. Learned Advocate Mr. Gandhi for petitioner raised contention before this Court that before Industrial Tribunal (Central), application was made by petitioner-Bank on 19-9-2008 raising preliminary contention *vide* Exh. 48 that in view of the recent decision of Apex Court in the matter of *Bharat Co-operative Bank Mumbai Ltd. v. Co-operative Bank Employees' Association*, reported in AIR 2007 SC 2320 : 2007 (2) CLR 180, appropriate Government is the State Government and not the Central Government, therefore, Reference which has been made by Central Government against present petitioner is not legal and valid and in respect of present petitioner-Bank, State Government is appropriate Government under Sec. 2(a) of the I. D. Act, 1947. Said application was replied by present respondent raising objection on 16th September, 2009. Copy of reply received by petitioner on same day 16th September, 2009. The Petitioner has, in support of its submission, relied upon copy of application made by employer to Central Government Industrial Tribunal Bombay in Reference No. CGIT 2/52 of 2005 dated 23rd October, 2007 raised contention by employer Bank raising same contention before Industrial Tribunal Central Government, Bombay. Said contention has been examined by Presiding Officer, AA Lad, Industrial Tribunal (Central) No. 2 in Reference No. 2/52 of 2005 and came to the conclusion in respect to employer Bank relying upon Apex Court decision in case of *Bharat Co-operative Bank* (supra) that appropriate Government is not Central Government but State Government by order dated 7-10-2008. Accordingly, Reference was disposed of by Industrial Tribunal for want of jurisdiction of the said Industrial Tribunal (Central). This order has been passed by Industrial Tribunal (Central) Bombay on 7th October, 2008. Said decision of Bombay Tribunal has been relied upon by learned Advocate Mr. Gandhi. Learned Advocate Mr. Gandhi submitted that Industrial Tribunal (Central) has committed gross error in rejecting application filed by petitioner Exh. 48. He also submitted that law laid down by Apex Court is binding to subordinate Courts under Art. 141 of the Constitution of India. Even though, decision, though relied by petitioner, not accepted by Industrial Tribunal (Central) on the ground that such decision is not having any retrospective effect and decision of Apex Court is also not much clear whether it applies with retrospective effect or with prospective effect? He also submitted that

the view taken by the Industrial Tribunal (Central) is erroneous because it is settled law that judicial decision, unless otherwise specified, is retrospective in effect while relying upon decision of Apex Court in case of *General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi,* reported in AIR 2009 SC 3121 : 2009 (7) SCC 205 where Apex Court has held that judicial decision, unless otherwise specified, are having retrospective effect. They would only be in prospective in nature if it has been provided therein. He also relied upon another decision in case of *M.A. Murthy v. State of Karnataka*, reported in AIR 2003 SC 3821 : 2003 (7) SCC 517 and submitted that in said decision, it has been held by Apex Court that a decision, unless indicated therein to be operative prospectively, cannot be treated to be so. He submitted that the Apex Court has also held that normally decision of Apex Court enunciating a principle of law is applicable to all cases irrespective of stage of pendency thereof, because it is assumed that what is enunciated by Apex Court is in fact the law from inception. He submitted that the doctrine of prospective overruling which is a feature of *American Jurisprudence* is an exception to the normal principle of law. He submitted that the Apex Court has further held that it is for Apex Court to indicate as to whether the decision in question will operate prospectively or not. As per his submission, in other words, there shall be no prospective overruling unless it is so indicated in the particular decision. Doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. Relying upon aforesaid two decisions, learned Advocate Mr. Gandhi submitted that the view taken by Industrial Tribunal (Central) is contrary to law decided by Apex Court. He submitted that in *Bharat Co-operative Bank Limited case*, Apex Court has not made it clear that it will apply with prospective effect, therefore, it must apply with retrospective effect to all pending cases, therefore, according to him, Industrial Tribunal (Central) has committed gross error in rejecting application Exh. 48. Learned Advocate Mr. Gandhi has read before this Court order in question passed by Industrial Tribunal (Central). He also emphasized view taken by Apex Court in *Bharat Co-op. Bank Limited* as referred above and submitted that said decision is clearly applicable to facts of present case which has not been properly appreciated by Industrial Tribunal (Central), and therefore, present petition is filed. Except that, no other submission is made by learned Advocate Mr. Gandhi and no other decision has been cited by him before this Court in support of contentions raised by him as aforesaid.

4. I have considered submissions made by learned Advocate Mr. Gandhi. I have also perused impugned order passed by Industrial Tribunal (Central) below Exh. 48. I have also perused decision of Apex Court in case of *Bharat*

Co-op. Bank and also decisions which have been referred to and relied upon by learned Advocate Mr. Gandhi before this Court as referred to above.

5. This case is having little a bitter history and legal fight between two unequals, one is poor employee who is out of job since 12th November, 1991, meaning thereby, it is like *Nirbalki ladai balwan se, ye kahani hai diye ki aur toofan ki*.

6. Looking to the facts as they are appearing from record, respondent was an employee of the petitioner-Bank, working as a peon. One incident occurred on 30th July, 1990 while balancing cash at 5-00 p.m., Head Cashier had noticed about shortage of cash of Rs. 5000-00 and it was informed to Branch Manager about shortage of cash, therefore, search was carried out but without any success and on next date, 31st July, 1990, it was further inquired and suspicion was raised against present petitioner with close interrogation by Head Cashier and according to Bank, respondent admitted to have taken bundle of Rs. 5000-00 and agreed to return it to the Bank. On the basis of aforesaid incident, show-cause notice was served to respondent on 4th August, 1990 which was replied by respondent on 10th August, 1990, and thereafter, departmental inquiry was completed and ultimately, he was dismissed from service on 12th November, 1991, and thereafter, after a period of four years, industrial dispute was raised by respondent which came to be referred to by appropriate Government means Central Government to Central Industrial Tribunal being Reference (I.T.C.) No. 18 of 1995. Here, it is necessary to note that one important fact is required to be noted which is relevant that initially, respondent-workman had raised industrial dispute before appropriate Government being State Government, as per reply submitted by present respondent against application Exh. 48 before Industrial Tribunal (Central), page 49, specific averment was made that initially complaint under Sec. 2(a) of the I. D. Act, 1947 was filed before Assistant Commissioner of Labour, State Government wherein petitioner-Bank had remained present in response to notice and raised contention before said authority that the petitioner-Bank is having branches out side State of Gujarat, and therefore, Central Government is the appropriate Government and not the State Government. In response to aforesaid contention raised by petitioner-Bank before Assistant Commissioner of Labour, respondent-workman had withdrawn complaint under Sec. 2(a) from the Assistant Commissioner of Labour State Government and had approached the Assistant Commissioner of Labour, Central Government where also, petitioner-Bank had appeared and made its written submissions but before said authority of Central Government, petitioner-Bank had not raised contention about jurisdiction of said authority of Central Government and it was also not contended by petitioner that the Central Government is not appropriate Government. Meaning thereby, that when the complaint

was filed by respondent before Assistant Commissioner of Labour, Central Government, his jurisdiction was not challenged and petitioner-Bank had surrendered to the jurisdiction of the Assistant Commissioner of Labour, Central Government, and accordingly, industrial dispute has been referred to for adjudication to the Industrial Tribunal (Central) for adjudication by order dated 19th July, 1995, and accordingly, it was numbered as Reference (I.T.C.) No. 18 of 1995. Before Industrial Tribunal (Central) also, written statement was filed by petitioner-Bank, but this contention was not raised by petitioner that the dispute which has been referred to for adjudication by Central Government is without jurisdiction, and therefore, order of Reference is bad because it is referred to by Central Government and not by the State Government, but jurisdiction of Industrial Tribunal (Central) has been accepted by petitioner and order of Reference has also not been challenged at the relevant time by petitioner before higher forum and no such contention has been raised in written statement by petitioner-Bank. Therefore, matter has been examined by Industrial Tribunal (Central) on merits and before Industrial Tribunal (Central), as referred to in Para 6 of award, legality and validity of departmental inquiry was not challenged by workman by filing *purshis* at Exh. 34 but challenged only legality and validity of finding and also challenging that findings are baseless and perverse and charges are not proved in departmental inquiry, and therefore, Industrial Tribunal (Central) has examined matter and in Paragraph 20, after re-appreciating evidence led in departmental inquiry, legality and validity of finding has been, in detail, examined by Industrial Tribunal and has come to the conclusion that such finding is baseless and perverse and on the basis of evidence led in departmental inquiry by petitioner-Bank, charges levelled against workman are not proved, and therefore, Labour Court has set aside order of dismissal and granted relief of reinstatement with continuity of service with 60 percent back wages for interim period and awarded Rs. 500-00 towards costs *vide* award dated 5th September, 2001.

7. Aforesaid award was challenged by petitioner before this Court by filing petition being Special Civil Application No. 3628 of 2002, raising contentions in Ground No. B, C and G which are quoted as under :

"(B) The Tribunal has failed to construe and interpret the provisions of Sec. 2(k) of the I. D. Act under which the dispute was referred to it. Section 2(k) reads as under :

'2(k) '*industrial dispute*' means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.'

