2010 eGLR_HC 10005447,2011 (2) LLJ 182 ,2010 Lab IC 4241

**Before the Hon'ble MR K M THAKER, JUSTICE the Hon'ble MR. S. J. MUKHOPADHAYA, Chief Justice**

**THAKOR NAGJIBHAI BHAILAL Vs. IPCL NOW AMALGAMATED WITH RELIEANCE IND.LTD AND NOW AND 2 -**

**LETTERS PATENT APPEAL No: 418 of 2009 , Decided On: 23/08/2010**

**P.R.Thakkar, K.S.Nanavati, Nandish Chudgar, Nanavati Associates, Prakash K.Jani**

**MR. S.J. MUKHOPADHAYA**

In all these matters as a common question of law is involved and similar order is under challenge, they were heard together and disposed of by this common judgment.

2. The appellants were the workmen of Indian Petrochemicals Corporation Ltd. (IPCL), now amalgamated with Reliance Industries Ltd. (RIL) [hereinafter referred to as "the management").

3. The IPCL, a Government of India Undertaking, divested its equity share capital of 46.64% to Reliance Industries Ltd. who took over the management. The management came out with a Voluntary Separation Scheme (hereinafter referred to as "the VSS") on 6.3.2007. The applications were to be filed on 20.3.2007 and about 2400 employees have chosen to apply for VSS within last two days i.e. 19.3.2007 and 20.3.2007. According to the workmen, having realized the mistake on the late evening of 20.3.2007, and as such applications were filed because of the pressurize tactics adopted by the management, many of the workmen submitted applications recalling their request for VSS. Withdrawal of VSS applications in writing were filed on 21.3.2007 and thereafter, but before the actual cessation of services. As, according to the workmen, the management forcefully pressurized the workmen and got them retired under the VSS, they raised an industrial dispute. The Assistant Labour Commissioner & Conciliation Officer, Vadodara by order dated 11.4.2008 refused to make a reference under Section 10(1) of the Industrial Disputes Act, 1947 ("the ID Act" for short) on the ground that after obtaining the benefits of Voluntary Retirement Scheme by the applicants, as there is no relationship of employer and employee and as they are not included in the definition of workman/employee and as there is no any dispute in existence, they do not call for adjudication qua any of the matters.

The aforesaid decision dated 11.4.2008 was challenged by a number of workmen by filing their respective writ petitions, which having dismissed, the present appeals have been preferred against the common judgment of the learned Single Judge dated 13.3.2009.

4. According to the workmen - appellants, the management wanted to drive out all the permanent employees of IPCL with a view to employ the labour contract to get the work done of a permanent nature, the Voluntary Separation Scheme was floated on 6.3.2007. Such strategy of the management is against the provisions of the Labour Contract (Regulation and Prohibition) Act, 1970. The management had adopted pressurize tactics and coercive method by threatening the employees that in case the employees do not opt to apply for Voluntary Separation Scheme, they will be thrown to Jamnagar Plant by way of transfer or they would be retrenched from the employment. In support of such submission, reliance has been placed on the circulars at Annexures - C, D and D1 attached in the paper book. It is stated that the employees were threatened to accept the VSS which was also reported in different newspapers enclosed as Annexures E1 to E5; pressurize tactics were adopted by the management, which was also highlighted in the Gujarat Assembly, as also before the State Government.

5. Further case of the workmen is that because of pressurizing methods, about 2400 employees had chosen to apply for VSS within last two days, but the majority of them having realized their mistake that it was by way of pressure, on late evening of 20.3.2007 they had orally withdrawn their request for Voluntary Retirement Scheme followed by the written applications for withdrawal of the option for retirement filed on 21.3.2007, 22.3.2007 and onwards, but prior to the voluntary retirement. It is alleged that the action of the management of not accepting the subsequent request of withdrawal of their option for voluntary retirement and forcing them to retire from 1.4.2007 is a fraud committed by the management with ulterior motive to frustrate the applications of withdrawal and thus an industrial dispute having cropped up, they were the fit case for reference.

6. It is the case of the workmen that they on their own have not accepted the voluntary retirement by accepting the retiral benefits. It is the management which on 4.4.2007 unilaterally, behind the back of the appellants, without any intimation, diverted the VSS monetary benefits directly to the bank accounts of the respective employees including the appellants. Such diversion of monetary benefits was without the consent of the appellants and, therefore, the same cannot be taken into consideration to deny the reference. The dates, on which the written protest/complaints to different authorities were made, have also been shown in the pleading and relevant evidence in support of the same has been enclosed.

