2024:DHC:348

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 29th November, 2023

Pronounced on: 15th January, 2024

\+ **W.P.(C) 11128/2023, CM APPL. 43199/2023 & CM APPL. 45368/2023.**

THE INDIAN EXPRESS P LTD ..... Petitioner

Through: Mr. N.B. Joshi, Advocate with Mr. Sahil, Advocate.

versus

THE INDIAN EXPRESS NEWSPAPERS WORKERS UNION REGD AND ANR ..... Respondents

Through: Mr. Colin Gonsalves, Sr. Advocate with Ms. Kawal Preet Kaur, Advocates.

Mr. Avishkar Singhvi, Mr. Vivek Kr. Singh and Mr. Naved Ahmed, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The present petition has been filed assailing award dated 31.07.2023 ("**impugned award**") passed by the Ld. Presiding Officer, Industrial Tribunal-I, Rouse Avenue Courts, New Delhi ("**the Tribunal**").

2. *Vide* the impugned award, the Tribunal increased the age of retirement/ superannuation of the workers with the petitioner establishment (The Indian Express Pvt. Ltd.) to 60 years with effect from the date of reference, i.e. 15.10.2009, with all consequential benefits, monetary or otherwise. The Tribunal further directed the petitioner establishment to implement it within 60 days of passing of the impugned award, failing which they were liable to pay interest at the rate of 8% per annum from the date of accrual till the date of final payment.

3. This writ petition was then filed on August 2023, notice was issued on 24th August 2023 and on 12th September 2023 this Court directed as a *pro-tem* arrangement, that subject to any order passed by the Court, two workmen who are retiring in the month of September would be allowed to continue to discharge their duties of their respective posts.

Factual Background

4. The petitioner herein is a company incorporated under the Companies Act, 1956, having its registered office in Mumbai, Maharashtra, and an office & factory in Noida, Uttar Pradesh. Its flagship publication is the Indian Express, an English daily newspaper. Other prominent publications and magazines are also published by the petitioner company.

5. Respondent no.1 is the Indian Express Newspaper Workers' Union (registered) ("**Union**"), which filed a claim before the Assistant Labour Commissioner, Delhi, and the Presiding Officer, Industrial Tribunal, Delhi.

6. The dispute raised by the workers of the petitioner establishment was referred for adjudication to the Industrial Tribunal, Delhi *vide* reference dated 15.10.2009. The terms of the reference were as under:

> *" Whether the demand of the workmen represented by the Indian Express Newspaper Workers Union for increasing the retirement age of the workmen from 58 years to 60 years is legal and justified and if so to what relief are they entitled and what directions are necessary in this regard? "*

7. Statement of claim was filed by the workers. The petitioner filed its written statement along with supporting documents Thereafter, issues were framed, evidence was led by the parties and the impugned award was passed.

Submissions on behalf of the Petitioner

8. Mr. N. B. Joshi, counsel for the petitioner establishment assailed the impugned award, *inter alia*, on the following grounds:

8.1 (i) Reference by the government itself was not maintainable in view of the Industrial Disputes Act, 1947 ("**ID Act**") and Industrial Employment (Standing Orders) Act, 1946 ("**SO Act**") and rules made thereunder. He submits that SO Act is a special Act prevailing over the general law and the field relating to the age of superannuation is exclusively in its realm, which is not available for adjudication under the ID Act. The SO Act requires employers under the industrial establishments to define conditions of

employment. Thus, the issue regarding the age of superannuation could only be addressed by amending the Model Standing Orders under the SO Act ("**MSOs**"). If any interpretation was required of the MSOs, referral ought to have been made under Section 13-A of the SO Act and not under Section 10 of the ID Act. Section 10 of the ID Act, which would relate to the Second Schedule for matters to be referred to the Labour Court, and Third Schedule for matters to be referred to the Industrial Tribunal, does not include within its purview an issue relating to superannuation, which would instead invite an amendment of the MSO. Even the residuary clause under Item 11 of the Third Schedule of the ID Act would require prescription by an appropriate authority of the government.

(ii) There being no such notification by the Government of NCT of Delhi ("**GNCTD**") or by the Central Government, there could not have been any reference under the ID Act. The age of superannuation could have only been addressed under the SO Act which requires an industrial establishment to draft Standing Orders in consonance with the MSOs prescribed under the Schedule. Subsequent thereto, the provisions require the Certifying Officer, as designated under the SO Act, to certify the Standing Orders which then would have statutory force. The age of superannuation is included as Clause 3 of Schedule I-B of the Rules framed under the SO Act, inserted by Rule 2A of the Industrial Employment (Standing Orders) Central Rules, 1946 ("**SO Rules**"). As per Clause 3 of Schedule IB, the age of superannuation has to be agreed upon between the employer and the worker in an agreement or specified in a settlement or an award. In a situation when there was no such

settlement, the retirement was on completion of 58 years of age. Determination of the age of superannuation could, therefore, not be a subject matter for adjudication in an industrial dispute.

(iii) An Industrial Tribunal would have to limit its adjudication only to the propriety or legality of a Standing Order, but could not re-write the age of superannuation as 60 years. At best, the reference could have been made under Section 13-A of the SO Act but only for the "application" and "interpretation" of the standing orders certified under the SO Act. Reference was also made to the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ("**WJ Act**") to submit that the SO Act applies even to newspaper establishments and therefore reference could not have been made for determining the age of superannuation.

8.2 Counsel for the petitioner argued that a "newspaper establishment" as defined under Section 2(d) of the WJ Act is not to be treated differently from other establishments. If it would have to be treated as a single establishment, the appropriate authority of the government to refer the dispute should be the Central Government under Section 7B of the ID Act to the National Industrial Tribunal.

8.3 Counsel for the petitioner drew attention to the reliance placed by the impugned award on decisions in ***Dunlop Rubber Co. India Ltd. v. Workmen***, (1960) 2 SCR 51 and ***G.M. Talang v. Shaw Wallace & Co. Ltd.***, (1964) 7 SCR 424 of the Hon'ble Supreme Court as authorities on the subject of retirement age. It was submitted that this reliance was incorrect as both the

judgments explicitly apply only to the Bombay region and did not lay down a general proposition applicable to the entirety of India.

8.4 Reliance was placed on the following decisions to canvass that in industrial jurisprudence, regional aspect will have to be considered and like employers have to be compared with each other, and that the financial implication on the employer is a determining factor: ***Novex Dry Cleaners, New Delhi v. Workmen of Novex Dry Cleaners***, (1962) 1 LLJ 271, ***Kamani Metals And Alloys Ltd v. Workmen***, (1967) 2 SCR 463, ***Hindustan Antibiotics Ltd. Vs. Workmen.***, (1967) 1 SCR 652, ***Concept Pharmaceuticals Ltd. v. Concept Pharmaceuticals Kamgar Sanghatana***, 2005 SCC OnLine Bom 1745, ***Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L.***, (2003) 6 SCC 490, ***Hindustan Insecticides Employees' Union Vs. Hindustan Insecticides Ltd.***, 2013 SCC OnLine Del 3223 and ***L.N. Khemka and Ors. v. IFCI Limited and Ors.***, MANU/DE/0766/2015

8.5 It was argued that the Industrial Tribunal had ignored relevant evidence which had been presented by the petitioner, *inter alia*, relating to proof of financial incapacity, certified Standing Order, Uttar Pradesh Industrial Employment Model Standing Order, Bombay Industrial Employment Standing Order, Rules 1959, and notifications by the Haryana Labour & Employment Department of July and August 2012.

8.6 Counsel for the petitioner contended that the Industrial Tribunal's opinion that by increasing the retirement age of the workmen, it would be financially beneficial to the employer, was wholly unsupported by evidence and is contrary to law as laid down in ***Indian Drugs & Pharmaceuticals Ltd.***

v. Workmen, (2007) 1 SCC 408 and ***L.N. Khemka and Ors. v. IFCI Limited and Ors.***, MANU/DE/0766/2015.

8.7 Standing Orders issued under the SO Act have a statutory backing and binding force; any change in the same could only be done by the government in exercise of its rule-making power under the SO Act. It was argued that reservation relating to the age of superannuation was made by the government itself since conditions of service would affect all industries in the State. Reference in this regard was made to ***Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Ltd.***, 2023 SCC OnLine SC 872.

8.8 It was argued that even in an industrial adjudication, which is between the employer and workers, the legal principle that parties are to be held to their pleadings, is highly relevant and endorsed by the Hon'ble Supreme Court in ***Municipal Committee, Tauru v. Harpal Singh***, (1998) 5 SCC 635 [wherein a case set up by the Union that the Wage Board mandated 60 years as the age of retirement was not made out based on evidence].

8.9 An objection had been taken by the petitioner on the issue of espousal contending that Section 2(k) of the ID Act requires a legitimate and proper espousal. In the present case, the respondent-Union acted contrary to its constitution. In the demand notice filed before the GNCTD and the claim statement filed before the Industrial Tribunal, the dispute was raised only by 5 workmen. The Secretary of the Union, acting in his personal capacity, had merely forwarded the notice, first to the government and then to the Tribunal. There needed to be compliance of Rule 4 of the ID Rules and of section 36 (1) (a) of the ID Act which identifies persons entitled to represent workers.