The petitioner submits that the dispute referred to in the present case is not the workman as a class, but was raised for the individual workman and is not supported by the Union or for that matter any of the workmen of the Bank. In the respectful submission of the petitioner, the Reference was therefore not maintainable and the consequential order passed therein by the Tribunal is liable to be quashed and set aside.

(B) The petitioner submits that the dispute was referred to in 1995 after a period of almost five years after the order of dismissal was passed against the respondent. In the submission of the petitioner, therefore, when the respondent has acquiesced to the order of dismissal, there was no necessity for referring the dispute after a period of five years. The petitioner submits that dispute must be referred within reasonable time and not at any time when the party aggrieved by it - either workman or employer - desires to refer the same. In the present case, there is not only delay in referring the dispute but there is gross delay in referring the dispute. In the submission of the petitioner, on this ground too, the order deserves to be quashed and set aside.

(G) The petitioner submits that the inquiry against the respondent was held in consonance with the principles of natural justice and fair-play. No grievance was made by the respondent during the course of inquiry about the validity and legality of the inquiry being conducted. The validity and legality of the inquiry was not challenged by the respondent. Therefore, the findings of fact arrived at by the Inquiry Officer ought not to have been disturbed by the Tribunal, especially when no allegation of victimization or *mala fide* has been alleged against the officers of the Bank who have no Axe to grind against the respondent. The order of the Tribunal, is therefore, liable to be quashed and set aside."

8. Before this Court, in Special Civil Application No. 13628 of 2002, one affidavit was filed by petitioner-Bank where copy of written statement placed before Industrial Tribunal (Central) has also been attached with affidavit. Relevant Paragraph Nos. 3 and 4 of said affidavit are quoted as under :

"3. It is submitted that though the petitioner-Bank, had in Paragraphs 20 and 21 of its written statement clearly stated that if for any reason the Hon'ble Presiding Officer found the inquiry conducted against the respondent-workman vitiated and/or illegal or improper, the petitioner-Bank be given the opportunity to lead additional evidence, the Presiding Officer did not allow the present petitioner to lead additional evidence. We rely upon the judgment of the Hon'ble Supreme Court reported in *Karnataka State Road Transport Corporation v. Lakshideviamma*, 2001 (5) SCC 433 with respect to right of employer to lead additional evidence in proceedings against the termination of service, in which a five Judges Bench of the Hon'ble Supreme

Court of India has held that the Court/Tribunal has powers to direct parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case, it is deemed just and necessary in the interest of justice.

4. In view of the aforesaid facts and circumstances and judgment, it is amply clear that the Tribunal has erred in not allowing the petitioner-Bank to lead additional evidence, hence the order dated 5-9-2001 of the Tribunal is required to be quashed and set aside."

9. It is necessary to note that aforesaid affidavit was filed by petitioner before this Court with a prayer that no such opportunity was given by Industrial Tribunal (Central) before setting aside finding given by inquiry officer. For that, according to petitioner-Bank, they are entitled to lead additional evidence before Industrial Tribunal (Central). In support of that, copy of written statement Exh. 7 has been attached to affidavit as Annexure-A relying upon Paragraphs 20 and 21 which is quoted as under :

"20. Without prejudice to the aforesaid contentions, the Bank submits that if for any reason the Hon'ble Presiding Officer is pleased to take a view that the inquiry conducted against the workman was vitiated and/or illegal or improper, then in that event, the Bank is desirous of leading evidence before the Hon'ble Presiding Officer with a view to prove the misconduct alleged against the workman by charge-sheet dated 10-9-90 and the Hon'ble Presiding Officer may be pleased to grant necessary permission for the same.

21. The Bank submits that the workman was supplied with a copy of the findings of the Inquiry Officer and was given the opportunity to make submissions in respect of the proposed punishment of dismissal. However, for any reason, the Hon'ble Presiding Officer is pleased to take contrary view in the matter, then, in that case also necessary opportunity in respect thereof may be given as per law laid down by the Hon'ble Court."

10. In light of this factual aspect where challenge was made by petitioner-Bank before this Court in earlier petition where award of reinstatement with 60 percent back wages was challenged by petitioner before this Court. Therefore, this was limited challenge made by petitioner-Bank in its earlier petition filed before this Court. In light of this challenge, it is necessary and relevant to consider order of this Court dated 22-2-2006 passed in aforesaid petition. Same is, therefore, quoted as under :

"1. This petition under Art. 227 of the Constitution of India is directed against the award dated 5-9-2001 passed by the Central Industrial Tribunal, Ahmedabad in Reference (I.T.C.) No. 18 of 1995 whereby the Industrial Tribunal has directed the petitioner to reinstate the respondent on his original post with 60% back wages and cost of Rs. 500/-.

2. The brief facts of the case are that the respondent was working as a peon with the petitioner-Bank. On 30-7-1990, while balancing the cash at 17-00 hrs, the Head Cashier informed the Branch Manager about the shortage of cash. Thereafter, a check was carried out within the Bank but to no success. The next day, when the respondent was examined he admitted to have taken the amount. The respondent agreed to return the amount and he duly returned the same in the presence of the Head Cashier, Receiving Cashier and the younger brother of the respondent.

2.1. Thereafter, the petitioner-Bank served a charge-sheet and a departmental inquiry was initiated against him. At the conclusion of the inquiry, on charges being proved against him, the respondent was dismissed from the services of the petitioner-Bank. After a period of four years, the respondent raised an industrial dispute which was referred to the Labour Court for adjudication. The Labour Court after hearing the parties passed the aforesaid award.

3. Learned Counsel for the petitioner has contended that the inquiry against the respondent was held in consonance with the principles of natural justice and that the respondent has not alleged anything against the officers of the petitioner-Bank who have given evidence. He has further contended that the Tribunal erred in granting 60% back wages to the respondent inasmuch as the Reference was made after a delay of almost four years after the order of dismissal.

4. Heard learned Counsel for the parties. I have gone through the award of the Industrial Tribunal and the evidence on record. The Apex Court in the case of *Karnataka State Road Transport Corporation v. Lakshmideviamma,* reported in 2001 (5) SCC 436 has held that the employer's request when made before close of proceedings deserves to be examined by the Labour Court/Tribunal on its own merits and the Labour Court/Tribunal should exercise discretion on well settled judicial principles and should examine the *bona fides* of the employer in making such an application. In that view of the matter, I am of the opinion that the matter is required to be remanded to the Industrial Tribunal for reconsideration of the matter.

5. In the premises aforesaid, the petition is allowed. The award of the Industrial Tribunal is quashed and set aside. The Tribunal is directed to hear and dispose of the Reference after allowing the parties to adduce evidence. Rule is made absolute accordingly with no order as to costs."

11. In view of the aforesaid order passed by this Court, it is clear that in petition filed by petitioner-Bank and in affidavit as referred to above and also in written statement Exh. 7 as referred to above, petitioner-Bank has not raised any contention about jurisdiction of Industrial Tribunal (Central) and also not challenged legality and validity of order of Reference referred to for adjudication to Industrial Tribunal (Central) by appropriate Government-Central Government. Not only that but this point was also not raised before this Court in earlier petition by petitioner-Bank looking to observations made by this Court as referred to above. In light of this background, petition was

allowed by this Court with a direction to Industrial Tribunal (Central) to hear and dispose of Reference after allowing parties to adduce evidence. Therefore, mater was remanded for limited purpose where parties are permitted to adduce evidence in respect to the contention raised in written statement Paragraphs 20 and 21 as referred to above. In short, petitioner-Bank wants to lead evidence to justify order of dismissal and also to justify finding given by Inquiry Officer. In light of this background, just to see the conduct of petitioner-Bank having taking advantage of recent judgment of Apex Court in case of *Bharat Co-operative Bank Ltd.,* reported in AIR 2007 SC 2320 : 2007 (2) CLR 160, application was submitted by petitioner-Bank to Industrial Tribunal (Central) Exh. 48 dated 19-9-2008 and not adduced any evidence before Industrial Tribunal (Central) for a period of two years from the date of the order passed by this Court in Special Civil Application No. 3628 of 2002 dated 22-2-2006. After a period of two years, one application Exh. 48 has been submitted by petitioner and preliminary contention has been raised by petitioner that Reference which was made by Central Government is not appropriate Government in light of recent judgment of Apex Court in case of *Bharat Co-op. Bank Ltd.,* and therefore, Industrial Tribunal (Central) has no jurisdiction to decide said Reference. Meaning thereby, the intention of the petitioner-Bank is to harass poor workman by using legal machinery being means and invited orders from Industrial Tribunal (Central) knowing fully well that at the initial stage, when complaint was filed by respondent-workman before Assistant Commissioner of Labour, State of Gujarat, said complaint was objected by petitioner on the ground that Central Government is appropriate Government. Then, when respondent-workman filed complaint before Assistant Commissioner of Labour, Central Government, petitioner-Bank not challenged his jurisdiction and invited Reference and in earlier proceedings before the Industrial Tribunal (Central) also, not challenged order of Reference but surrendered to jurisdiction without raising any such preliminary contention about maintainability of order of Reference made by appropriate Government (Central) and even before this Court also, not raised any such contention about jurisdiction of Central Government to make Reference in this case and then after order of this Court remanding matter for adducing evidence to justify finding, waited for a period of about two years and after pronouncement of judgment by Apex Court in case of *Bharat Co-op. Bank Ltd.,* as referred to above, filed application Exh. 48 for taking benefit of situation and raised preliminary objection as if the matter has been remanded back with a permission to petitioner to raise preliminary objections and contentions also about maintainability of order of Reference. This shows conduct of petitioner-Bank. This is nothing but legal harassment based on legal proceedings and workman who is out of job since 1991 may remain