7. Earlier the appellants preferred different writ petitions in August, 2007 wherein a learned Single Judge of this Court by order dated 22.8.2009 made the following observations :-

"Learned advocate Mr. Nanavati has disputed all the submissions made by learned advocate Mr. Thakker. After considering the submissions made by both the learned advocates number of disputed questions are raised in this group of petition, which required some evidence to be taken before appropriate authority."

In view of the aforesaid observations, the workmen raised the industrial dispute for reference under Section 10(1) of the ID Act, which was rejected by the impugned order dated 11.4.2008.

8. The management denied the allegation of pressurize tactics before the Labour Commissioner. It took a specific plea that under Section 2(oo) of the ID Act, relieving of an employee under Voluntary Separation Scheme does not amount to termination of service, amounting to retrenchment, and thereby no industrial dispute exists. It was also pleaded that the authorities had paid all monetary benefits and hence, there is no question of reinstatement. Thus, there is no industrial dispute and, therefore, no reference is called for under Section 10(1) of the ID Act.

9. A specific plea was taken by the management that the voluntary separation applications were processed and accepted on 20.3.2007, which was the last date of submission of the applications. In fact, similar plea has been taken before this Court also. It was accepted before the learned Single Judge that more than 2300 employees, including the appellants, opted for Voluntary Separation Scheme in the last two days before the closure of the Scheme. A specific plea was taken before the learned Single Judge that 19 employees applied for withdrawal of their applications prior to 20.3.2007, who have been allowed for such withdrawal, but the remaining applicants, including the appellants, did not withdraw from the Scheme on or before 20.3.2007 and, therefore, their applications for voluntary separation were accepted by the competent authority on 20.3.2007.

10. A specific plea was taken by the management that after voluntary separation, all the applicants have withdrawn the amount and they have accepted the compensation/monetary benefits flowing out of the Scheme and, therefore, they are not entitled for any relief.

11. The Labour Commissioner by impugned order dated 11.4.2008 framed two issues -

(i) Whether the appellants are the workmen with the meaning of Section 2(s) of the ID Act ? and

(ii) Whether there exists any industrial dispute with regard to the complaint lodged by the appellants ?.

Both the aforesaid issues were negatived and decided against the management.

However, it was noticed that out of 464 appellants, only 4 appellants have produced the withdrawal applications. All others have sent reminders in the month of June, 2007. Rest of the 460 appellants who claimed to have submitted withdrawal applications on 21.3.2007 had not produced any evidence in support of their claim of withdrawal. On the contrary, they have received the monetary benefits.

It was noticed that some of the workmen out of 460 have been served with the relieving order on 28.3.2007 and the workmen have been relieved in the first week of April, 2007. So far as the 4 employees are concerned, though it was accepted that they have asked for withdrawal on 21.3.2007 and 22.3.2007, but on the ground that the Company has stated that the they have also received the monetary benefits in the first week of April and having relieved without objection, no reference was made with regard to them under Section 10(1) of the ID Act. The learned Single Judge has also noticed the aforesaid facts and giving reference to the Supreme Court decision in Sarva Shramik Sangh vs. Indian Oil Corporation Ltd., reported in (2009) 11 SCC 609 upheld the order of rejection.

Both on behalf of the appellants and the management relied on one or other decisions, which were also noticed by the learned Single Judge.

12. The management has taken almost similar plea before us. The learned counsel for the management would contend that the appellants - workmen had ceased to be workmen within the meaning of Section 2(s) of the ID Act and, therefore, on cessation of employment pursuant to their applications under the Voluntary Separation Scheme, there is no industrial dispute within the meaning of Section 2(k) of the ID Act, which can be referred under Section 10(1). Reliance was also placed on Section 2(k) of the ID Act, which 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 person;"

12. He would contend that for the purpose of qualifying as an industrial dispute, the dispute or difference has to be between the employer and the workmen and in the present case, the appellants having been separated themselves from the services of the Company and as they were no longer workmen of the Company from the date of acceptance of voluntary retirement, the alleged dispute or difference between the appellants and the management Company cannot be termed as an industrial dispute for reference under Section 10 of the ID Act.

