



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.18857/2022 (L-RES)

BETWEEN:

TRIVENI TURBINE LIMITED,
12-A, PEENYA INDUSTRIAL AREA,
BENGALURU – 560058.
REPRESENTED BY ITS
DEPUTY GENERAL MANAGER (HR & ADMN.)
PETITIONER IS A COMPANY INCORPORATED
UNDER COMPANIES ACT 1956 AND IS IN
THE MARKET LEADERS IN STEAM TURBINES.

... PETITIONER

(BY SRI C.K. SUBRAHMANYA, ADVOCATE FOR
SRI B.C. PRABHAKAR, ADVOCATE)

AND:

1. GOVERNMENT OF KARNATKA
DEPARTMENT OF LABOUR,
VIKAS SOUDHA, VIDHANA VEEDHI ,
BENGALURU – 560 001
BY ITS PRINCIPAL SECRETARY.
2. SRI C.S. PRAKASH
S/O. SRI C.G. SHAMBULINGAPPA,
AGED ABOUT 43 YEARS,
NO.13, 8TH MAIN, 9TH CROSS,
BHUVANESHWARINAGARA,
T. DASARAHALLI, BENGALURU – 560057.
3. SRI GANGARANGAIAH G.K.
S/O. SRI KEMPANNA,
AGED ABOUT 39 YEARS,
NO.105, NAGAVENI NILAYA,
OLD SOCIETY ROAD, 1ST CROSS,
1ST MAIN, PIPE LINE ROAD,

MALLASANDRA, T. DASARAHALLI,
BENGALURU – 560057.

4. SRI YOGISHAPPA M.H.
S/O. SRI HANUMANTHAPPA,
AGED ABOUT 39 YEARS,
B. SIDDARAHALLI, KASABA HOBLI,
DUGLAPURA POST,
CHIKKAMAGALURU – 577144.
5. SRI VENKATESHA MURTHY .G
S/O. SRI GOVINDA RAJU .G
AGED ABOUT 38 YEARS,
NO.165, KUMBARAHALLI,
GIRIYAPPA GARDEN, THARABANAHALLI,
CHIKKABANAVARA POST,
BANGALORE NORTH,
BENGALURU – 560 090.
6. SRI DINESHA A.N.
S/O. SRI NAGAPPA,
AGED ABOUT 39 YEARS,
NO.851, PRANAV NILAYA,
17TH MAIN, MARIYAPPANA PALYA,
NEAR SHIVAKUMARASWAMY
KALYANA MANTAPA, BENGALURU – 560056.
7. SRI BABU BHAIREGOWDA .J
S/O. SRI JAYARAMEGOWDA
AGED ABOUT 35 YEARS,
NO.614, 60 FEET MAIN ROAD,
MEI LAYOUT, BAGALAGUNTE,
BENGALURU – 560073.
8. SRI PRABHU KUMARA .M
S/O. SRI MARAVENKATAPPA,
AGED ABOUT 35 YEARS,
NO.49/A, MATHRUSHREE NILAYA,
R R COLLEGE ROAD,
OPP. CHIKKABANAVARA RAILWAY STATION,
VINAYAKANAGAR, CHIKKABANAVARA,
BENGALURU – 560090.
9. SRI SHIVARAM .N
S/O. SRI NAGARAJU,

AGED ABOUT 36 YEARS,
NO.611, NEAR RAILWAY STATION,
CHIKKABANAVARA, BENGALURU – 560090.