continue out of job though once order of reinstatement was passed in his favour by Industrial Tribunal (Central) in the year 2001. By adopting such practice and tactics, petitioner-Bank, being mighty employer, wants to see that ultimately by passage of time, workman may get tired and surrender to their conditions and settle matter or accept any amount by compelling him in creating such legal situation, so mater can be over as per desire of petitioner-Bank. Such an approach and conduct of the petitioner-Bank is required to be deprecated by this Court as it is nothing but clear case of legal victimization and unfair labour practice adopted by petitioner by misusing legal machinery against poor respondent-workman who is out of job since 1991.

12. Industrial Tribunal (Central) has considered application Exh. 48 submitted by petitioner-Bank and has also considered reply Exh. 51 filed by respondent-workman. In light of this legal aspect, whether the decision of Apex Court in case of *Bharat Co-op. Bank Ltd.* (supra) is having retrospective effect or not and whether such decision is applicable to pending cases or not, for that, certain decisions are necessary to be considered by this Court, over and above decisions referred to and relied upon by learned Advocate Mr. Gandhi.

13. Division Bench of this Court in case of *Indian Oil Corporation Ltd. v. Mahendrabhai R. Patel*, reported in 1987 (54) FLR 490, has examined question in Special Civil Application filed by I.O.C. challenging order of Labour Court Baroda where subsequent notification changing appropriate Government. It has been held that the Reference has not been invalidated by subsequent notification changing appropriate Government. Relevant discussion made by Division Bench of this Court in said decision is quoted as under :

"This Special Civil Application is to quash, the order of the Labour Court, Baroda, wherein the Labour Court has held that the subsequent notification changing the 'appropriate Government in relation to certain industry will not invalidate the Reference made by the appropriate Government at the time the dispute was referred. Mr. Bhatt, the learned Counsel appearing for the petitioner submitted that by virtue of the notification dated 21-6-1985, the Central Government was specified as appropriate Government for oil industry. At the time of the Reference under Sec. 10 of the Industrial Disputes Act, 1947, the appropriate Government was the State Government in respect of this particular industry. Inasmuch as there is a change in the appropriate Government subsequent to the matter having been referred to the Labour Court under the powers conferred under Sec. 10 of the Industrial Disputes Act, Mr. Bhatt the learned Counsel for the petitioner, submitted that Labour Court ceased to have jurisdiction. This he wanted to fortify by submitting that as per Sec. 17 of the Industrial Disputes Act, 1947, the appropriate Government to publish the award that will be passed by the Labour Court.

Since, at the time of passing the award, the appropriate Government will not be the State Government, the difficulty will arise for publication of the award concerned.

We have issued notice on this petition and Mr. N. J. Mehta entered appearance on behalf of the respondent and Mr. S. D. Shah entered appearance on behalf of the second respondent. Both of them contended that the appropriate Government is that Government which has referred the dispute to the Labour Court under Sec. 10, that it continues to be the appropriate Government and that when any award is passed by the Labour Court, the said appropriate Government 'which referred the matter will publish it under Sec. 17 of the Industrial Disputes Act. It is unnecessary for us to site any decision for the clear proposition that it is only that appropriate Government which referred the matter will be the appropriate Government for publishing the report or award under Sec. 17 even though the 'appropriate Government' is changed during the pendency of the award proceedings by virtue of any notification by the Government on the strength of Sec. 2 of the Industrial Disputes Act, 1947.

In any way, we make Reference to one decision cited by Mr. N. J. Mehta, the learned Counsel appearing for the first respondent, in the case of *Workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd. v. The Management,* 1973 (26) FLR 359 (SC). No doubt this is with Reference to Sec. 11A of the Industrial Disputes Act regarding the applicability of the said Sec. in respect of the pendency of the proceedings. The Supreme Court in Paragraphs 53 and 58 has observed as follows :

> '53. The words 'has been referred' in Sec. 11A are no doubt capable of being interpreted as making the Section applicable to References made even prior to 15-12-1971. But is the Section so expressed as to plainly make it applicable to such References? In our opinion, there is no such indication in the Section. In the first place, as we have already pointed out, the Section itself has been brought into effect only some time after the Act had been passed. The proviso to Sec. 11A which is as much part of the Section, refers to 'in any proceeding under this Section'. Those words are very significant. There cannot be a 'proceeding under this Section', before the Sec. itself has come into force. A proceeding under that Section can only be on or after 15-12-1971. That also gives an indication that Sec. 11A applies only to disputes which are referred for adjudication after the Section has come into force.
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> 58. We have already expressed our view regarding the interpretation of Sec. 11A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established

in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognized by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognized certain managerial rights in an employer. We have pointed out that this position has now been changed by Sec. 11A. The Section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence, in order to make the Section applicable even to disputes, which had been referred prior to the coming into force of the Section, there should be such a clear, express and manifest indication in the Section. There is no such express indication. An inference that the Section applies to proceedings, which are already pending, can also be gathered by necessary intendment. In the case on hand, no such inference can be drawn as the indications are to be contrary. We have already referred to the proviso to Sec. 11A which states 'in any proceeding under this Section'. A proceeding under the Section can only be after the Section has come into force. Further, the Section itself was brought into force some time after the Amendment Act was passed. These circumstances as well as the scheme of the Section and particularly the wording of the Proviso indicate that Sec. 11A does not apply to disputes which had been referred prior to 15-12-1971. The Section applies only to disputes which are referred for adjudication on or after 15-12-1971. To conclude, in our opinion, Sec. 11A has no application to disputes referred prior to 15-12-1971. Such disputes have to be dealt with according to the decisions of this Court already referred to.'

Thus, from the abovesaid decision, it is clear that the disputes referred to prior to the coming into force of Sec. 11A of the Industrial Disputes Act will not be governed by the provisions of Sec. 11A. Likewise, the subsequent notification changing the appropriate Government in respect of the particular industry will not in any affect the Reference made by the appropriate Government at the time of making such Reference and that the Government which made the Reference will have the authority to publish the award under Sec. 17 of the Industrial Disputes Act.

Section 2(a) of the Industrial Disputes Act, 1947 clearly states that :

'*appropriate Government*' means -

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of this Central Government or by a Railway company.....'

Thus, it is clear that the 'appropriate Government will be the Government which makes the Reference of an industrial dispute for adjudication. The

subsequent consequence that follows by such Reference is relatable to the said appropriate Government which has referred the matter under Sec. 10. The proceeding that is continued by virtue of such Reference will have its logical end by passing an award and such award to be published under Sec. 17 has to be so published by the appropriate Government which referred the matter for adjudication.

We entirely agree with the reasoning and finding of the Labour Court, and as such, we do not find any merits in this Special Civil Application. Accordingly, the Special Civil Application is dismissed. Notice discharged. Interim relief vacated. No costs."