13. Reliance was also placed on the definition of "workman" as defined under Section 2(s) of the ID Act, as reproduced hereunder :-

"2(s) workman means any person (including an apprentice) employed in any industry to to any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

14. The learned counsel for the management - Company would contend that none of the appellants were employed in the respondent - Company on the date on which the issue was examined by the Government. Further, none of the employees are dismissed, discharged or retrenched in connection with, or as a consequence of any dispute. In other words, none of the appellants have been terminated from the services of the respondent - Company. The voluntary separation/retirement from the respondent - Company by the appellants cannot be considered to be either dismissal or discharge or retrenchment.

15. Reliance was also placed on Section 2(oo) of the ID Act wherein the definition of retrenchment has been laid down, which do not include the voluntary retirement of the workman, as reproduced hereunder for ready reference :-

"2(oo) retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; of

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"

In the result, as per the management, none of the appellants can be said to be workmen within the meaning of Section 2(s) of the ID Act nor their cessation from the Company can be termed to be retrenchment as defined under Section 2(oo) of the ID Act. The appropriate Government, i.e. the 3rd respondent herein, would have no jurisdiction to refer this alleged dispute/difference for adjudication to an Industrial Tribunal under Section 10 or any other provisions of the ID Act.

16. He would further contend that without prejudice to the aforesaid argument, in any case, as the appellants have opted for voluntary retirement under the Scheme, the management having accepted the same prior to their alleged withdrawal, not only that the appellants have by their conduct accepted the voluntary retirement under the Scheme, but even after the alleged withdrawal, they have accepted the compensation pursuant to the Voluntary Retirement Scheme and also sought other benefits like Provident Fund, Pension, Mediclaim, Group Life Assurance, etc.. As per the Scheme, on an average, the employees are paid compensation of about Rs.15 to 17 lakhs each.

The learned counsel for both the parties placed reliance on different decisions rendered by this Court and the Supreme Court, which will be discussed at an appropriate stage.

17. It will be evident that the Voluntary Separation Scheme (VSS) and the Special Separation Scheme (SSS) were floated on 6.3.2007 by the management inviting offers from the concerned employees. On 15.3.2007, a circular was displayed by the whole time Director that in case there is any pressure on employees for opting voluntary separation, then it may be brought to his notice so that steps can be taken. The 20.3.2007 was the last date to submit application for voluntary retirement.

18. The case of the management is that on the late evening/night of 20.3.2007, a decision was taken by the competent authority i.e. Mr SK Anand, the whole time Director, to accept all the applications, 2266 in total, made for VSS for non-supervisory employees and 125 applications for SSS for non-supervisory employees excepting those who have withdrawn their applications on or before 20.3.2007. Further case of the management is, as it appears, that a circular was pasted on the notice board on 21.3.2007, communicating all the optees that the applications for VSS and SSS have been accepted by the competent authority. However, such evidence is not on record.

19. It is accepted by the management that some of the appellants have filed their withdrawal applications on 21.3.2007 or 22.3.2007 or thereafter. According to them, the management has received only 110 such withdrawal applications.

The management has also accepted that many of the optees have not been served with the order of voluntary retirement. Therefore, a circular was displayed on 24.3.2007 with names requesting them to collect their letters of acceptance. Out of 2391 optees, except about 356 optees, others are stated to have collected their letters of acceptance on 26.3.2007 and for the said remaining 356 employees, including 99 appellants, having not accepted the same, their letters of acceptance were sent through RPAD by the management on 26.3.2007.

Further fact, which is not in dispute, is that the relieving letters were issued to the employees on 29.3.2007 and it was informed that they will be relieved from the first week of April, 2007. Except 9 employees, almost all the appellants were relieved on or about 3.4.2007 and 7 employees were relieved on 30.4.2007 apart from two persons who were relieved on 31.5.2007. It is also not in dispute that the compensation packages have been sent in their bank accounts, which is stated to have been deposited in the first week of April, 2007.

20. In the case of Sarva Shramik Sangh vs. Indian Oil Corporation Ltd., reported in (2009) 11 SCC 609, the Supreme Court observed as follows :-

"29. It is true that making a reference under Section 10(1) of the ID Act is within the discretion of the appropriate Government. Referring to the unamended Section 10(1) of the ID Act this Court in State of Madras vs. C.P. Sarathy, AIR 1953 SC 53 laid down the following principles :-

(i) The Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an "industrial dispute" exists or is "apprehended".

(ii) The factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the Government to decide.

(iii) The order making a reference is an administrative act and it is not a judicial or a quasi-judicial act.

(iv) The order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Article 226 of the Constitution, to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended."