8.10 It was asserted that the retrospective application of the enhanced age of superannuation by way of the impugned award from 05.10.2009 casts a huge financial burden on the petitioner, and for no fault of theirs. It was pointed out that in a total of 87 hearings, on 26 occasions adjournments had been sought by the Union, on 11 occasions adjournments were due to the court and there were 3 adjournments during the pandemic. For almost half the number of years, the matter was pending and the delay could not be attributed to the petitioner.

Submissions on behalf of the Respondent

9. As opposed to the above, Mr. Colin Gonsalves, Senior Counsel for the respondent pressed the following contentions:

9.1 Extensive reliance was placed on the decision of the Gujarat High Court dated 28.07.2014 in *SCA 10141/2001* wherein the decision of the Industrial Tribunal was upheld which had held that the retirement age of the worker and journalist should be raised from 58 to 60. The same was not challenged before the Hon'ble Supreme Court and has, therefore, attained finality. This decision is related to Indian Express Company itself, and noted that in seven other newspaper companies within Gujarat, the retirement age was 60, as also in those situated within Maharashtra.

9.2 Relying on the WJ Act which applies to newspaper establishments, section 2(d) read with the Schedule indicated that all the establishments in India constitute a single establishment. Therefore, it was neither lawful nor proper to have different ages of retirement for similarly situated workers. The focus was also on the aspect of transferability of such employees between

various branches of the establishment, which would create dissonance if there were different retirement ages. Retirement age, therefore, could not be fixed on a regional basis. Reliance was also placed on the Wage Board Awards which had recommended uniform service conditions for newspaper employees throughout the country with minor modifications. It was submitted that there never was a state or region-wise Wage Board, instead it was always national in its scope.

9.3 Reliance was placed on the award dated 11.11.2011 passed by the Majithia Wage Board showing that newspaper establishments were categorized, not according to profit and loss figures in the balance sheet but, according to the "gross revenue". This was because such companies divert profits and revenue from one concern to another while diversifying into other areas such as digital media, real estate, etc. Reliance by the petitioner, therefore, on profit and loss figures of one year only (2009) before the Tribunal could not be taken as a standard. This submission was made in the context of financial hardship being pleaded by the petitioner establishment.

9.4 Provision for the age of retirement in a certified Standard Order merely indicates present terms of contract between an employer and the employee(s). This does not restrict or bind an Industrial Tribunal which is empowered to adjudicate on the issue of retirement age. The industrial award itself creates a new contract between an employer and an employee which supersedes the old contract. Concerning the power of the industrial courts to create new contracts, reliance was placed on ***Bidi, Bidi Leaves and Tobacco Merchants Association v. State of Bombay***, 1961 SCC OnLine SC 33, ***Apollo Tyres***

Limited v. C.P. Sebastian, (2009) 14 SCC 360, ***Cooperative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh***, (1969) 2 SCC 43 and ***New Maneck Chowk SPG, Ahmedabad & Ors. vs. Textile Labour Association***, AIR 1961 SC 867.

9.5 It was contended that the retirement age in other newspaper establishments like Hindustan Times, Tribune, Deccan Herald, Statesman, etc., is fixed at 60 years. Notwithstanding the same, it was argued that even if the retirement age of 58 years had been in existence for a long time, with improvements in the standard of living and improvement in health facilities, the retirement age ought to be enhanced instead of being stagnated. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in ***G. M. Talang*** (*supra*), ***Dunlop Rubber*** (*supra*), and ***Imperial Chemical Industries Pvt. Ltd. v. Workmen***, AIR 1961 SC 1175 where the age of retirement in the case of workmen was increased from 58 years to 60 years in 1960. It was contended that these decisions were from roughly 60 years ago and were fully applicable in the present case. It was also argued that minor errors made in the impugned award will not amount to perversity as was being contended by the petitioner's counsel.

9.6 On the issue of retrospective application of the retirement age, it was contended that the petitioner, having taken an intransigent stand relating to retirement age had brought this upon themselves. The erstwhile workers were fit with healthy body and mind and were also skilled, and would have given a long service to the petitioner. Continuing to allow them to work for another 2 years would cause less financial hardship to the petitioner establishment.

Regarding this, reliance was placed on ***Bengal Chemical and Pharmaceutical Works vs. Workmen***, AIR 1969 SC 360.

9.7 On the issue of reference not being maintainable, reliance was placed on Clause 11 of the Third Schedule which is a residual clause and, therefore, allows prescription for any other matter.

9.8 As regards the issue of espousal, it was contended that the petitioner never challenged the reference on the ground that it was flawed on account of improper espousal by the Union or there being no espousal by a significant number of workmen. Notwithstanding the same, it was evident from the records that a resolution was passed by the Union, demand notice was served by the General Secretary of the Union, communications were addressed by the Union to the management and the statement of claim was also filed through the General Secretary of the Union.

9.9 As regards the reference to Majithia Wage Board, it was contended that initially it had raised the retirement age from 58 years to 60 years in December 2010 and, later after consideration of the evidence, had recommended increasing it to 65. However, due to an objection taken by newspaper employers, that aspect was later removed and the award of Majithia Wage Board was modified. The Hon'ble Supreme Court later declined to go into this issue.

Submissions in rejoinder on behalf of the Petitioner

10. Counsel for the petitioner, countering the arguments made by the counsel for the respondent Union, submitted as under:

10.1 Reliance of the respondent on the Gujarat High Court decision dated 28.07.2014 in SCA 10141/2001 was flawed considering that the decision was based solely on MSO which specified 60 years as the retirement age in Gujarat. This was evident from reading para nos. 10, 11, and 12 of the said decision.

10.2 In response to the submission that newspaper establishments were to be considered a single newspaper establishment under the WJ Act, it was submitted that the concept of a newspaper establishment under the WJ Act is similar to an industrial establishment under the ID Act. Newspaper establishments are state-wise and reference can be made to Sections 2(a) and 2(ka) of the ID Act. Therefore, the concepts of the WJ Act are in line with the ID Act by virtue of Section 3 of the WJ Act.

10.3 As regards the application of the National Wage Board and it being akin to a National Tribunal, reference was made to the decision in ***Bennett Coleman & Co. Ltd. v. State of Bihar,*** (2015) 11 SCC 204, particularly paragraphs 13, 16, and 19, which held that the recommendations of the Wage Board are neither an award nor a settlement and that it does not constitute an Industrial Tribunal under the purview of the ID Act. It was contended that the wage boards were created only to determine wages; the determination of other service conditions is beyond the jurisdiction of wage boards. This was reiterated by the Hon'ble Supreme Court in ***ABP (P) Ltd. v. Union of India*** (2014) 3 SCC 327, particularly in paragraphs 70 and 72. It has been specifically held in this decision that aspects regarding, *inter alia***,** retirement age were beyond the mandate for which the wage boards were constituted.

10.4 Regarding the contention that newspapers were classified on gross revenue and not on profit earned, it was contended that this argument is irrelevant as regards wages are concerned. Various legislations which impose statutory liability such as the Payment of Bonus Act, 1965; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and the Minimum Wages Act, 1948, ignore the paying capacity of the employer. However, for the liabilities that are not statutory, the paying capacity of the employer is an imperative yardstick. Further, it was contended that there was no cross-examination on the numbers that had been filed by the Indian Express.

10.5 On whether the Industrial Tribunals were empowered to re-write the contracts of service, it was contended that it can only do so for matters specified in the Second and Third Schedule of the ID Act and are precluded from doing so for those not specified. Since the SO Act reserved this issue of retirement to be considered by the State, the question of the Tribunals taking over the jurisdiction did not arise.

10.6 As regards the retrospectivity of the relief sought, it was stated by the respondent that it is automatic unless it is refused by the Industrial Tribunal. Refuting the same petitioner contended that the proposition in law to say that relief has to be retrospective is incorrect. Reliance was placed on para 23 of ***Hindustan Times Ltd. v. Aita Ram***, (2015) SCC OnLine Del 7495.

10.7 Petitioner submits that prescription, as per entry 11 of the Third Schedule of the ID Act can only mean a prescription under the Rules framed therein. This can only be done by delegated legislation and cannot be subverted by a simpliciter reference of an industrial dispute under Section 10

of the ID Act, which is not the same process; recourse was made to Section 40 of the ID Act, which empowers amendment of Schedules to the ID Act.

10.8 In relation to the contention that the reference itself ought to have been challenged by a Writ Petition, which the petitioner did not do, the petitioner placed his reliance on ***D. P. Maheshwari v. Delhi Admn.,*** (1983) 4 SCC 293 (Para 1); Order dated 23.04.2012 of this court in ***Indian Express Newspapers (Mumbai) Ltd. v. State (NCT) of Delhi***, W.P.(C) 7483/2008; and order dated 23.04.2013 of this court in ***Workmen of Indian Express Newspaper Workers Union (Regd.) v. Management of M/s. Indian Express Newspapers(Bombay) Ltd.***, W.P.(C) 8676/2011.