10. SRI VENKATESH H.R.
S/O. SRI RAMANNA,
AGED ABOUT 36 YEARS,
NO.889, 1ST CROSS, 8TH MAIN,
BEHIND VST COMPANY,
BHUVANESHWARINAGARA,
HESARAGHATTA MAIN ROAD,
T. DASARAHALLI, BENGALURU – 560057.
11. SRI PRASANNA G.A.
S/O. SRI APPU G.M.
AGED ABOUT 56 YEARS,
NO.92, BHUVINISHA,
1ST MAIN, PIPELINE ROAD,
ABBIGERE, THAMMAIAH GARDEN,
CHIKKABANAVARA, BENGALURU – 560090.
12. SRI ANANDA .K
S/O. SRI KEMPANNA,
AGED ABOUT 50 YEARS,
NO.113, NADUBIDI, IVAR KANDAPURA,
HESARAGHATTA LAKE, BENGALURU – 560089.
13. SRI CHETHAN KUMAR B.K.
S/O. SRI KRISHNAPPA,
AGED ABOUT 36 YEARS,
NO.7, BOMMANAYAKANAHALLI,
BEVUR MANDYA POST, MALLUR HOBLI,
CHANNAPATNA TALUK,
RAMANAGARA – 562108.
- 14 . SRI MANJANNA. S
S/O. SRI SIDDEGOWDA,
AGED ABOUT 36 YEARS,
DOOR NO.11/2, HARIHARA LAYOUT,
1ST MAIN ROAD, NEAR BENAKA ENCLAVES,
ANCHEPALYA MAIN ROAD,
NAGASANDRA POST,
THOTADAGUDDADAHALLI,
BANGALORE – 560073.

15. SRI RACHAYYA MATHAPATI
S/O. SRI VIRUPAKSHAYYA,
AGED ABOUT 36 YEARS,
NO.70/4, ADAKAMARANAHALI,
NEAR OVER HEAD TANK,
DASANAPURA HOBLI, NELAMANGALA TALUK,
BANGALORE – 562162.
16. SRI PRAVEEN R. NAIK
S/O. SRI RAMACHANDRA M. NAIK,
AGED ABOUT 38 YEARS,
NO.2057, 3RD FLOOR, 5TH CROSS,
NEAR SELECTION CORNER,
PRASHANTH NAGAR, T. DASARAHALLI,
BENGALURU – 560057.
17. SRI HARIHARESHWARA SWAMY
S/O. SRI BASAPPA,
AGED ABOUT 38 YEARS,
NO.119, SUMANTH SADANA,
1ST MAIN, SAHYADRI BALAGA,
SIDDESHWARA LAYOUT, SIDEDAHALLI,
BENGALURU – 560073.
18. SRI CHETAN A.L.
S/O. SRI ANNEGOWDA,
AGED ABOUT 34 YEARS,
NO.157, SURACHITHA NILAYA,
RANGANATHASWAMY LAYOUT,
DASANAPURA, BENGALURU – 562162.
19. SRI RAMA RAO D.R.
S/O. SRI D.R. RAMAKRISHNA MURTHY,
AGED ABOUT 42 YEARS,
NO.135/197, ASHIRWADA,
VINAYAKA LAYOUT, OPPOSITE NURSERY,
BINNAMANGALA, ARASINAKUNTE POST,
NELAMANGALA TALUK,
BENGALURU – 562123.
20. SRI S. MAHADEVIAIAH
S/O. SRI SIDDAIAH,
AGED ABOUT 38 YEARS,
NO.55, 2ND CROSS, NISARGA LAYOUT
SEEDALLI MAIN ROAD, BONEMILL,

HESARAGHATTA MAIN ROAD,
BENGALURU – 560073.

21. SRI SHIVAKUMAR .R
S/O. SRI K. RAMALINGEGOWDA,
AGED ABOUT 36 YEARS,
NO.15, 11TH MAIN ROAD,
CANARA BANK BUILDING,
AVALAHALLI MAIN ROAD,
RAGHAVENDRA BLOCK,
SRINAGAR, BENGALURU – 560050.
22. SRI H.B. KHIZAR BASHA
S/O. MR. H.D. BASHU SAB,
AGED ABOUT 51 YEARS,
NO.1046, 3RD BLOCK,
MADDANI NAGAR, NEAR RAILWAY BRIDGE
CHIKKABANAVARA, BENGALURU – 560090.
23. SRI KARIBASIAH .M
S/O. SRI BASALINGAIAH
R/AT NO.20, MAHIMAIAH ENCLAVE,
NEAR GOVERNEMNT HOSPITAL,
THIPPENAHALLI, DODDABIDIRAKALLU,
BENGALURU – 560073.
24. SRI MUNIRAJU
S/O. SRI UJJINAPPA
AGED ABOUT 37 YEARS,
NO.758, 7TH CROSS,
BAGALAGUNTE, NAGASANDRA (P),
BENGALURU – 560073.
25. SRI GANESHA SHIVA NAIK
S/O. SRI SHIVA H. NAIK
AGED ABOUT 38 YEARS,
NO.216, FLAT F2, 10TH CROSS,
5TH MAIN, NRUPATHUNGA NAGARA,
NGEF LAYOUT, NAGARABAVI,
BENGALURU – 560072.
26. SRI RENUKARAJ
S/O. SRI CHIKKIREGOWDA,
AGED ABOUT 35 YEARS,
NO.32, 1ST MAIN,

RANGANATHA SWAMY LAYOUT,
DASANAPURA POST,
BANGALORE NORTH,
BENGALURU – 562162.