20. In Rohtas Industries Ltd. vs. S.D. Agarwal, reported in (1969) 1 SCC 325, the Supreme Court held as follows :-

"7. .... This interpretation of Section 10(1) is based on the language of that provision as well as the purpose for which the power in question was given and the effect of a reference. That decision cannot be considered as an authority for the proposition that whenever a provision of law confers certain power on an authority on its forming a certain opinion on the basis of certain facts the courts are precluded from examining whether the relevant facts on the basis of which the opinion is said to have been formed were in fact existed."

21. Whether the Government can go into the merits of the dispute was the question raised before the Supreme Court in Western India Match Co. Ltd. vs. Western India March Co. Workers Union, reported in (1970) 1 SCC 225. Therein, at para 9, the Supreme Court observed as under :-

"9. ... the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible."

22. If the appropriate Government refuses to make a reference for irrelevant considerations, on extraneous grounds or acts mala fide, a party would be entitled to move the High Court for a writ of mandamus. This was the view of the Supreme Court in Hochtief Gammon vs. State of Orissa, reported in (1975) 2 SCC 649, wherein the Supreme Court made the following observations :-

"13. The executive has to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the executive acts lawfully. It is no answer to the exercise of that power to say that the executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts."

23. Section 10(1) of the ID Act confers a discretionary power and is exercised on being satisfied that an industrial dispute exists or is apprehended. There may be some material before the Government on the basis of which it forms an opinion. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party, it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. Such was the finding of the Supreme Court in Avon Services Production Agencies (P) Ltd. vs. Industrial Tribunal, reported in (1979) 1 SCC 1.

In the very same case, however, the Supreme Court held that "....merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist. ..... The industrial dispute may nonetheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under Section 10(1), nor is it precluded from making the reference on the only ground that on an earlier occasion it had declined to make the reference."

24. In Ram Avtar Sharma vs. State of Haryana, reported in (1985) 3 SCC 189, the Supreme Court considered a refusal by the Government which has decided on merit. That was the case where the services of the employee were terminated after charges against him were proved in a domestic enquiry. In the said case, the Supreme Court observed as follows :-

".... The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appeal that the

Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under Section 10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the court for a writ of mandamus .. ... It is equally well settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision."

25. In Telco Convey Drivers Mazdoor Sangh vs. State of Bihar, reported in (1989) 3 SCC 271, the Supreme Court held as under :-

".... While exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function. In performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. However, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. But the Government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1). When the dispute was whether the convoy drivers were employees or workmen of TELCO, that is to say, whether there was relationship of employer and employees between TELCO and the convoy drivers, the Deputy Labour Commissioner and/or the State Government was not justified in holding that the convoy drivers were not workmen and accordingly, no reference could be made.

When it is found that the dispute should be adjudicated by the Industrial Tribunal and the State Government had persistently declined to make a reference under Section 10(1) despite chances given by the High Court and Supreme Court to reconsider the matter, the Court would direct the Government to make a reference of the dispute to the appropriate Industrial Tribunal."

26. When similar matter fell for consderation before the Supreme Court in Sharad Kumar vs. Govt. of NCT of Delhi, reported in AIR 2002 SC 1724, the Supreme Court observed that where determination of the question requires examination of factual matters for

which materials including oral evidence will have to be considered, in such matters, the State Government could not arrogate on to itself the power to adjudicate on the question.

27. In the present case, there is a disputed question of fact whether the workmen had withdrawn their offers for voluntary retirement prior to the order of acceptance of such voluntary retirement or prior to their relieving. The management has taken a plea that the circulars were displayed on the notice board on 21.3.2007, but also accepted that the letters of voluntary retirement were issued in the end of March, 2007. The management has also accepted that pursuant to the VRS on or about 3.4.2007, 455 persons were relieved and 7 persons were relieved on 30.4.2007 and 2 persons were relieved on 31.5.2007. Therefore, the question as to whether one or the other workmen had withdrawn their prayer for voluntary retirement prior to issuance of their relieving order or prior to their relieving is one of the questions which requires determination to adjudicate whether the relationship of employer and employees ceased because of the voluntary retirement or they were forcibly retired from the service amounting to retrenchment.

28. In the case of Bank of India vs. Swaranakar, reported in AIR 2003 SC 858, the Supreme Court observed that the decision making process involved application of mind on the part of several authorities. The request of employees seeking voluntary retirement is not to take effect until and unless it is accepted in writing by the competent authority. Once the application filed by the employee is held to be an offer, section 5, in absence of any such independent binding contract or statute or statutory rules to the contrary, would come into play and the offer made by employees could be revoked any time before it is accepted.