14. In case of *International Air Port Authority v. P. K. Srivastava,* reported in 1987 (1) LLJ 242, Bombay High Court observed as under in Paras 12, 13, 14 and 17 :

"12. Learned Advocate for the respondent lays emphasis on the subsequent amendment made in the definition of 'appropriate Government' as a result of which the first part of the definition now expressly includes the International Airport Authority of India as an industry in relation to which the appropriate Government for making a Reference is the Central Government. He submitted that the very fact that there was no express Reference to the International Airports of India in the previous definition would show that previously it was not covered under the first part of the definition of the appropriate Government under Sec. 2(a) by an amendment. According to him, the definition, therefore, prior to its amendment could not have included the International Airports Authority of India in first part. In support of his contention he relied upon certain observations of the Supreme Court in the case of *Food Corporation of India Workers Union v. Food Corporation of India*, 1985 (2) LLJ 4. In that case, the Supreme Court was concerned with the interpretation of the Contract Labour (Regulation and Abolition) Act of 1970. Section 2(a) of the Contract Labour (Regulation and Abolition) Act defines appropriate Government in that Act. This carried on by or under the authority of the Central Government. In considering this phrase, the Supreme Court made a Reference to the provisions of Sec. 2(a) of the Industrial Disputes Act, 1947. One of the arguments advanced before the Supreme Court was that under the amended definition of appropriate Government under Sec. 2(a) of the Industrial Disputes Act, 1947, the Food Corporation of India was specifically included in the first part of the definition. It was submitted before the Supreme Court that, therefore, the Food Corporation of India should also not be considered as an industry carried on by or under the authority of the Central Government for the purpose of the Contract Labour (Regulation and Abolition) Act, 1970. While negativing this contention the Supreme Court observed that the F.C.I. was expressly included in the amended definition in part (i) of Sec. 2(a) of the Industrial Disputes Act, 1947. Hence, prior to the amendment, it was not covered by the earlier part of the definition as an industry carried on by

or under the authority of the Central Government. The Supreme Court examined the nature of the activity carried on by the Food Corporation of India and came to the conclusion that the Food Corporation of India could not be said to be an industry carried on by or under the authority of the Central Government. This decision does not lay down that any of the statutory corporations and other bodies which are expressly included in Sec. 2(a)(i) of the Industrial Disputes Act, 1947 either originally or by virtue of the amendment of 1982 cannot be said to be an industry carried on 'by or under the authority of the Central Government' This question will have to be decided on the facts and circumstances of each case depending upon the matter in which the statutory Corporation in question is set up and the matter in which it functions and discharges its obligations. It is possible that in a given case a Corporation would not have been considered as an industry carried on by or under the authority of the Central Government. But, by virtue of its express inclusion in Sec. 2(a)(i), a Reference in case of such a Corporation is required to be made by the Central Government. It is equally possible that in the case of another Corporation, on the facts and circumstances relating to that Corporation, it can be seen that it is an industry carried on by or under the authority of the Central Government. Its express inclusion in Sec. 2(a)(i) will not make the first part of Sec. 2(a)(i) inapplicable to it. It would not, therefore be correct to say that because the International Airports Authority of India is subsequently expressly included in Sec. 2(a) (i) it cannot be considered as an industry carried on under the authority of the Central Government.

13. It was submitted by Mr. Talsania, learned Advocate for the petitioner, that the subsequent amendment of Sec. 2(a)(i) as a result of which the International Airports Authority of India is added to the list of statutory Corporations in Sec. 2(a)(i) is an amendment which is classificatory in nature. He relied upon the Statement of Objects and Reasons relating to the said amendment, where it is stated that this part of the amendment is being made in, in order to remove certain difficulties which have been experienced. He, therefore, submitted that since the amendment merely clarifies what was already contained in the definition the amendment must be given a retrospective effect and should be applied even in cases of a Reference which was made prior to the coming into operation of the amendment. This submission does not appear to be correct. In the first place, there is nothing to show that the amendment is merely classificatory The Statement of Objects and Reasons shows that the amendment was made in order to remove certain difficulties. It is therefore more curative than classificatory. Such a curative amendment in the absence of any express words to the effect in the amending statute, cannot be given a retrospective effect.

14. Mr. Talsania, relied upon a decision of the Supreme Court in the case of *Ruston & Hombsbu (I) Ltd. v. T. B. Kadam,* 1975 (2) LLJ 352. In that case, the facts which gave rise to the industrial dispute had occurred prior to the amendment of the Industrial Disputes Act as a result of which

Sec. 2A was inserted in the Industrial Disputes Act. The Reference was made after Sec. 2A was added to the statute and the Reference was in terms under the provisions of Sec. 10 read with Sec. 2A of the Industrial Disputes Act. It was argued before the Supreme Court that since the fact which gave rise to the industrial dispute arose before the amendment, now, Sec. 2A would not apply to such a dispute. The application of Sec. 2A in such a case would be retrospective. This argument was negatived by the Supreme Court which held that in such a situation there was no question of applying Sec. 2A retrospectively. The conditions which gave rise to the Reference were existing at the time when the Reference was made under Sec. 10 read with Sec. 2A. This decision can have no application to the present case. At the time when the Reference was made, amendment to Sec. 2(a)(i) had not been effected. Any later amendment cannot govern a Reference already made.

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17. Since, however, International Airports Authority of India is an industry carried on by or under the authority of the Central Government, the appropriate Government for making a Reference in the present case is the Central Government. It is unfortunate that the initial application of the workman to the Central Government was turned down by the Central Government. It is hoped that in case the workman approaches the Central Government for a Reference, the application will be disposed of expeditiously in view the special circumstances of the case."

15. Division Bench of this Court, in case of *Valsad Jilla Sahakari Bank Ltd. v. Assistant Commissioner of Labour and Certifying Officer*, 1990 (2) GLH 269, observed as under in Paras 7 and 8 :

"7. Relying on the principle of incorporation, looking to the aforesaid two decisions, it has to be held that if the meaning of a term is incorporated from an Act which has been subsequently repealed or has been subsequently amended, the position available as on the date of passing of the statute wherein the definition has been incorporated from another statute will prevail and will continue to hold the field and any subsequent changes in the incorporated statute will not affect the position *vis-a-vis*. The statute in which the definition is incorporated.

8. The position therefore to be found in the case before us is that when the said Act came to be enacted the meaning of the term 'industrial establishment' was to be understood in accordance with the position available at that time, under the Payment of Wages Act, 1936. That clearly excluded the petitioner-Bank and establishment of that type, and as such, the order of certifying authority is clearly without jurisdiction."

16. In case of *Saudi Arabian Airlines v. Shehnaz Mudhatkal,* 1999 (1) CLR 205, Single Judge of Bombay High Court observed as under in Paras 18 and 34 as under :

"18. The Reference has been made under Sec. 10 of Act, which empowers the appropriate Government to refer an industrial dispute, *inter alia*, for the adjudication of the Labour Court. The term 'appropriate Government' is defined in Sec. 2(a) of the Act. Sub-clause (i) of Sec. 2(a) it enumerates a large number of industries and then provides that in relation to an industrial dispute concerning such industries, the appropriate Government in respect of those industries will be the Central Government. Sub-section (ii) of Sec. 2(a) provides that in relation to any other industrial dispute, the State Government is the appropriate Government. As the provisions of Sec. 2(a) stood on the date of Reference *i.e.* 5th May, 1986, the only Airline industries which fell within the ambit of Sec. 2(a) were Indian Airlines and Air India Corporations established under the Air Corporations Act, 1953, as enumerated in clause (i) of Sec. 2(a) of the said Act. Thus, on the date of the Reference, the State Government was the appropriate Government in respect of an industrial dispute in the establishment of the petitioner, and therefore, the Reference was validly made to the Labour Court under Sec. 10(1)(c) of the Act. Section 2(a)(1) of the Act was amended by Ordinance of 1995 (Ordinance No. 12 of 1995) which came into force from 11th October, 1995. This Ordinance came to be replaced by the Industrial Disputes (Amendment) Act, 1996 (No. 24 of 1996) which also was brought into force from 11th October, 1995. The result of the amendment as far as we are concerned, is that the words 'an insurance company' were were added at the end of sub clause (i) of sec. 2(a) of the said Act. As a consequence of this amendment, the 'appropriate Government' in relation to an industrial dispute in any Air Transport Services Industry would be the Central Government from 11th October, 1985.

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34. Mr. Anand Grover, learned Advocate appearing for the 1st respondent drew my attention to a judgment in *Indian Oil Corporation v. Mahendrabhai R. Patel*, 1987 (54) FLR 490, a decision of the Division Bench of Gujarat High Court. The Division Bench in this case placed reliance on the observations of the Supreme Court in the case of *Workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd. v. The Management*, 1973 (26) FLR 359, and pointed out that the Supreme Court in *Firestone* (supra) had held that industrial disputes referred to for adjudication prior to coming of force of Sec. 11A of the Industrial Disputes Act, 1947, would not be governed by the provisions of Sec. 11A. The Gujarat High Court pointed out that, likewise, a subsequent notification changing the appropriate Government in respect of a particular industry would not in any way affect the Reference already made by the appropriate Government at the time of making such Reference and that the Government which made the Reference alone would not have the jurisdiction and authority to publish the consequent award under Sec. 17 of the Act. Interpreting Sec. 2(a) of the Act, the Division Bench of the Gujarat High Court pointed out, 'Thus, it is clear that the 'appropriate Government will be the Government which makes the Reference of an

industrial dispute for adjudication. The subsequent consequence that follows by such Reference is relatable to the said appropriate Government which has referred the matter under Sec. 10. The proceeding that is continued by virtue of such Reference will have its logical end by passing an award and such award to be published under Sec. 17 has to be so published by the appropriate Government which referred the matter for adjudication.' I respectfully agree with the observations of the learned Chief Justice of the Gujarat High Court in *Indian Oil Corporation's case* (supra), in my view the legal position has been aptly precisely laid down by the Division Bench of the Gujarat High Court. I, therefore, hold that despite the amendment brought into force from 11th October, 1995, the industrial dispute which had been adjudicated by the Labour Court on a Reference made by the State Government would continue to be valid and the State Government would have the authority to publish such an award under Sec. 127 of the Act. Consequently the award published by the State Government under Sec. 17 is perfectly legal and valid."