Analysis

11. Having heard *in extenso* the contentions of both the parties, this Court considers it necessary to first deliberate on the issue of determination of the age of retirement, from its very genesis.

12. The age of retirement is undoubtedly a condition of service and employment. Admittedly, the petitioner is an '*industrial establishment*'. The conditions of employment to be defined by industrial establishments are governed by the ***Industrial Employment (Standing Orders) Act, 1946*** (having been referred to as SO Act). In this regard, it would be useful to extract relevant parts of its Statements of Objects and Reasons of the SO Act as under:

> *"Experience has shown that 'Standing Orders' defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour Conference revealed a consensus of opinion in*

favour of legislation. The Bill accordingly seeks to provide for the framing of "Standing Orders" in all industrial establishments employing one hundred or more workers.

...

...

Within six months from the date on which the Act becomes applicable to an industrial establishment, the employer is required to frame draft 'Standing Orders' and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. The Certifying Officer will be empowered to modify or add to the draft Standing Orders so as to render them certifiable under the Act. It will not be his function (nor of the Appellate Authority) to adjudicate upon their fairness or reasonableness. There will be a right of appeal against the decisions of the Certifying Officers."

13. Legislation itself prefaces the provisions of the Act as "*An Act to require employers in industrial establishments formally to define conditions of employment under them*". It further states that *"Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them"*.

14. The concept employed, therefore, is that the employer is required to frame draft standing orders and submit them to the Certifying Officer for certification. The draft was to cover matters specified in the Schedule of the Act or any other specifications subject to the applicable Rules. Post submission to the Certifying Officer, the said Officer was empowered to modify or add to the draft standing orders to render them certifiable under the SO Act. He would not adjudicate on the fairness or reasonableness of the said

Standing Orders (This position was changed by the amendment in 1956). Against the same, an appeal would lie to the Appellate Authority. More specifically, this process is embedded in Section 3 (*Submission of draft standing orders*); Section 4 (*Conditions for certification of standing orders*); and Section 5 (*Certification of standing orders*).

15. For ease of reference, these three sections of the SO Act are extracted as under:

> *"**Section 3. Submission of draft standing orders.** — (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.*
>
> *(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.*
>
> *(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.*
>
> *(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.*
>
> ***Section 4. Conditions for certification of standing orders.** —Standing orders shall be certifiable under this Act if—*
>
> *(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and*

(b) the standing orders are otherwise in conformity with the provisions of this Act; and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

***Section 5. Certification of standing orders.**—(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.*

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

(emphasis added)

16. Section 3(2) of the SO Act mandates that the draft Standing Orders proposed by the establishment will provide for every matter set out in the Schedule of the SO Act, as applicable to the concerned establishment; and if model Standing Orders have been prescribed, it shall be in conformity with the same, "*so far as is practicable*". These aspects of conformity, etc. are what

would be overseen by the Certifying Officer under Section 4. Objections to the draft Standing Orders are then invited under Section 5.

17. Pursuant to that, an opportunity for a hearing is to be given and modifications to the draft, if any, are made as per the decision of the Certifying Officer (as per Section 5(2) of the SO Act) and thereafter, the draft Standing Orders would be duly certified.

18. Provision of appeal is provided under Section 6 of the SO Act, by any employer, worker, trade union, or other prescribed representatives of the worker to appeal against the order of the certifying officer. The appellate authority is also empowered to amend the Standing Orders by making modifications, as it may consider necessary. Consequently, the Standing Orders come into operation (as per Section 7) and are filed in the form of a register maintained by the Certifying Officer (Section 8), followed by the posting of the Standing Orders (Section 9).

19. Section 10 of the SO Act provides for the duration and modification of the Standing Orders. The relevant provision is extracted as under:

> *"**Section 10**. **Duration and modification of standing orders.** — (1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.*
> *(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the*

workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.
(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.
(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

20. It is to be noted at this stage, that the SO Act mandates that Standing Orders that are certified shall not, except on agreement between the employer and employee (worker), be liable to modification for at least 6 months from when they came into force or since the last modification took place.

21. Section 10 (2) provides for a process of modification of Standing Orders which can be triggered by an employer or workmen or a trade union or a representative body of the workmen, through an application to the Certifying Officer. In the event there is an agreement between the employer and the workmen, that shall also be filed. In respect of this application, the process of determination of the appropriateness of that modification proposal will be processed in the same manner as prescribed under Sections 4, 5, and 6 of the SO Act.

22. It is also noted that Section 10(4) mandates that provisions of Section 10(2) shall not apply to an industrial establishment in respect of the State of Gujarat and the State of Maharashtra.

23. Since the reference is made to the Schedule of the SO Act and The Industrial Employment (Standing Orders) Central Rules, 1946 for aspects that

must be taken care of while drafting the Standing Orders or reviewing them, it is noted that Schedule I applies to MSOs in respect of industrial establishments, (not being industrial establishments in coal mines) and Schedule IA applies to the MSOs for industrial establishments in coal mines. It is an admitted position that, as regards newspaper establishments, Schedule IB provides for MSOs on additional items that are applicable to all industrial establishments.

24. Clause 3 of Schedule IB specifies the age of retirement. The said clause is extracted as under:

> *"(3) AGE OF RETIREMENT*
> *The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of 58 years of age by the workman."*

25. Clearly, it provides that the age of retirement shall be as decided under an agreement between an employer and the workmen or as specified in a settlement or an award. Where it was not so agreed, the retirement age would be 58 years. This substitution of 58 years was done by GSR 1040 dated 12.09.1984, before which the age was 60.

26. Hence, for an establishment like the petitioner, the MSOs in Schedule I along with additional items in Schedule IB would apply. The petitioner establishment had accordingly floated their SO which, in clause 15(d) provides: *"The employment of an employee shall terminate on his attaining the age of superannuation (58 years) and one months' notice will be given in*

such cases. The employer may, however, at his discretion extend the period of his service or re-employ him on such terms and conditions as may be mutually agreed upon.*"*

27. The said Standing Orders were duly certified by the Certifying Officer and accordingly, became applicable to the establishment and its workers. This certified Standing Order relates to their office in New Delhi and therefore, in the present case, would apply to the workers in question.

28. One of the contentions of the petitioner was that any issue relating to the application or interpretation of a certified Standing Order can be referred by an employer/ workman/ trade union/ representative body of the workmen to the Labour Courts constituted under the ID Act. This is provided by Section 13A of the SO Act. Section 13 of the SO Act lays down, *inter alia*, penalties for an employer who modifies Standing Orders, otherwise than in accordance with Section 10. The Labour Court, after giving opportunity to parties of being heard, decides the question and such a decision would be final and binding on the parties.

29. What needs to be focused on, at this stage of discussion, is whether a change of retirement age from 58 years to 60 years is an issue of "application" or "interpretation" or invites a "modification". It would be difficult to accept any contention that pleads that a variation of 58 years to 60 years as the age of retirement, would not amount to seeking a "modification" of a certified Standing Order. A modification necessarily entails "*make partial or minor changes to; alter without radical transformation*". The phrase "application" on the other hand would entail something which requires "*putting into use*",

and "interpretation" would necessarily involve "*the action of explaining the meaning of something*".

30. Aside from these definitions, applying a commonsensical view, it would be obvious from the usage of these phrases that a variation from 58 years to 60 years would amount to "modification". Accordingly, the question of it being a matter which could be referred to under Section 13A by either an employer or a worker does not arise. The submission of the petitioner that the reference could have possibly been under Section 13A of the SO Act, therefore, does not merit any further consideration.

31. It will have to be stressed here that "modification" is provided for under Section 10 (2) of the SO Act, as has been noted above. This aspect would be adverted to later after further discussion on various other submissions made by the parties.

32. In relation to the process of modification, the petitioner submitted that such a process of modification of the retirement age had indeed taken place in Haryana. A notification dated 10.07.2012 had been issued by the Labour & Employment Department, Government of Haryana where a proposal was made to add the item "*age of superannuation of workmen*" in the Schedule to the Act as well as a Clause 17A in the MSO providing for the age of retirement to be 60 years.

33. The industry in Haryana filed its objections after the government conducted oral hearings and thereafter, a decision was taken by the government to notify 58 years as the age of superannuation *vide* notification

dated 06.08.2013. The said Clause 17A was introduced in Schedule I of the MSO, produced as under:

> *"17A, Age of Superannuation - The age for retirement or superannuation of the workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement of award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of fifty eight years of age by the workman."*

34. This, as per the petitioner, ought to be the ideal process for modification of the age of retirement i.e. a proposal must be put forward by one of the stakeholders (in the case of Haryana, it was the government) and after hearing the objections of the parties, a decision will be made. The petitioner also pointed out that the age of retirement in other States is also similar, like in the State of Uttar Pradesh wherein, Clause 31 of the MSO fixes the age of superannuation at 58 years; in Maharashtra and Gujarat, the MSO fix the age of superannuation at 60 years in Clause 27.