29. When the question of voluntary retirement under the Scheme fell for consideration before the Supreme Court in Shambhu Murari Sinha vs. Project & Development India Ltd., reported in (2002) 3 SCC 437, the Supreme Court held that even after the acceptance of voluntary retirement but before the date of actual release from the service, the applicant did have a locus poenitentiae to withdraw his proposal for voluntary retirement. In the said case, having noticed that the voluntary retirement offer was withdrawn prior to release, the Supreme Court ordered for reinstatement with all consequential benefits.

30. A Constitution Bench of the Supreme Court in the case of Union of India vs. Gopal Chandra Misra, reported in (1978) 2 SCC 301 held that a prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor.

31. In the case of JN Srivastava vs. Union of India, reported in (1998) 9 SCC 559, the Supreme Court held as follows :-

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta vs. Union of India.

32. In Nand Keshwar Prasad vs. Indian Farmers Fertilizers Coop. Ltd., reported in (1998) 5 SCC 461, similar view was taken by the Supreme Court that it is open to the employee concerned to withdraw letter of resignation before the date indicated in the notice of voluntary retirement.

33. In Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia, reported in (1997) 4 SCC 280, the Supreme Court held as follows :-

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."

34. From the aforesaid decisions, it will be evident that relevant dates are required to be noticed by leading evidence, the date when such offer for voluntary retirement was made by the workmen, the actual date on which it was accepted and communicated to the workmen and the date of voluntary retirement when it was actually given effect.

35. We have noticed that this Court cannot sit in appeal over a finding of the State. The determination of the question which requires examination of factual matters, for which material including oral evidence is required to be considered, such matter cannot be arrogated to by the State which will amount to adjudication of the question.

36. In the present case, it will be evident that the workmen also moved before this Court in Special Civil Application No. 20727 of 2007 and in analogous cases. Therein, this Court by order dated 22.8.2007 after considering the submissions made by the learned counsel for the parties, having noticed that a number of disputed questions are raised in the aforesaid group of petitions, which require some evidence to be taken before the appropriate authority, allowed the parties to move before the State. Thereafter, the workmen moved before the respondent - State for reference under Section 10(1) of the ID Act. Such observations having already made, the matter having remitted at the instance of the parties including the management, when the question of deciding the disputed fact was required to be determined on the basis of the evidence, we are of the view that the respondent - State or its authority could not have arrogated on itself the power to adjudicate on the question whether the relationship between the management and the workmen ceased because of voluntary retirement or they were retrenched. In view of

the Supreme Court decisions as referred to above, we also hold that the respondent - State and the Assistant Labour Commissioner, in particular, had no jurisdiction to look into the evidence to adjudicate on the question which was required to be determined by the Tribunal in a reference, if it would have been made under Section 10(1) of the ID Act.

37. Another thing that we have noticed that the impugned order dated 11.4.2008 is though administrative in nature, but the manner in which the same has been written appears to be a judgment written by a very experienced person having knowledge of practice in the Court of law or had been an adjudicating authority in a Court of Law. We do not express further opinion with regard to the same, as we have already observed that the respondent - State and its authority had no jurisdiction to adjudicate the question of fact which requires examination of factual matters for which material including oral evidence were required to be considered.

38. The learned Single Judge has not taken into consideration the aforesaid aspects nor discussed the same while dismissing the case and adjudicated the matter on presumption that all the workmen were actually voluntarily retired from the service though in many cases it was brought to his notice that the workmen had submitted letters recalling their offers prior to issuance of their individual letter of voluntary retirement or prior to their release.

39. For the reasons aforesaid, the common judgment passed by the learned Single Judge dated 13.3.2009 and the order dated 11.4.2008 passed by the Assistant Labour Commissioner & Conciliation Officer, Vadodara cannot be upheld and the same are accordingly set aside, and the cases are remitted with a direction to the respondent - State to refer the dispute under Section 10(1) of the ID Act to the competent Labour Court or the Tribunal. The reference to be couched in proper manner. It should be referred at an early date, preferably within two months from the date of receipt/production of a copy of this judgment.

40. All the appeals stand disposed of with the aforesaid observations and direction. There shall be no order as to costs.

[S.J. MUKHOPADHAYA, CJ.] [K. M. THAKER, J.]

After the judgment was pronounced, the learned counsel for the management requested to suspend the judgment to enable the parties to move an appeal.

Taking into consideration the findings given by us in the judgment, the prayer for suspension of the judgment is rejected.

*Appeal dismissed*