17. Aforesaid decision given by learned Single Judge of Bombay High Court was challenged before Division Bench and Division Bench of Bombay High Court confirmed it in case of *Saudi Arabian Airlines v. Shehnaz Mudhatkal*, 1999 (2) CLR 766. Relevant observations made by Division Bench of Bombay High Court in Paras 1, 2 and 3 are quoted as under :

"The learned Single Judge on detailed clarification of the facts and the case-law, has concluded that an overall view of the case before the Labour Court brings out that the 1st respondent a lady was subjected to continuous sexual harassment by her superior official Bahrani. The operative Paragraph of the judgment of the learned Single Judge reads as under :

'An overall view of the case before the Labour Court brings out that the 1st respondent, a lady, was subject to continuous sexual harassment by her superior official, Bahrani. The 1st respondent protested vigorously and complained to higher officers. This resulted in an 'operative scuttle'. First, the 1st respondent was threatened that her husband's employment in Saudi Arabia would be terminated by using the petitioner's influence with the Saudi Arabian Government. Second, she was forced to give an apology. Third, when the sexual harassment continued and the 1st respondent once again took up the matter with the highest authorities in the petitioner company, the petitioner decided to summarily terminate the services of the 1st Respondent by putting forth concocted and baseless reasons and carried it into effect. In these circumstances, the 1st respondent has been victimized for her refusal to submit herself to the sexual demands of her superior. The conduct of Bahrani would squarely fit in with the concept of 'sexual harassment' as defined by the Supreme Court in the case of *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011. In my judgment, the conclusions recorded by the Labour Court in its impugned award and the final order made by it in its award both are unexceptionable and they have to be upheld.'

2. Having heard the learned Counsel for the appellants at length, we are unable to accept the contention that the finding of sexual harassment arrived at in the award and upheld by the learned Single Judge is perverse. We are in agreement with the observation of the learned Single Judge that the conduct of the officer of the appellants squarely falls within the concept of 'sexual harassment' in terms of the decision of the Supreme Court in *Vishaka v. State of Rajasthan,* AIR 1997 SC 3011.

3. There is also no substance in the contention that, on coming into force of the Industrial Disputes (Amendment) Act, 1996, the appropriate Government on the case in hand would become the Central Government and would affect the proceedings which were pending. This does not appear to be the intention of the legislation, as has been held by the learned Single Judge. We are also in respectful agreement with the opinion of the Gujarat High Court in *Indian Oil Corporation v. Mahendrabhai R. Patel,* 1987 (54) FLR 490."

18. Division Bench of this Court examined identical question in *P. K. Shah v. Gujarat Industrial Co-operative Bank Ltd.*, 2001 (1) LLJ 783. Relevant discussion made by Division Bench of this Court in Paras 6 to 10 is reproduced as under :

"6. We have considered the submissions advanced at the Bar and the documents forming part of the petition. In order to resolve the dispute raised in the appeal, it would be relevant to notice certain provisions of the Industrial Disputes Act, 1947 and other relevant statutes. Section 2(a) of the Industrial Disputes Act, 1947 defines 'appropriate Government' and reads as under :

"2(a) : '*appropriate Government*' means :-

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a Railway company or concerning any such controlled industry as may be specified in this by the Central Government or in relation to an Industrial Dispute concerning a Dock Labour Board established under Sec. 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India established under Sec. 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948), or the Employees' State Insurance Corporation established under Sec. 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Sec. 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Sec. 5A and Sec. 5B respectively of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the "Indian Airlines" and "Air India" Corporations established under Sec. 3 of the Air Corporations Act, 1953 (27 of 1953), or the Life Insurance Corporation of India established under Sec. 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Commission established under Sec. 3 of the Oil and Natural Gas Commission Act, 1959

(43 of 1959) or the Deposit Insurance and Credit Guarantee Corporation established under Sec. 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Sec. 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Sec. 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Sec. 3, or a Board of Management established for two or more contiguous States under Sec. 16 of the Food Corporations Act, 1964 (37 of 1964), or the International Airports Authority of India constituted under Sec. 3 of the International Airports Authority of India Act, 1971 (43 of 1971), or a Regional Rural Bank established under Sec. 3 of the Regional Rural Bank Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India, or the Banking Service Commission established, under Sec. 3 of the Banking Service Commission Act, 1975 or a Banking or an Insurance Company, a Mine, an Oil Field a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute, the State Government;"

7. Section 5(1)(C) of the Banking Regulations Act, 1949 also defines the phrase "Banking Company" to mean any Company which transacts the business of Banking in India. A bare reading of the above-quoted provisions makes it evident that a Bank which transacts business of Banking is a 'Banking Company' within the meaning of Sec. 2(bb) of the Industrial Disputes Act, 1947 provided it has branches or other establishment in more than one State. As noted earlier, the respondent has its branches all over the State of Gujarat and also a regional Branch at Dadra Nagar Haveli, which is a Union Territory. A Division Bench of this High Court had occasion to consider the question whether the respondent which is having one of its regional branches at Dadra Nagar Haveli (Selvas), is governed by the Bombay Industrial Relations Act, 1946. The Division Bench in Special Civil Application No. 249 of 1982 decided on April 22, 1990 noted that the proviso to sub-sec. (3) of Sec. 2 of the Bombay Industrial Relations Act provides that the said Act will not apply to any Banking Company as defined in Sec. 6 of the Banking Companies Act of 1949 having branches or other establishments in more than one State. The Division Bench noted the admitted fact that one of regional branches of the respondent is located at Dadra Nagar Haveli, which is a Union Territory and proceeded to consider the contention raised that Dadra Nagar Haveli being Union Territory should not be considered to be a 'State'. The said contention was negatived by the Division Bench holding that Dadra Nagar Haveli is a 'State' within the meaning of Proviso to Sec. 2(3) of the Bombay Industrial Relations Act read with provisions of Sec. 3(58) of the General Clauses Act, 1897. Thus, the question whether the respondent is a Banking Company having its branches in more than one State, is no more *res integra* and we hold that the respondent is a Banking Company having its branches in more than one State. Section 2(aa) of the Industrial Disputes Act, *inter alia*, provides that in relation to any industrial

disputes concerning any industry carried on by a Banking or Insurance Company, the Central Government is the appropriate Government. As the dispute between the appellant and the respondent is a dispute between a Banking Company and its employee, Reference of dispute could have been made only by the Central Government in view of provisions of Sec. 10 of the Industrial Disputes Act, 1947. At this stage, it would be relevant to notice the provisions of Sec. 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949. Section 4 of the said Act reads as follows :-

"4. Prohibition of Reference by State Government of certain industrial disputes for adjudication, inquiry or settlement :

Notwithstanding anything contained in any other law, it shall not be competent for a State Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any Banking Company or Insurance Company, or any matter relating to such disputes, to any Tribunal or other authority for adjudication, inquiry or settlement."

8. A bare reading of the above-referred to provision makes it manifest that it is not competent for the State Government or any officer or authority subordinate to State Government, to refer an industrial dispute concerning any Banking Company or any matter relating to such dispute, to any Tribunal or other authority for adjudication, inquiry or settlement, notwithstanding anything contained in any other law. The prohibition mentioned in Sec. 4 of the said Act is absolute and does not admit of any exception. A conjoint reading of Secs. 2(aa), 2(bb) and 10 of the Industrial Disputes Act, 1947 read with Sec. 5(1)(C) of the Banking Regulation Act, 1949 and Sec. 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949 makes it abundantly clear that the dispute between the appellant and the respondent could not have been referred for its adjudication to the Labour Court by the State Government and the Reference itself was void *ab-initio.* It is needless to point out that the award based on an incompetent Reference is a nullity, and therefore, in our view, the learned Single Judge was justified in setting aside the same.

9. The contention that no prejudice having been caused to the respondent, award rendered in favour of the respondent should not have been set aside by the learned Single Judge, has no merits. The scheme as envisaged under the Industrial Disputes Act is such that adjudication of a dispute referred by the Central Government can be made only by the Industrial Tribunal and not by any other forum. Thus, the forum which gets jurisdiction to adjudicate the dispute also changes when the Reference of the same is made by the Central Government. The prejudice is inherent in a Reference which is made by an incompetent authority, and therefore, it is difficult to uphold award rendered by the Labour Court in favour of the appellant on the ground that no prejudice is caused to the respondent.