35. As to the statutory sanctity of a Standing Order, reference was made to the decision of the Hon'ble Supreme Court in ***Bharatiya Kamgar Karmachari Mahasangh*** (*supra*).

36. In contrast, Senior Counsel for the respondent heavily relied upon the decision of the **Gujarat High Court in SCA 10141/2001** (*supra*) dated 28.07.2014 wherein a decision, relating to the retirement age in petitioner establishment was raised from 58 years to 60 years. Gujarat High Court was dealing with a reference made to it for fixing the age of retirement of working journalists of the petitioner establishment therein to 60 years. It was related to

the branch of Indian Express at Ahmedabad. In 1986, the Union in Ahmedabad made a demand that their retirement age should be enhanced to 60 years. This demand was referred to the Tribunal. Subsequent demands were also made and were finally referred to the Industrial Tribunal.

37. Gujarat High Court referred to MSO framed by the State Government under the SO Act, particularly Clause 27 which provided that the age of retirement of workmen may be 60 years or such other age as has been agreed upon. The said SO Act was considered applicable to the newspaper establishment as per Section 14 of the WJ Act which provides that the SO Act would apply to a newspaper establishment. Therefore, it was held that the Tribunal had not committed any error in relying upon the MSO and the petition filed by Indian Express was therefore dismissed, thereby upholding the retirement age as 60 years.

38. Reliance of Senior Counsel for the respondent on the decision of Gujarat High Court was made to contend that once the age of retirement was accepted as 60 years in one State of the country where the newspaper establishment was functioning, it would serve as a necessary benchmark for other States as well. However, this Court is of the view that the decision by the Gujarat High Court cannot act as inviolable precedent, *inter alia*, because the said decision arising out of reference in Gujarat, was based squarely on the MSO propounded by the State Government in Gujarat which provided for retirement age as 60 years. It is not the same as in the instant matter, since the MSO in Delhi prescribe the retirement age as 58 years. Moreover, the Gujarat

High Court does not go into the detailed merits of the matter and only affirms the decision of the Tribunal in that regard.

39. Be that as it may, the decision by the Gujarat High Court at best only fortifies the petitioner's submission that the age of retirement has to be in consonance with the MSO.

40. Therefore, we now have to address the vexed and much argued issue as to whether the issue regarding the age of retirement could have been referred to an Industrial Tribunal.

41. Reference dated 15.10.2009 by the GNCTD reads as: *" Whether the demand of the workmen represented by the Indian Express Newspaper Workers Union for increasing the retirement age of the workmen from 58 years to 60 years is legal and justified and if so to what relief are they entitled and what directions are necessary in this regard? "*

42. As a starting point, it would be undeniable that the certified Standing Orders issued under the SO Act have a statutory force. This has been recently reiterated by the Hon'ble Supreme Court in ***Bharatiya Kamgar Karmachari Mahasangh*** (*supra*) a decision of 2023, wherein the Apex Court has, *inter alia*, made the following observations:

> *"7. On various occasions, this Court has observed that the certified standing orders have a statutory force. The Standing Order implies a contract between the employer and the workman. Therefore, the employer and workman cannot enter into a contract overriding the statutory contract embodied in the certified Standing Orders.*
>
> *8. This Court has succinctly laid down the scope of The Act in U.P. SEB v. Hari Shankar Jain,1 (3-Judge Bench) that it was specially designed to define the terms of employment of workmen in industrial*

establishments, to give the workmen a collective voice in determining the terms of employment and to subject the terms of employment to the scrutiny of quasi-judicial authorities by the application of the test of fairness and reasonableness. It is an Act giving recognition and form to workmen's hard-won and precious rights. We have no hesitation in saying that it is a special Act expressly and exclusively dealing with the schedule-enumerated conditions of service of workmen in industrial establishments."

43. As discussed above, the focus of our discussion would be on whether a certified Standing Order with a statutory force, can be modified, and by which process. It may be useful to consider the decisions on this issue rendered by the Hon'ble Supreme Court and other Courts that had been referred to by the respective counsel. The following decisions are referred to in a chronological sequence.

(i) In a decision of 18.09.1967, the Hon'ble Supreme Court speaking through 3 Hon'ble Judges in ***Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. Workmen,*** (1968), 1 SCR 581, was dealing with a reference by the State Government was related to the entitlement of leave benefits including privilege leave, casual leave, and sick leave. When the matter was being adjudicated before the Industrial Tribunal, the management raised an objection as to the jurisdiction of the Industrial Tribunal to adjudicate upon this question, *inter alia*, that leave facilities having been provided by certified Standing Orders, a modification could only be in the manner provided under the SO Act. The Industrial Tribunal answered these issues against the management. The High Court of Karnataka also agreed with the

findings of the Tribunal and held that the scope of the Standing Orders was limited and there is no conflict between the ID Act and Standing Orders and that it was open to a Tribunal to adjudicate upon these matters as referred to it. Having made an assessment of the contentions of the parties, the Court assessed the law as it existed at that time, particularly in light of the amendment to the SO Act in 1956. In para 22 and 23 of the said decision, the Hon'ble Supreme Court stated as under:

> *"22. None of the above decisions lend support to the contentions of the learned counsel for the appellant that, after the amendment effected in 1956, to the Standing Orders Act, the Industrial Tribunal will have no jurisdiction, under the Act, to adjudicate upon any disputes in relation to matters, covered by the standing orders, framed under the Standing Orders Act.*
>
> *23. Further, accepting the contention of the learned counsel for the appellant, will be to practically wipe out the existence of the Act, so far as industrial establishments, governed by the Standing Orders Act, are concerned. The legislature, in 1956, amended, by the same Act viz. Act 36 of 1956, both the Act and the Standing Orders Act. Schedules were also incorporated in the Act, and, in particular, the same item, which is referred to in Section 13-A, of the Standing Orders Act, is again referred to, as Item 2 of the Second Schedule to the Act, over which the Labour Court has jurisdiction. Item 5, of the Schedule to the Standing Orders Act, as interpreted, by this Court, gives jurisdiction to the authorities under that Act, to frame standing orders with reference, not only to the procedure for grant of leave and holidays, but also in respect of the quantum of leave, and allied matters. The legislature, in Item 4 of the Third Schedule to the Act, dealing with "leave with wages and holidays", has conferred jurisdiction, in that regard, on the*

Industrial Tribunal. The Standing Orders Act which, has for its object, the defining, with sufficient precision, the conditions of employment, under the industrial establishments and to make the said conditions known to the workmen employed by them, has provided more or less a speedy remedy to the workman, for the purpose of having a standing order modified, or for having any question relating to the application, or interpretation of a standing order, referred to a Labour Court. But there is no warrant, in our opinion, for holding that merely because the Standing Orders Act is a self-contained statute, with regarded to the matters mentioned therein, the jurisdiction of the Industrial Tribunal, under the Act, to adjudicate upon the matters, covered by the standing orders, has been, in any manner abridged or taken away. It will always be open, in a proper case, for the Union or workmen to raise an "industrial dispute", as that expression is defined in Section 2(k) of the Act, and, if such a dispute is referred by the Government, concerned, for adjudication, the Industrial Tribunal or Labour Court, as the case may be, will have jurisdiction to adjudicate, upon the same. But, it must also be borne in mind that an "industrial dispute" has to be raised by the Union, before it can be referred and, it is not unlikely that a Union must be persuaded to raise the dispute, though the grievance of a particular workman, or a member of the Union, be otherwise well-founded. Even if the Union takes up the dispute, the State Government may, or may not, refer it to the Industrial Tribunal. The discretion of the State Government, under Section 10 of the Act, is very wide. It may be that the workmen, affected by the standing orders, may not always, and in every case, succeed in obtaining a reference to the Industrial Tribunal, on a relevant point. These are some of the circumstances for giving a right and a remedy, to the workman, under the Standing Orders Act itself, but there is no indication, in the scheme of the Standing Orders Act, that the jurisdiction of the Industrial Tribunal, to entertain an "Industrial dispute", bearing upon the standing orders of an industrial establishment, and to adjudicate upon the same, has in any manner been

abridged, or taken away, by the Standing Orders Act. Therefore, on this aspect, we are in agreement with the conclusions, arrived at, by the Industrial Tribunal, and the High Court."

(emphasis added)

It is quite clear from the passages extracted above, particularly the portion underscored, that the Apex Court was of the opinion that notwithstanding the SO Act being a self-contained statute, the jurisdiction of the Industrial Tribunal to adjudicate upon the matters governed by the Standing Orders has not been taken away or abridged in any manner. The Union or workmen would be fully within their right to raise an "Industrial Dispute" as defined under section 2(k) of the ID Act and the Industrial Tribunal upon reference, will have the jurisdiction to adjudicate. The Apex Court further reiterates that the SO Act itself does not have any provision to take away the jurisdiction of an Industrial Tribunal to entertain an industrial dispute bearing upon the SO Act and to adjudicate upon the same.

(ii) Another decision that may have bearing on the present matter, but was not cited by the parties, is ***Management, Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. S.S. Railway Workers Union***, 1968 SCC OnLine SC 79, a decision rendered on 18.09.1968. The relevant portions are extracted as under, which usefully traverse the journey of evolution of the SO Act:

"7. The Act was passed because the legislature thought that in many industrial establishments the conditions of service were not uniform and sometimes were not even reduced to writing.

This led to conflicts resulting in unnecessary industrial disputes. The object of passing the Act was thus to require employers to define with certainty the conditions of service in their establishments and to require them to reduce them to writing and to get them compulsorily certified. The matters in respect of which the conditions of employment had to be certified were specified in the Schedule to the Act. As the Act stood prior to its amendment in 1956, Section 3 required the employer to submit to the certifying officer draft Standing Orders proposed by him for adoption in his establishment. Section 4 provided that Standing Orders shall be certifiable if (a) provision is made therein for every matter set out in the Schedule, and (b) that they were otherwise in conformity with the provisions of the Act. The section, however, expressly provided that it shall not be the function of the Certifying Officer or the Appellate Authority to adjudicate upon the fairness or reasonableness of the Standing Orders. Under Section 5, the Certifying Officer was required to send a copy of the draft Standing Orders to the union, if any, or in its absence to the workmen in the manner prescribed together with a notice calling for objections by them, if any, and to give opportunity to the employer and the workmen of being heard and then to decide whether or not any modification of or addition to the draft Standing Orders was necessary to render them certifiable under the Act. Section 6 provided for an appeal by any person aggrieved by the order passed under Section 5. The Appellate Authority, whose decision was made final, had the power to confirm or amend or add to the Standing Orders passed by the Certifying Officer to render them certifiable under the Act. Though the order passed by the Appellate Authority was made final under Section 6, Section 10 provided for modification. Sub-section 1 of Section 10 provided that Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until expiry of six months from the date on which they or the last modification thereof came into operation. Sub-section 2 read as follows:

"An employer desiring to modify his Standing Orders shall apply to the Certifying Officer in that behalf...."
Sub-section 3 provided that the foregoing provisions of the Act shall apply in respect of an application under sub-section 2 as they apply to the certification of the first Standing Orders.

8. As the Act stood prior to 1956, there was thus a prohibition against the Certifying Officer going into the question of reasonableness or fairness of the draft Standing Orders submitted to him by the employer. His only function was to see that the draft made provisions for all matters contained in the Schedule and that it was otherwise certifiable under the Act. Therefore, though the workmen through the Union or otherwise were served with the copy of the draft and had the right to raise objections, the objections could be of a limited character, namely, that the draft did not provide for all matters in the Schedule or that it was not otherwise certifiable under the Act. Even in an appeal under Section 6, the only objections they could raise were limited to the two aforesaid questions. The workmen thus could not object that the draft Standing Orders were not reasonable or fair. Under Section 10, the right to apply for modification was conferred on the employer alone and in view of sub-section 3 the only consideration which the certifying authority could apply to such modification was the one which he could apply under Sections 4 and 6. Therefore, no question whether the modification was fair or reasonable could be raised. It is thus clear that the workman had very little say in the matter even if he felt that the Standing Orders or their modifications were either not reasonable or fair. <u>They could, of course, raise an industrial dispute.</u> But that remedy was hardly satisfactory. Such a dispute had to be first sponsored by a union or at least a substantial number of workmen; it had next to go through the process of conciliation and lastly the appropriate Government may or may not be prepared to refer such a dispute to industrial

adjudication. Even if it did, the entire process was a protracted one.

9. In 1956, Parliament effected radical changes in the Act widening its scope and altering its very complexion. Section 4, as amended by Act 36 of 1956, entrusted the authorities under the Act with the duty to adjudicate upon fairness and reasonableness of the Standing Orders. The enquiry when such Standing Orders are submitted for certification is now twofold : (1) whether the Standing Orders are in consonance with the model Standing Orders, and (2) whether they are fair and reasonable. The workmen, therefore, can raise an objection as to the reasonableness or fairness of the draft Standing Orders submitted for certification. By amending Section 10(2) both the workmen and the employer are given the right to apply for modification and by reason of the change made in Section 4 a modification has also now to be tested by the yardstick of fairness and reasonableness. The Act provides a speedy and cheap remedy available to the individual workman to have his conditions of service determined and also for their modifications. By amending Sections 4 and 10, Parliament not only broadened the scope of the Act but also gave a clear expression to the change in its legislative policy. Parliament knew that the workmen, even as the unamended Act stood, had the right to raise an industrial dispute, yet, not satisfied with such a remedy, it conferred by amending Sections 4 and 10 the right to individual workmen to contest the draft Standing Orders submitted by the employer for certification on the ground that they are either not fair or reasonable, and more important still, the right to apply for their modification despite the finality of the order of the Appellate Authority under Section 6. Parliament thus deliberately gave a dual remedy to the workmen both under this Act and under the Industrial Disputes Act. This fact has in recent decisions been recognised by this Court. (cf. Bangalore Woollen, Cotton & Silk Co. Ltd. v. Workmen [(1968) 1 LLJ 555]

, Buckingham & Carnatic Co. Ltd. v. Workmen [CA No. 674 of 1968 decided on 25th July, 1968] and Hindustan Brown Boveri Ltd. v. Workmen [CA No. 1631 of 1966 decided on 31st July, 1967] .”

(emphasis added)

This relates to the scope of Section 10(2) of the SO Act. The Union therein had applied for certain modifications to a certified Standing Order which was partly allowed by the Regional Labour Commissioner and thereafter appealed against the same by the Union. The Appellate Authority altered the modifications. The impugned order was challenged on the scope of power of modification under Section 10(2) of the SO Act. The Apex Court usefully traversed the history of the SO Act which is reflected in paras 7 to 9 of the said decision. The underscored/ highlighted portion in para 9 extracted above notes that the attention of the Apex Court had been invited, *inter alia*, to the decision rendered in ***Management Of Bangalore Woollen, Cotton & Silk Mills Co. v. The Workmen & Anr.***, (*supra*) which states that the Parliament had deliberately given dual remedy to the workmen, both under the SO Act and the ID Act. Further, it was noted in para 11:

“11….Apart from the right to apply for modification under the Act, the workmen ,can raise an industrial dispute with regard to the standing orders. There is nothing in the Industrial Disputes Act restricting the right to raise such a dispute only when a new set of circumstances has arisen. If that right is unrestricted, can it be possible that the very legislature which passed both the Acts could have, while conferring the right on the workmen individually, restricted that right as suggested by counsel ? To

illustrate, a new industrial establishment is set up and workmen are engaged therein. Either there is no union or if there is one it is not yet properly organised. The standing orders of the establishment are certified under the Act. At the time of certification, the union or the workmen's representatives had raised either no objections or only certain objections. If subsequently the workmen feel that further objections could have been raised and if so raised the authority under the Act would have taken them into consideration, does it mean that because new circumstances have since then not arisen, the workmen would be barred from applying for modification ? Let us take another illustration. Where, after the standing orders or their modifications are certified, it strikes a workman after they have been in operation for some time that a further improvement in his conditions of service is desirable, would he be debarred from applying for a further modification on the ground that no change of circumstances in the meantime has taken place? Where the standing orders provide 10 festival holidays, if counsel were right, the workmen can never apply for an addition in their number as they would be faced with the contention that the festivals existed at the time of the last certification and there was therefore no change of circumstances."

(emphasis added)

The rest of the decision is mostly related to the modifications itself and may not be relevant to our determination. Notably, a separate opinion authored by Hon'ble Mr. Justice V. Bhargava in addition to the main opinion by Hon'ble Mr. Justice J. M. Shelat notes as under:

"26. The purpose of the Act, as it was originally passed in 1946, was merely to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen employed by them. To give effect to this purpose, Section 3 of the Act gave the power exclusively to the employers

to submit draft Standing Orders for certification. The Certifying Officer had to certify the Standing Orders, if provision was made in them for every matter set out in the Schedule and the Standing Orders were otherwise in conformity with the provisions of the Act. In addition, sub-section (2) of Section 3 also laid down that the provision to be made was to be as far as practicable, in conformity with model Standing Orders prescribed by the appropriate State Government. Thus, the Act, in its original form, was designed only for the purpose of ensuring that conditions of service, which the employer laid down, became known to the workmen and the liberty of the employer in prescribing the conditions of service was only limited to the extent that the Standing Orders had to be in conformity with the provisions of the Act and, as far as practicable, in conformity with model Standing Orders. The Certifying Officer or the Appellate Authority were debarred from adjudicating upon the fairness or the reasonableness of the provisions of the Standing Orders. Then, as noticed in the case of Rohtak Hissar District Electricity Supply Co. Ltd. [(1966) 2 SCR 863] , the legislature made a drastic change in the policy of the Act by amending Section 4 and laying upon the Certifying Officer the duty of deciding whether the Standing Orders proposed by the employer were reasonable and fair, and also by amending Section 10(2) so as to permit even a workman to apply for modification of the certified Standing Orders, while, in the original Act, the employer alone had the right to make such an application. It is, however, to be noticed that the Preamble of the Act was not altered, so that the purpose of the Act remained as before. While the Act was in its unamended form, if the workmen had a grievance, they could not apply for modification of certified Standing Orders and, even at the time of initial certification, they could only object to a Standing Order on the ground that it was not in conformity with the provisions of the Act or model Standing Orders. After amendment, the workmen were given the right to object to the draft Standing Orders at the time of first certification on the ground that the Standing Orders

were not fair and reasonable and, even subsequently, to apply for modification of the certified Standing Orders after expiry of the period of six months prescribed under Section 10(1) of the Act. These rights granted to the workmen and the powers conferred on the Certifying Officer and the Appellate Authority, however, still had to be exercised for the purpose of giving effect to the object of the Act as it continued to remain in the Preamble, which was not altered. Before the amendment of the Act, if the workmen had any grievance on the ground of unfairness or unreasonableness of the Standing Orders proposed by the employer, their only remedy lay under the Industrial Disputes Act. By amendment in 1956, a limited remedy was provided for them in the Act itself by conferring on the Certifying Officer the function of judging the reasonableness and fairness of the proposed Standing Orders. These amendments cannot, however, affect the alternative remedy which the workmen had of seeking redress under the Industrial Disputes Act if they had grievance against any of the Standing Orders certified by the Certifying Officer (see Bangalore Woollen, Cotton and Silk Mills Company Ltd. v. Workmen [(1968) 1 LLJ 555] , and Buckingham and Carnatic Co. Ltd. v. Workmen [CA No. 674 of 1968 decided on 25th July, 1968] . It is, therefore, clear that, after the amendment in 1956, the workmen have now two alternative remedies for seeking alterations in the Standing Orders proposed or already certified. They can object to the proposed Standing Orders at the time of first certification, or can ask for modification of the certified Standing Orders under Section 10(2) on the limited ground of fairness or reasonableness. But, for the same purpose, they also have the alternative remedy of seeking redress under the Industrial Disputes Act, in which case the scope of their demand would be much wider. If the proceedings go for adjudication under the Industrial Disputes Act, the workmen can claim alterations of the Standing Orders not merely on the ground of fairness or reasonableness, but even on other grounds, such as further liberalisation of the terms and conditions of service, even though the certified Standing Orders

may be otherwise fair and reasonable. The remedy provided by the Act has, therefore, a limited scope only.

……

……

28. This interpretation, of course, does not affect the right of the workmen to seek an amendment of the Standing Orders, even if certified as reasonable and fair by the Appellate Authority under Section 6, by appropriate proceedings under the Industrial Disputes Act. In fact, it appears to me that the power of a Tribunal dealing with an industrial dispute under that Act relating to direct alteration of a Standing Order held to be reasonable and fair by a Standing Order will, of course, be wide enough to permit the Tribunal to direct alteration of a Standing Order held to be reasonable and fair by the Appellate Authority under Section 6 of the Act, in case a dispute about it is referred to the Tribunal; and that is the only remedy available if either the workman or the employer desires to have modification without any fresh grounds, material or circumstances. The validity of the order of the Appellate Authority in the present appeal has to be judged on this basis."

(emphasis added)

(iii) Yet another decision of this Court that is relevant as regards the issue in question, but has not been cited by the parties, is ***Indian Oil Corporation Ltd. v. Joint Chief Labour Commissioner And Appellate Authorities and Ors.***, (1989) SCC OnLine Del 339. The issue before the Court was whether the certifying authority under the SO Act has jurisdiction to entertain an application for amendment of the Standing Order which fixes the age of retirement of the workmen at 58 years and enhances the same to 60 years, without first giving any finding whether it is practical to give effect to the MSO. Considering that the issue in this decision of 1989 was similar to

what is being raised here, reference to the same will be apposite. The Court considered the scope of the right to seek modification under Section 10 of the SO Act and held that post the 1956 amendment, power was given to the Certifying Officer to adjudicate upon the reasonableness or fairness of the Standing Orders. The Division Bench of this Court cited the decision rendered in ***Rohtak & Hissar Districts Electric Supply Company Ltd. v. State Of Uttar Pradesh And Others***, AIR 1966 SC 1471. It was noted that the contention raised in ***Rohtak*** (*supra*) was whether the MSOs should be confined to the matters which do not fall within the purview of the ID Act. It was noted that the contention was repelled by the Hon'ble Supreme Court and it was held that the two Acts do not conflict with each other. It was stated that:

> *"22. One of the contentions raised in the said case was that the Model Standing Orders permissible under the Standing Orders Act should be confined to matters which do not fall within the purview of the provisions of the Industrial Disputes Act, 1947. This contention was repelled by the Supreme Court and it was held that the two Acts do not conflict with each other. One Act purports to secure to industrial employees clear and unambiguous conditions of their employment while the object of the other Act is to deal with the problems posed by the industrial disputes which have actually arisen or are apprehended, and naturally the nature of the industrial disputes which may arise or which may be apprehended, relates to items larger in number than the items covered by the first Act and it may be also true that some of the items are common to both the Acts but the scope of the provisions of the two respective Acts and the fields covered by them from that point of view are not the same. Then referring to the amended provisions of the Standing Orders*

> *Act the Supreme Court opined that it is true that the original scope of the Act was 'narrow and limited but even after the scope of the Act has been made wider even then it cannot be said that the said Act conflicts with the provisions of the other Act.*
> (emphasis added)

The Division Bench of this Court held that the authorities had not exceeded the jurisdiction in allowing the modification of the Standing Orders and changing the age of superannuation from 58 years to 60 years even though the MSOs provided for the age of 58 years.

44. This finally leads us to the decision rendered in ***Bharatiya Kamgar*** *(supra)* of 2023 which has already been referred to above. This aspect of the Standing Orders having statutory power is further fortified by a recent decision of the Supreme Court in ***Union of India v. K. Suri Babu***, (2023) SCC OnLine SC 1591. Reference be made to para 16 of the said decision:

> *"16. A standing order is hence no ordinary order. It has a statutory mandate. The 1946 Act mandates all owners of industrial establishments which are employing 100 or more workmen to prepare standing orders which should cover all matters relating to employment of a workman which have been given in the schedule of the 1946 Act and then these standing orders further need to be certified by the authority under the 1946 Act. The objective and purpose of the 1946 Act was to have a certainty in service conditions of workmen and a responsibility was placed upon the employer to formulate fair conditions of industrial employment, including in its disciplinary proceedings against a workman. In other words, standing orders are a set of Rules which have to be strictly followed and cannot be ignored, modified or changed, except in accordance with law."*

45. Despite the detailed submissions of the counsel for the petitioner relating to the jurisdiction of the Industrial Tribunal to adjudicate upon an issue concerning the retirement age, prescribed under the Standing Orders, the position in this regard stands stated, clarified and reiterated by both the Hon'ble Supreme Court and this Court, throughout the decisions referred herein above. To reiterate, it has been stated by the Hon'ble Supreme Court in ***Management Of Bangalore Woollen, Cotton & Silk Mills Co. v. The Workmen & Anr.***, (*supra*) and subsequent decisions that, as a matter of principle, there is no conflict between the SO Act and the ID Act, and while the SO Act may be more specific to the issues it deals with, the ID Act is a more beneficial piece of legislation dealing with a larger canvas. There was no exclusion in the SO Act relating to the possibility of adjudication of a service condition under the ID Act.

46. No doubt, the process under Section 10(2) of the SO Act could have been adopted and may seem to be a more natural recourse considering that there is an established procedure for seeking modification in a certified Standing Order (as discussed in paras above). However, applying the principles as laid down by the Hon'ble Supreme Court, the Industrial Tribunal would also be empowered to adjudicate upon the said issue, if so, raised by the workmen/ Union and if considered fit for reference by the government to the Industrial Tribunal for adjudication. Even from a practical viewpoint, at the end of the day, it is a special court that is empowered to hear and entertain labour disputes and adjudicate upon the appropriateness of the demand of the workmen in relation to their service conditions.

47. In light of the law, as clearly enunciated by the Hon'ble Supreme Court, the contention of the petitioner regarding the jurisdictional issues, therefore, cannot be accepted.

WJ Act

48. Coming to the submission of the petitioner, made on a demurrer, that the petitioner was a 'newspaper establishment' under the WJ Act and therefore had to be treated as a single establishment and the appropriate government to refer should be the Central Government and not the State Government, it must be noted that the petitioner establishment did not object to this issue when the matter was before the Gujarat High Court and neither did it challenge the same before the Hon'ble Supreme Court. If it considers itself as governed by the WJ Act only and therefore requires a reference from the central government, it ought to have raised this issue by challenging the reference in the first place. Admittedly, there was no challenge to the reference in this matter by the establishment and therefore, this contention cannot be accepted at this stage. Having acquiesced in the reference and the determination therefore, the petitioner establishment cannot approbate and reprobate, and challenge it at this stage. Even otherwise, the WJ Act is an Act for regulating the service conditions of the journalists and other persons employed in newspaper establishments. The WJ Act does not preclude the application of the ID Act in relation to industrial disputes.