10. The argument that the respondent has not obtained Banking licence under Sec. 22 of the Banking Regulation Act, 1949, and therefore, cannot

be regarded as 'Banking Company', has also no substance. The relevant documents produced by the learned Counsel for the respondent - Bank indicate that the respondent had made an application dated June 17, 1970 for obtaining Banking licence and the same was granted by the Reserve Bank of India *vide* order dated October 13, 1999. It is further to be noted that Saurashtra Small Industries Co-operative Bank Ltd. Rajkot, which is registered under the Co-operative Societies Act as applicable to the Saurashtra State and the Southern Gujarat Co-operative Bank Ltd. Surat registered under the Bombay Co-operative Societies Act, had decided to amalgamate themselves and form the State Industrial Co-operative Bank. As a result of the said decision, the above-referred to two Co-operative Banks were amalgamated and the Gujarat Industrial Co-operative Bank Ltd., which is respondent in the appeal was formed. This is quite evident from the order dated May 21, 1970 passed by the Registrar, Co-operative Societies, Gujarat State, Ahmedabad under Sec. 17 of the Gujarat Co-operative Societies Act, 1961. Section 56 of the Banking Regulation Act, 1949 provides that the provisions of this Act, as in force for the time being, shall apply to, or in relation to Co-operative Societies as they apply to, or in relation to Banking Companies subject to modification indicated therein. The provisions of Sec. 56(o)(2) proviso (ii) stipulate that a Co-operative Bank which has come into existence as a result of the amalgamation of two or more Co-operative societies carrying on Banking business is not precluded from carrying on Banking business until it is granted a licence or is by a notice in writing notified by the Reserve Bank of India that licence cannot be granted to it. Therefore, till the grant of licence, the respondent was entitled to carry on Banking business and was a Banking Company within the provisions of The Banking Regulation Act, 1949. In view of this position, it is difficult to agree with the submission made by the learned Counsel for the appellant that as the respondent had no valid Banking licence, it should not be regarded as 'Banking Company, and Reference at the instance of the State Government should be treated as competent."

19. In case of *Steel Authority of India Ltd. v. National Union Waterfront Workers*, reported in 2002 (1) GLR 792 (SC) : 2001 (7) SCC 1, Apex Court considered Contract Labour (Regulation and Abolition) Act, 1970, Sec. 2(1)(a) thereof before and after Amendment Act 14 of 1986, Secs. 2(1)(e) and 1(4) and (5). Apex Court considered a particular industry, whether is carried on under the authority of the Central Government. Relevant discussion made by Apex Court in Para 125 of said judgment is reproduced as under :

"125. The upshot of the above discussion is outlined thus :

(1)(a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression appropriate Government as stood in the C.L.R.A. Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain

to any specified controlled industry; or the establishment of any Railway, Cantonment Board, major Port, Mine or Oil-Field or the establishment of Banking or Insurance Company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government, (b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Sec. 2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein *eo nomine*, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by Railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Sec. 10(1) of the C.L.R.A. Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government :

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and;

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and (ii) other relevant factors including those mentioned in sub-sec. (2) of Sec. 10;

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of Sec. 10, it is quashed but we do so prospectively *i.e.* from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Sec. 10 of the C.L.R.A. Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-sec. (1) of Sec. 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;

(4) We overrule the judgment of this Court in *Air India's case* (supra) prospectively and declare that any direction issued by any industrial adjudicator/any Court including High Court, for absorption of contract labour following the judgment in *Air India's case* (supra), shall hold good and

that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Sec. 10(1) of the C.L.R.A. Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Sec. 10(1) of the C.L.R.A. Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and wherein such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

20. In light of aforesaid various decisions relating to question raised by petitioner-Bank in this case and also considering recent decision of Apex Court in case of *Bharat Co-operative Bank Ltd.*, whether it would apply with retrospective effect or that it amounts to declaration of law in prospective effect, has been considered by Apex Court in case of *Bahuram v. C. C. Jacob*, 1999 Lab.IC 2084. Relevant observations made by Apex Court in Paras 2, 3, 4 and 5 are reproduced as under :

"2. Since, the law in regard to the above-stated position was nebulous, a Constitution Bench of this Court in the case of *R. K. Sabharwal v. State of Punjab,* 1995 (2) SCC 745 settled the said issue holding that such reservation is in relation to the number of posts comprising in the cadre and not in relation to vacancies. The judgment of the Constitution Bench was delivered on 10-2-1995. This Court in the said judgment after taking into consideration the fact that the law was not clear till that date, observed thus : "We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively."

The question that arises for our consideration in this case is : was it open to the Tribunal to apply the law laid down in *R. K. Sabharwal's case* (supra) to the facts of the case in hand.

3. The brief facts necessary for the purpose of deciding this question are that in June, 1993, the Departmental Promotion Committee (for short 'the D.P.C.') considered the suitability of candidates eligible for promotion to four vacancies which arose during 1993-1994 in the cadre of Superintendent of Customs (Preventive) from the post of Preventive Officers in which proceedings of the D.P.C. the appellant was chosen to be promoted against a reserved vacancy earmarked for the Scheduled Castes. The said decision of the D.P.C. was challenged before the Tribunal on 27-1-1994 wherein the applicants contended that they are entitled to be considered for promotion to the category of Superintendent of Customs in the concerned vacancy, treating these vacancies as unreserved. Consequently, they prayed that their case be considered for promotion on merits. During the pendency of the applications before the Tribunal, the appellants herein came to be promoted on 26-6-1994 as against a reserved vacancy which arose on 1-6-1994. The Tribunal on 22-9-1995 following the judgment of this Court in the *Sabharwal's case* (supra), allowed the applications and held that there had been an erroneous application of the principle of reservation resulting in appointment of Scheduled Caste candidates in excess of the quota earmarked for them. It directed the concerned respondents to recalculate the entitlements of different categories and take further action applying the quota rule to the cadre and not to the vacancies as they arose. It further directed that till the quota is correctly maintained, no appointment will be made from the groups which have exceeded the quota reserved for them. As noted above, the finding of the Tribunal is based on the ratio of the judgment laid down by this Court in *Sabharwal's case* (supra). The contention of the appellant in these appeals is that the judgment in Sabharwal's case was made effective prospectively, hence, the same could not have been applied to the promotion of the appellant. This contention was negatived by the Tribunal on the ground that the decision of the D.P.C. in selecting the appellant does not amount to an appointment and in view of the fact that the appellant's promotion was made subsequent to filing of the petition, the appellant cannot claim the benefit of the prospectivity given to the *Sabharwal's* judgment by this Court.

4. We are unable to agree with this view of the Tribunal. It is to be noted that the prospectivity given to *Sabharwal's case* was obviously on the ground that there was a doubt in regard to the position of law until the same was clarified by this Court in *Sabharwal's case*. The decision of the D.P.C. was taken in June, 1993; much prior to the judgment in *Sabharwal's case*. It is only pursuant to the decision of the D.P.C., the appellant came to be promoted on 27-6-1994 which is also a date prior to the delivery of the judgment in *Sabharwal's case*. In our opinion,the prospectivity was given to *Sabharwal's case* only to see that status prevailing prior to the judgment in *Sabharwal's case* should not be disturbed.

5. The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the D.P.C. as well as the appointing authority being prior to the judgment in *Sabharwal's case*, we are of the opinion that the Tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in O.A. Nos. 186 of 1994 and 961 of 1995.

21. In light of aforesaid decision, where it is made clear by Apex Court that the prospective declaration of law is device innovated by Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation by the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger interest of public so that the subordinate forums which are legally bound to apply the declaration of law made can apply such dictum to cases which would arise in future only. In the matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. Similarly, decision of Apex Court relied upon by learned Advocate Mr. K. D. Gandhi in case of *Bharat Co-operative Bank Ltd.*, it is merely declaration of law in respect to petitioner-Bank that the appropriate Government is now State Government and not the Central Government. Such declaration of law would always apply with prospective effect and would not apply to pending cases where decision has already been taken by the competent authority. Therefore, contention raised by learned Advocate Mr. Gandhi cannot be accepted. In *Bharat Co-op. Bank Ltd.* (supra), Apex Court has examined only short question in respect to *Bharat Co-op. Bank Ltd.* as discussed in Paras 11, 12, 13, 14, 21, 26, 27, 28 and 29. Therefore, said observations are reproduced as under :

"11. The I. D. Act came into force with effect from 1st April, 1947. The term "appropriate Government" was defined in Sec. 2(a). However, sub-clause (i) of clause (a) came to be amended in the year 1949 by the amendment Act 54 of 1949, whereby in relation to any industrial dispute concerning a

"Banking Company" or Insurance Company, the Central Government was declared to be the "appropriate Government". Simultaneously, Sec. 2(bb) was inserted by the same Act, defining the "Banking Company". Needless to add that it is only those Banking Companies which fall within the ambit of the definition in the said provision that the Central Government would be the appropriate government. With respect to other Banking companies, the State Government, in which the Bank is situated, would be the appropriate Government in terms of sub-clause (ii) of clause (a) of Sec. 2 of the I. D. Act. Sec. 2(bb) which is at the centre of controversy reads as under :

> "2(bb). "Banking Company" means a Banking Company as defined in Sec. 5 of the Banking Companies Act, 1949 (10 of 1949) having branches or other establishments in more than one State and includes (the Export-Import Bank of India) (the Industrial Reconstruction Bank of India), (the Industrial Development Bank of India), (the Small Industries Development Bank of India established under Sec. 3 of the Small Industries Development Bank of India Act, 1989), the Reserve Bank of India, the State Bank of India (a corresponding new Bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970 (5 of 1970) (a corresponding new Bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary Bank), as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959)."

From a bare reading of the Sec. it is clear that in order to fall within the meaning of this definition, a "Banking Company" has to satisfy two requirements, *viz :* (i) it should be a "Banking Company" as defined in Sec. 5 of the Banking Companies Act, 1949, and (ii) it should have branches or other establishments in more than one State. It may also be noted that some Banks, by name, have specifically been included in the definition. Section 5 of the B. R. Act gives interpretation to various expressions used in the said Act. As per clause (c) of Sec. 5 the expression "Banking Company" means any "Company" which transacts the business of Banking in India. According to Sec. 5(b) "Banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise. The expression "Company" has been interpreted in clause (d) of Sec. 5 to mean any Company as defined under Sec. 3 of the Companies Act, 1956 and includes foreign company within the meaning of Sec. 591 of that Act. Indubitably, the appellant-Bank is not a Company within the meaning of the said clause. However, by the Act 23 of 1965 several amendments were carried out in the B. R. Act with effect from 1st March, 1966, widening the scope of the said Act. By that amendment Part-V, containing only one Sec. 56, providing for application of B. R. Act to Co-operative Banks, like the appellant-Bank, was inserted. Sec. 3 was substituted to declare that the provisions of the B. R. Act shall apply to a Co-operative Society only in the manner and to the extent specified in Part-V thereof.

The main question raised for determination is whether the afore-noted amendments to the B. R. Act, particularly insertion of Sec. 56 in the new format *w.e.f.* 1st March, 1966, after the insertion of the definition of "Banking Company" in the I. D. Act by Act 54 of 1949 will apply *mutatis mutandis* to the matters governed by the I. D. Act?

As there is no indication in the I. D. Act as to the applicability or otherwise of the subsequent amendments in the B. R. Act, the question posed has to be answered in the light of the two concepts of statutory interpretation, namely, incorporation by Reference and mere Reference or citation of one statute into another. Thus, answer to a rather intricate question hinges on the test whether at the time of insertion of the definition of the term "Banking Company" in the form of sub-sec. (bb) of Sec. 2 of the I. D. Act by the 1949 Act it was a mere Reference to the Banking Companies Act, 1949 (later re-christened as the Banking Regulation Act) or the intendment of the legislature was to incorporate the said definition as it is in the I. D. Act?

Before adverting to the said core issue, we may briefly notice the distinction between the two afore-mentioned concepts of statutory interpretation, *viz.*, a mere Reference or citation of one statute in another and incorporation by Reference. Legislation by incorporation is a common legislative device where the legislature, for the sake of convenience of drafting incorporates provisions from an existing statute by Reference to that statute instead of *verbatim* reproducing the provisions, which it desires to adopt in another statute. Once incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed, and thereafter, there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. On the contrary, in the case of a mere Reference or citation, a modification, repeal or re-enactment of the statute, that is referred will also have effect on the statute in which it is referred. The effect of "incorporation by Reference" was aptly stated by Lord Esher, M. R. *In Re : Wood's Estate, Ex parte Her Majesty's Commissioners of Works and Buildings* in the following words *at page 615* :

> "If a subsequent Act brings into itself by Reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those Secs. into the new Act just as if they had been actually written in it with the pen, or printed in it, and the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

xxx xxx xxx

21. The plain language of Sec. 2(bb) of the I. D. Act makes the intention of the legislature very clear and we have no hesitation in holding that Reference to Sec. 5 of the Banking Companies Act, 1949 in the said provision is an instance of legislation by incorporation and not legislation by Reference.

24. We are, therefore, of the opinion that introduction of the Banking Companies Act, 1949 in clause (bb) of Sec. 2 of the I. D. Act is a case of incorporation by Reference; it has become its integral part and therefore, subsequent amendments in the B. R. Act would not have any effect on the expression "Banking Company" as defined in the said Section.

26. In our view, there is no substance in the contention. The I. D. Act is a complete and self-contained Code in itself and its working is not dependant on the B. R. Act. It could not also be said that the amendments in the B. R. Act either expressly or by necessary intendment applied to the I. D. Act. We, therefore, reject the contention advanced by learned Counsel for the appellant on this aspect as well.

27. Further, as noticed above, the definition of the "Banking Company" in clause (bb) of Sec. 2 of the I. D. Act being exhaustive, it is only with respect to the "Banking Company" falling within the ambit of the said definition in the I. D. Act, that the Central Government would be the appropriate government, which admittedly is not the case here.

28. In the light of the analysis we have made of the provision contained in Sec. 2(bb) of the I. D. Act, we deem it unnecessary to dilate on the impact of the I.D.B.I.C. Act on the I. D. Act.

29. For all these reasons, we have no hesitation in upholding the view taken by the High Court that for the purpose of deciding as to which is the "appropriate Government", within the meaning of Sec. 2(a) of the I. D. Act, the definition of the "Banking Company" will have to be read as it existed on the date of insertion of Sec. 2(bb) and so read, the "appropriate Government" in relation to a multi-state co-operative Bank, carrying on business in more than one state, would be the State Government."

22. In view of the aforesaid observations made by Apex Court in *Bharat Co-op. Bank Ltd.* (supra), where existing law has been clarified by Apex Court, meaning thereby, it is a declaration of law while interpreting relevant provisions having effect, being prospective declaration of law, cannot apply to all pending cases where such question was not at all raised prior to the aforesaid decision of Apex Court and where party concerned had submitted to the jurisdiction of authority concerned without raising any such contention prior to aforesaid decision of Apex Court. Law which was in existence and and on that basis, whatever action or decision was taken cannot be disturbed by recent decision given by Apex Court in *Bharat Co-op. Bank Ltd.* Because it is having only prospective declaration of law because it is a clear case of clarified legal position by Apex Court in *Bharat Co-op. Bank Ltd.* (supra), therefore it must apply or to be operative prospectively and not with retrospective effect, therefore, contentions raised by learned Advocate Mr.Gandhi cannot be accepted. Same are, therefore, rejected.

23. In light of the aforesaid observations made by Apex Court in case of *Bahuram v. C. C. Jacob* (supra) as refered to above, law which is clarified

by Apex Court in case of *Bharat Co-op. Bank Ltd.* Is a declaration of law apply with prospective effect and not with retrospective effect, therefore, Industrial Tribunal (Central) has rightly decided application Exh. 48 and has rightly considered contentions raised by petitioner-Bank and has rightly considered reply given by respondent Exh. 51 and has also rightly come to conclusion that the decision of Apex Court in *Bharat Co-op. Bank Ltd.* (supra) is not applicable to facts of present case and it applies with prospective effect and has also rightly considered hardship as well as legal harassment which has been caused to workman, and therefore, according to my opinion, Industrial Tribunal (Central) has rightly examined matter and has rightly decided application Exh. 48, for that, Industrial Tribunal (Central) has not committed any error which would require interference of this Court in exercise of powers under Art. 227 of the Constitution of India.

24. Recently, the Apex Court has examined similar aspect in the case of *Harjinder Singh v. Punjab State Warehousing Corporation,* reported in 2010 (1) SCALE 613. Relevant observations are in Paras 17, 18, 19, 36 to 43, which is quoted as under :

"17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Arts. 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Arts. 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that 'the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State - *State of Mysore v. Workers of Gold Mines,* AIR 1958 SC 923.

18. In *Y. A. Mamarde v. Authority under the Minimum Wages Act,* 1972 (2) SCC 108, this Court, while interpreting the provisions of Minimum Wages Act, 1948, observed :

"The anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supercession of the old principle of absolute freedom of contract and the doctrine of *laissez faire* and in recognition of the new principles of social welfare and common good. Prior to our Constitution, this principle was Advocated by the movement for liberal employment in civilised countries and the Act which is a pre-constitution measure was the offspring

of that movement. Under our present Constitution, the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity."

19. The Preamble and various Articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived Secs. of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every Section of the society. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees Insurance Act, the Employees Provident Funds and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different States.

36. Therefore, it is clearly the duty of the judiciary to promote a social order in which justice, economic and political informs all the institution of the national life. This was also made clear in *Kesavananda Bharati* (supra) *by Justice Mathew at Para 1728, p. 1952* and His Lordship held that the Directive Principles nevertheless are :

"…fundamental in the governance of the country and all the organs of the State, including the judiciary are bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience.

37. In view of such clear enunciation of the legal principles, I am in clear agreement with Brother J. Singhvi that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory

goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker Sections of the society in view of the clear constitutional mandate discussed above.

38. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our Constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.

39. Commenting on the importance of Art. 38 in the Constitutional scheme, this Court in *Sri Srinivasa Theatre v. Government of Tamil Nadu,* 1992 (2) SCC 643, held that equality before law is a dynamic concept having many facets. One facet- the most commonly acknowledged- is that there shall be not be any privileged person or class and that none shall be above the law. This Court held that Art. 38 contemplates an equal society [Para 10, pg. 651].