49. Reference to the Majithia Wage Board and other similar wage boards relating to wages of employees in newspaper establishments, in the opinion of

this Court, may be out of context because – *firstly*, the jurisdiction to consider the demand of retirement age was taken away from the Majithia Wage Board after an objection was taken by newspaper employers and the Hon'ble Supreme Court had declined to go into that issue; and *secondly*, the existence of a Wage Board on a national level does not in any manner preclude the State wise reference of an industrial dispute under the ID Act or even modification of the certified Standing Order prevalent in a particular State. Going by the contention of the petitioner, it was not denied by the petitioner that modification of the certified Standing Order could have potentially been triggered through Section 10 (2) application or Section 13A reference under the SO Act. Both of these, in any event, would have gone to the specified process through the State government. Yet again this could have been a ground to challenge the reference in the first place, which was not done by the petitioner establishment.

Espousal

50. We now deal with the issue of lack of legitimate espousal, as contended by the petitioner. Petitioner to support his contention that the management has a right to question the process followed by the Union, placed his reliance on the decision of this court in ***Voltas Limited Vs. Voltas Employees' Union and Another***, 2007 SCC OnLine Del 53. Tribunal in its impugned award took notice of the management's contention relating to the espousal but was unable to find the basis for the same, as workmen had placed on record the resolution dated 20.06.2008 passed by the Indian Express Newspapers Workers Union.

The Union unanimously resolved to raise an industrial dispute concerning the raising of retirement age and legal demand notice dated 14.07.2008 was issued on the letterhead of the Union, and the statement of claim was filed before the conciliation officer by the same Union. Tribunal made note of a judgment of Hon'ble Kerala High Court, Division Bench in the matter of ***Mangalam Publications (India) Pvt. Ltd. v. Saju George,*** W.A. No. 964 of 2020, decided on 01.12.2020 on similar issue and also considered the findings in the case of ***Pratap Singh & Anr. vs. Municipal Corporation of Delhi***, a decision of this Court in WP(C) No. 676/2013 wherein *vide* order dated 04.02.2013, this Court reversed the finding of the Labour Court on the issue of espousal categorizing it as hyper-technical.

51. Respondent Union and the Tribunal also placed reliance on ***Omji Srivastava & Others Vs P.W.D./C.P.W.D.,*** 2023 SCC OnLine Del 1726, a judgment dated 17.03.2023, wherein this Court held:

> "*As held by Hon'ble Supreme Court in J.M Jhadav Vs Forbes Gokak Ltd reported as 2005 (3) SCC 202, there is no particular form prescribed to effect the espousal. Generally, Union passes resolutions, however sometimes proof of support by the Union may also be available aliunde. It would depend upon the facts of each case. In the present case, even though no resolution was placed on record on behalf of the Union, from the documents placed on record by the Petitioners/Workmen, i.e. Exhibit WW2/1 to WW2/7, it is evident that the Hindustan General Mazdoor Union has espoused the cause of the Petitioners/Workmen.*"

52. Tribunal *vide* its impugned award found that there is ample material on record i.e. Ex. WWI/4 i.e. copy of the legal demand notice which was sent on the letterhead of the Indian Express Newspapers Workers Union (Regd.), Ex.

WWl/9 i.e. the copy of the Statement of Claim filed by the same union before the conciliation officer of Govt. of NCT of Delhi, Ex. WWl/2 i.e. copy of the resolution on espousal dated 20.06.2008 passed by the Indian Express Newspapers Workers Union, wherein the Union unanimously resolved to raise an industrial dispute concerning the raising of retirement age. In addition to this, the General Secretary of the Union himself appeared in the witness box and was duly cross-examined by the AR for the management. Tribunal also noted that no such objection has been taken by the management when the proceedings were conducted before the conciliation officer and the same cannot be taken at this belated stage, more so in the absence of a basis/reason for stating that the present dispute is not properly espoused by the Union. Tribunal also noticed that the dispute pertains to the general demands of the workmen for raising their retirement age and the technicalities of espousal would not come into the picture.

Similar establishments

53. Petitioner contended that Paragraph 35 of the impugned Award is perverse in light of the cross-examination of MW1, MW2, and MW3. The paragraph 35 of the impugned order reads:

> *"35. Perusal of file shows that the workman has relied upon the aforesaid marked documents, which they could not duly prove during their examination. However, the management did not dispute the authenticity of these documents or have nowhere denied that the retirement age in Times of India' (Bennett Coleman Limited) and Hindustan Times is not 60 years, nor the AR for the management, while cross-examining the workmen witness chose to cross-examine him on this aspect. On the contrary, the Management Witness in his*

cross-examination dated 06.03.2016 categorically admitted that the retirement age in Telegraph, Statesman, Dainik Jagran, India Today, NDTV and even in Hindustan Times and Times of India is extendable to 60 years, provided they found medically fit and their performance is satisfactory. So, when the contents of documents are admitted by the management then these documents can be read and are exhibited as Ex. PX and Ex. PY."

54. Petitioner contends that this finding is not correct as in cross-examination of MW-1 it was recorded:

"... The retirement age fixed at 58 year in Telegraph, Statesman, Dainik Jagran, India Today, NDTV and even in Hindustan Times and Times of India retirement age is 58 years which can be increased by two years i.e. 60 years if found medically fit and performance is OK..."

The cross-examination of MW-2 on 24.05.2017 reads as:

"....I cannot say anything about the retirement age of non journalists in Times of India, Hindustan Times, Statesman, The Hindu, PTI and UNI....The retirement age for both journalist and non-journalist in Dainik Jagran, India Today and Telegraph is 58 years. It is wrong to suggest that the retirement age of both journalist and non-journalist in above mentioned newspaper is 60 years....It is wrong to suggest that in other newspapers the retirement age of the journalist and non-journalist is 60 years...."

In cross-examination, MW-3 stated:

"The retirement age of the employees in the daily newspapers Times of India, Statesman, Hindustan Times and Dainik Jagran is 58 years. I am deposing in this regard on the basis of survey conducted by me.....It is wrong to suggest that the retirement age of the employees in daily newspapers Times of India, Statesman and Hindustan Times is 60 years....."

55. The impugned award relied upon these findings, *inter alia* in that comparable industries like Times of India, Hindustan Times, Statesman, The Hindu, PTI, and UNI having its offices in Delhi as well as outside Delhi continue to employ journalists and non-journalists even after 58 years till attaining 60 years of age; 5th Central Pay Commission, Central Government, and State PSUs have also raised the retirement age from 58 to 60 years; admission in cross-examination by MW that the retirement age in Telegraph, Statesman, Dainik Jagran, India Today, NDTV, Hindustan times and Times of India is extendable to 60 years on basis of medical fitness and performance; instances of retired personnel being re-hired; financial burden to be increased because of new hiring and training and increase in life expectancy due to improved nutrition and well-being.

56. The impugned order, in its analysis, *firstly* rejected the reliance on the Majithia Wage Board; and *secondly,* the application of the Gujarat order as well (since the Gujarat order was restricted primarily to Gujarat and Bombay regions); and, *thirdly*, accepted the principle that the industry-cum-region concept would have to be applied. However, simpliciter, relying merely on the basis that the retirement age in some other newspapers was extendable to 60 years, as well as based upon its opinion that extending the retirement age to 60 years would benefit the establishment (since they won't have to pay wages to new recruits to do the same work) it reached its conclusion.

57. This assessment is flawed, inadequate, insufficient and ignores the well-established law relating to the assessment of service conditions in industrial establishments. Reliance of the petitioner on a series of decisions *inter alia*

Novex Dry Cleaners (supra), ***Kamani Metals & Alloys*** (supra), ***Hindustan Antibiotics*** (supra), and ***Concept Pharmaceuticals Ltd*** (Supra) is apposite in this context. The relevant portions of these decisions are as under.

58. In ***Novex Dry Cleaners*** (supra), the Hon'ble Supreme Court held as under:

> *"5. In our opinion, this conclusion is open to serious criticism. In dealing with the question as to whether the appellant establishment was comparable to Snowhite and Band Box, it was obviously necessary to compare the three institutions in respect of their standing, the extent of the labour force employed by them, the extent of their respective customers and, what is more important, a comparative study should have been made of the profits and losses incurred by them for some years before the date of the award. Unfortunately, the Tribunal has not even considered the balance-sheets produced by the appellant showing the position of the profit and loss of the appellant itself. These documents are Exts. M/2, M/4, M/6, M/8 and M/10. The financial position of the two other concerns has not been referred to in the award and presumably no evidence about the said point was adduced before the Tribunal. On the question of the strength of the labour force, it appears that the appellant engages 109 permanent employees and 20 to 30 temporary employees, whereas the Snowhite appears to have 258 persons on its rolls; about the labour force of the Band Box, there is no evidence. The oral evidence given by some of the witnesses on behalf of the respondents is very vague and cannot at all serve to support the finding about the financial position of the appellant. Therefore, in our opinion, the Tribunal was in error in making a finding about the financial position of the appellant in comparison to that of the Snowhite and the Band Box without applying its mind to the relevant factors and without calling upon the parties to adduce relevant and material evidence in that behalf. It is well known that in fixing the wage structure on a fair basis, an attempt is generally made in assessing the additional liability imposed upon the employer by the new wage structure and trying to anticipate whether the employer would be able to meet it for reasonably long period in future. Since the Tribunal has not considered*

these aspects of the matter at all, we cannot uphold its award whereby it has merely adopted the wage scale fixed by the two awards in respect of the Snowhite and the Band Box."