40. In *Indra Sawhney v. Union of India,* 1992 Supp. (3) SCC 217, the Constitution Bench of the Supreme Court held that :

> "The content of the expression "equality before law" is illustrated not only by Arts. 15 to 18 but also by the several Arts. in Part IV, in particular, Arts. 38, 39, 39A, 41 and 46. [at Paras 643, pg. 633]

41. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in *Authorised Officer, Thanjavur v. S. Naganatha Ayyar,* 1979 (3) SCC 466, while interpreting the Land Reforms Act, that beneficial construction has to be given to welfare legislation. Justice Krishna Iyer, speaking for the Court, made it very clear that even though the Judges are "constitutional invigilators and statutory interpreters" they should "also be responsive to Part IV of the Constitution being" one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The learned Judge made it very clear that when the Judges when "decode social legislation, they must be animated by a goal oriented approach" and the Learned Judge opined, and if I may say so, unerringly, that in this country 'the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme.' [Para 1, page 468]

42. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Justice Singhvi about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy.

43. I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so-called trends of 'Globalisation', may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over the country along with escalation of terrorism throw dangerous signal. Here, if we may remember Tagore who several decades ago, in a slightly different context spoke of eventualities which may visit

us in our mad rush to ape western ways of life. Here if I may quote the immortal words of Tagore :

'1. We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and the progress was civilization. If we ever ventured to ask 'progress toward what, and progress for whom, it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress'. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path'."

Recently Apex Court has considered scope of Art. 227 of Constitution of India in case of *State of Haryana v. Manoj Kumar,* reported in 2010 AIR SCW 1990 decided on 9th March, 2010. The relevant Paras 22 to 29 are quoted as under :

"22. The appellants urged that the jurisdiction of the High Court under Art. 227 is very limited and the High Court, while exercising the jurisdiction under Art. 227, has to ensure that the Courts below work within the bounds of their authority.

23. More than half a century ago, the Constitution Bench of this Court in *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam,* AIR 1958 SC 398 settled that power under Art. 227 is limited to seeing that the Courts below function within the limit of its authority or jurisdiction.

24. This Court placed reliance on *Nagendra Nath's case* in a subsequent judgment in *Nibaran Chandra Bag v. Mahendra Nath Ghughu,* AIR 1963 SC 1895. The Court observed that jurisdiction conferred under Art. 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate Courts or Tribunals, but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This Court had an occasion to examine this aspect of the matter in the case of *Mohd. Yunus v. Mohd. Mustaqim,* 1983 (4) SCC 566. The Court observed as under :

"The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh

the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision."

26. This Court again clearly reiterated the legal position in *Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi,* 1995 (6) SCC 576. The Court again cautioned that the High Court under Art. 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this Court in *Rena Drego (Mrs.) v. Lalchand Soni,* 1998 (3) SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate Court or the Tribunal while exercising its jurisdiction under Art. 227. Its function is limited to seeing that the subordinate Court or the Tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. In *Virendra Kashinath Ravat v. Vinayak N. Joshi,* 1999 (1) SCC 47 this Court held that the limited power under Art. 227 cannot be invoked except for ensuring that the subordinate Courts function within its limits.

29. This Court over 50 years has been consistently observing that limited jurisdiction of the High Court under Art. 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the Courts below on merit."

25. In view of the recent decision of Apex Court as referred to above and also considering observations made by Apex Court while exercising powers under Art. 227 of Constitution of India and also considering peculiar facts of the case before hand where petitioner had surrendered to the order of Reference and not raised such contention till the pronouncement of judgment by Apex Court in case of *Bharat Co-op. Bank Ltd.* (supra) and filed such application Exh. 48, that too after remand of matter by this Court in petition referred to above and considering approach of the petitioner to disturb the pending proceedings before Industrial Tribunal (Central) and also to see that in such a manner, poor workman must be ruined during pendency of proceedings and so, he may not be able to get job (justice) till final outcome of legal proceedings which has been initiated in the year 1995 initially before State Government where objection was raised by present petitioner that in case of petitioner-Bank, appropriate Government is Central Government and not State Government and pursuant to such objection, petitioner raised industrial dispute before Central Government where matter was referred to for adjudication by appropriate Government (Central) to Industrial Tribunal, according to my opinion, such efforts made by petitioner-Bank being a mighty employer against poor workman who is out of job since 1991 should

not have to be encouraged by this Court while exercising powers under Art. 227 of the Constitution of India. Therefore, there is no substance in this petition and order passed by Industrial Tribunal (Central) below Exh. 48 is legal and valid order requiring no interference of this Court in exercise of powers under Art. 227 of Constitution of India. Therefore, there is no substance in this petition and same is, therefore, required to be dismissed.

26. It is necessary to note that initially, order of Reference made by Central Government was not challenged by petitioner. No such contention was raised by petitioner in written statement before Labour Court while challenging Reference. While challenging award passed by Industrial Tribunal (Central) before this Court, no such contention was raised by petitioner about legality, validity and propriety of order of Reference. This Court has remanded matter for limited purpose to adduce evidence of both parties because Industrial Tribunal (Central) has set aside finding on the ground that charge is not established against workman, therefore, opportunity was demanded by petitioner by filing petition and that permission alone was given by this Court while remanding matter back to Industrial Tribunal (Central) by order dated 22-2-2006 in Special Civil Application No. 3628 of 2002 Thereafter, instead of availing such opportunity given by this Court, new issue has been raised which is altogather different by filing application Exh.48 raising preliminary objection that the order of Reference itself is bad and illegal because appropriate Government and not Central Government. According to my view, this is nothing but legal harassment made by petitioner to respondent-workman. Once, order of Reference is made as per contention of petitioner itself that appropriate Government is Central Government and not State Government and when petitioner has surrendered to jurisdiction of Industrial Tribunal (Central), then, subsequently it is not open for petitioner to raise such contention about legality and validity of order of Reference and such contention is barred by the principles of estoppel and acquiescence, and therefore, petitioner establishment cannot raise such contention against order of Reference which has been made after considering contention of petitioner that appropriate Government is not the State Government but Central Government in respect of the petitioner. No contention against order of Reference has also not been raised by petitioner in petition filed before this Court challenging award of reinstatement of respondent with 60 percent back wages for interim period. Therefore also, principles of acquiescence and estoppel are applicable and petitioner is estopped from raising such contention. Principles of estoppel and acquiescence are coming in the way of petitioner in challenging order of Reference also after remanding matter back to Industrial Tribunal (Central) by this Court for limited purpose to provide opportunity to petitioner which opportunity has not been availed by petitioner intentionally and altogather new contention has been raised by

petitioner by filing application Exh. 48, and therefore, according to my opinion, such challenge itself is not permitted in law to the petitioner, and therefore, Industrial Tribunal (Central) has rightly decided matter which would not require any interference of this Court in exercise of powers under Art. 227 of the Constitution of India.

27. For reasons recorded above, this petition is dismissed. It is directed to Industrial Tribunal (Central) to decide Reference (I.T.C.) No. 18/95 (Old Number) and New Number 1618 of 1995 as expeditiously as possible but within three months from date of receiving copy of this order after giving reasonable opportunity to respective parties and let petitioner-Bank cooperate hearing before Industrial Tribunal (Central) without creating further legal hurdle against respondent-workman.

(SBS) *Petition dismissed.*

* * *

SUPREME COURT

Present : Mr. P. Sathasivam & Mr. H. L. Dattu, JJ.

NATIONAL SMALL INDUSTRIES CORPORATION LTD. v. HARMEET SINGH PAINTAL & ANR.*

Negotiable Instruments Act, 1881 (26 of 1881) — Secs. 138 & 141 — Vicarious liability of Directors and person who was "in-charge of, and was responsible to the Company for the conduct of the business of the Company" — Complainant has to make specific averments in this regard and substantiate the same — Principles emerging from case-law, summarised.

વટાઉખત અધિનિયમ, ૧૮૮૧ — કલમ ૧૩૮ અને ૧૪૧ — "કંપનીના ધંધા બાબત જવાબદાર વ્યક્તિઓ અને ડિરેક્ટરોની પરકૃત્યજન્ય જવાબદારી" ફરિયાદીએ આ બાબતમાં નિર્દિષ્ટપણે પ્રતિપાદિત કરી સાબિત કરવું જોઈએ — કેસ-લૉમાંથી ઉભરતા સિદ્ધાંતો સંક્ષિપ્તમાં રજૂ કરવામાં આવ્યા.

For making a person liable under Sec. 141(2), the mechanical repetition of the requirements under Sec. 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence, and therefore, responsible under sub-sec. (2) of Sec. 141 of the Act. (Para 24)

From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the

*Decided on 15-2-2010. Criminal Appeal Nos. 320-336 with 337 of 2010 (Arising out of S.L.P. Nos. 445-461 with 1079 of 2008) against the judgment and order dated 24-10-2007 in Cri.M.C. Nos. 1853, 1854 and 1857 of 2005 by Delhi High Court.