(emphasis added)

59. In ***Kamani Metals & Alloys*** (supra), the Hon'ble Supreme Court observed while considering its decision in ***Novex Dry Cleaners*** (supra):

"10. The next part of the inquiry involved the application of the principle of industry-cum-region. This principle is that fixation or revision of scales of wages, pays or dearness allowance must not be out of tune with the wages etc. prevalent in the industry or the region. This is always desirable so that unfair competition may not result between an establishment and another and diversity in wages in the region may not lead to industrial unrest. In attempting to compare one unit with another care must be taken that units differently placed or circumstanced are not considered as guides, without making adequate allowance for the differences. The same is true when the regional level of wages are considered and compared. In general words, comparable units may be compared but not units which are dissimilar. While disparity in wages in industrial concerns similarly placed leads to discontent, attempting to level up wages without making sufficient allowances for differences, leads to hardships."

(emphasis added)

60. In ***Hindustan Antibiotics*** (supra), a Constitution Bench of the Hon'ble Supreme Court observed:

"5. The Industrial Tribunal made the following findings among others : Rejecting the contention of the Company that in fixing the wage scales different considerations and standards should apply to public sector undertakings as distinct from private sector undertakings, the Tribunal fixed the wage scales on region-cum-industry basis. On a scrutiny of the comparative study of the wage structures of companies in the region, it found that the Company was a very large and prosperous concern and its wage scales were on the low side, particularly in regard to the lower

categories of workers, taking into consideration the duties and qualifications prescribed for them. The Tribunal fixed the wage scales, having regard to the Companys financial position, its productive capacity, a comparative study of its wage structure with that in the neighbouring industries, and similar other relevant factors. It retained the existing dearness allowance scheme except for a small alteration in the slab of dearness allowance for the pay group Rs 301-500; it merged a proportion of what would normally be paid in the shape of dearness allowance in the basic pay in the case of lower categories of workmen by giving increases wherever necessary in the basic pay only. It linked the dearness allowance with the cost of living index for Poona. It evolved a gratuity scheme for the workmen. It gave retrospective operation to the award. The findings of the Tribunal on other points need not be mentioned here they will be dealt within appropriate places. In the result, pursuant to the said directions, the Tribunal had worked out the figures in detail and given its findings on the various demands made by the workmen.

.....

.....

9. At the outset, it will be convenient to consider the question of principle. The object of the industrial law is two-fold, namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (ii) by that process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour. By this process, it is hoped that the standard of life of the labour can be progressively raised from the stage of minimum wage, passing through need found wage, fair wage, to living wage. Industrial adjudication reflected in the judgments of tribunals and the courts have evolved some principles governing wage fixation though accidentally they related only to industries born in the private sector. The principle of region-cum-industry, the doctrine that the minimum wage is to be assured to the labour irrespective of the capacity of the industry to bear the expenditure in that regard, the concept that fair wage is linked with the capacity of the industry, the Rule of relevancy of comparable concerns,

and the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in the fixation of wage structure, are all so well settled and recognised by industrial adjudication that further elaboration is unnecessary……..

……

That apart, whatever may be said about proprietary firms, it cannot be asserted that every company born in the private sector only functions on private motives; it may earn profits, pay reasonable dividends and plough back the balance of the profits into the industry for its further growth. So too, it cannot be asserted that always a State will utilise the profits earned for the good of the country. There are many instances in the world where the national resources were frittered away. In the ultimate analysis, the character of the employer or the destination of profits has no relevance in the fixation of wages. Whoever may be the employer, he has to pay a reasonable wage to the employees. The incongruity of the alleged distinction in the matter of wages is further exemplified if we compare similar industries in the same region owned by the State and by the Union. Now, if the argument be accepted, the pattern of wage structure between these also must differ, for, the pay scales now obtaining in the State Governments and the Central Government radically differ. On the other hand, if the doctrine of region-cum-industry is accepted, all the employees of industries of similar nature, irrespective of the character of the employers, will get a fair deal without any discrimination which will certainly be conducive to the industrial development of our country."

(emphasis added)

61. In the case of ***Concept Pharmaceuticals Ltd*** (supra), High Court of Bombay made the following observation and remanded the matter back to the Tribunal for a *de novo* enquiry and decision on grounds, *inter alia*, there being no discussion with regard to the evidence including material for a comparison:

"9. (i) Precise recapitulation of above referred judicial pronouncements would clearly reveal that in the matter of application of industry-cum-region formula, the comparison of wage scales should

be in relation to the similar concerns in the region. Ordinarily speaking, similar concerns would be those in the same line of business, indeed, the Apex Court in French Motor case (1962 II LLJ 744), while dealing with the class of employees consisting of drivers, sweepers, peons, clerks, godown-keepers, typist and stenographers, held that it may be possible to take into account even those concerns which are engaged in an entirely different line of' business, because work of the employees of that class is more or less similar in all the concerns. This exception is related only to the extent of dissimilarity in the concerns in the matter of comparison while applying the said formula of industry-cum-region and it does not extend or relate to exemption from comparison itself or from the obligation to apply the said formula. The Tribunal is under obligation and has to assess the additional liability which will be imposed upon the employer by the new wage structure and try to anticipate whether the employer would be able to bear the same for a reasonably sufficient period in future. Failure on the part of the Tribunal to approach the issue on the settled lines would constitute serious infirmity rendering the award bad in law."

(emphasis added)

62. The Industrial Tribunal, therefore, does not sit in an easy arm-chair for the purposes of this assessment, and merely on extremely slim and lightweight reasons reach a finding that the retirement age ought to be increased. Increase in retirement age has a vast and far-reaching impact on the establishment and the manner in which it runs its own business and plans for future. Increasing the retirement age across all cadres of employees in a large establishment involves a very high economic impact and therefore, it is necessary to analyze it threadbare, assess comprehensively on various relevant parameters. Some of the parameters have been usefully employed in decisions noted above.

63. Comparison, if at all, with other institutions, has to be in respect of their relative standing, extent of the labour force, extent of respective customers,

profits and losses for a few years, financial position, productive capacity, wage structure in neighboring industries, inflexibility or flexibility of retirement age, totality of the basic wage structure, additional liability which would be imposed upon the employer, consideration whether the employer would be able to bear it for a sufficient period in the future, and the different classes of employees for which it is sought to be employed.

64. The list above is merely illustrative and certainly not exhaustive. These and other parameters become necessary for any assessment which has a large financial impact. Needless to say, if it was an issue that was so obvious, the retirement age would have been increased to 60 years across the board for this establishment and others. The Industrial Tribunal has also erred in taking the option of extendibility of the retirement age from 58 to 60 years in other newspaper establishments, as a fixed retirement age of 60 years. There is a clear difference between a fixed retirement age and the option of extending the same by 2 years based on the health, performance, and other factors relating to the employee. Importantly it is noted, that existing Model Standing Order still defines the age of superannuation at 58 years. Therefore, displacing the same in its application to the establishment, necessitates proper consideration of materials, keeping in view above-mentioned observations and findings. This is further necessitated in view of the fact that an application for adducing additional evidence was made by the respondent herein which was subsequently rejected by the Tribunal.

Conclusion

65. Therefore, this Court is of the opinion that even while the Industrial Tribunal was correct in the exercise of its jurisdiction (as already held above), it did not exercise its jurisdiction in the proper manner, considered irrelevant materials, ignored or did not requisition relevant materials, made an irrational, fragile, perfunctory and cursory assessment in order to reach its conclusion. Clearly, this necessitates interference in the supervisory and extraordinary jurisdiction of this Court. The Industrial Tribunal ignored all the established parameters for revising the service conditions/ wages of an establishment, as is noted above.

66. Accordingly, the impugned order is set aside and the matter is remanded back to the Industrial Tribunal for fresh adjudication after considering all materials which may be placed by the parties in detail to be examined with a fresh nuanced outlook and robust reasoning, taking into account decisions of the Hon'ble Supreme Court and this Court, as noted above, and as may be presented by the parties.

67. The petition stands disposed of with the above-mentioned observations and directions.

68. Pending applications, if any, also stand disposed of.

69. Judgment be uploaded forthwith on the website of this Court.

(ANISH DAYAL)
JUDGE

JANUARY 15, 2023/sm