27. SRI KIRAN M. DANAYAT
S/O. SRI. MADHAV DANAYAT,
AGED ABOUT 36 YEARS,
DOOR NO.240, NEAR AHAM ATHMA SCHOOL,
KARIHOBANAHALLI, BALAJI NAGARA
BANGALORE – 560073.
28. SRI MUNIRAJU B.R.
S/O. SRI RANGAPPA,
AGED ABOUT 35 YEARS,
BALERLAHALLI VILLAGE,
THONDEBHAVI HOBLI,
KALLINAYAKANAHALLI POST,
GOWRIBIDANUR TALUK,
CHIKKABALLAPUR DISTRICT – 561213.
29. SRI JAYAKUMAR S.M.
S/O. SRI MALLESHAPPA,
AGED ABOUT 37 YEARS,
SEEGE VILLAGE AND POST,
SALAGAME HOBLI, HASSAN – 573219.
30. SRI RAKESH K.R.
S/O SRI. K.R RANGARAMU,
AGED ABOUT 38 YEARS,
NO.54/2, SRIRANGA,
2ND CROSS, 3RD MAIN ROAD,
KALYAN NAGAR, T. DASARAHALLI,
BENGALURU – 560057.
31. SRI SADASHIVA S.T.
S/O. SRI THYAGARAJA,
AGED ABOUT 38 YEARS,
NO.36/2, SEEGE VILLAGE AND POST,
SALAGAME HOBLI, HASSAN – 573201.
32. SRI KRISHNA MURTHY .N
S/O. SRI NARASIMHAIAH,
AGED ABOUT 36 YEARS,
NO.121, 4TH CROSS, BGS LAYOUT,

KUDURUGERE MAIN ROAD,
TOTADAGUDDADAHALLI,
NAGASANDRA PSOT,
BENGALURU - 560073.

33. SRI GOVINDA RAJU .S
S/O. SRI SRINIVAS,
AGED ABOUT 44 YEARS,
NO.55, SAMPIGAMMA,
VISHWESHWARIAH LAYOUT,
11TH CROSS, SIDEDAHALLI,
BENGALURU - 560073.
34. SRI B. PRAKSAH SINGH
S/O. SRI BALAJI SINGH,
AGED ABOUT 53 YEARS,
NO.33, 1ST MAIN, 1ST CROSS,
KALIDASA LAYOUT, SRINAGARA,
BANASHANKARI, BENGALURU - 560050.
35. SRI GANGADHARA
S/O. SHIVANNA GOWDA,
AGED ABOUT 37 YEARS,
NO.57/2, 19TH CROSS,
7TH MAIN, MEI LAYOUT,
BAGALGUNTE, NAGASANDRA,
BENGALURU - 560073.
36. SRI GANGADHAR B.L.
S/O. SRI G.K. LAKSHMANA,
AGED ABOUT 41 YEARS,
NO.242, SRI LAKSHMINARASIMHA,
SWAMY NILAY, 8TH CROSS,
NANDINI ROAD, BHUVANESHWARI NAGAR,
NEAR SHANIMAHATMA TEMPLE,
T. DASARAHALLI,
BENGALURU - 560057.
37. SRI MADHUSUDHAN .N
S/O. SRI NARAYANASWAMY .R
AGED ABOUT 41 YEARS,
NO.12/1, 8TH MAIN, BANDAPPA GARDEN,
MUTHYLANAGAR, GOKULA,
BENGALURU - 560054.

38. SRI BASAVARAJU G.R.
S/O. SRI RAMACHANDRAPPA G.K.
AGED ABOUT 39 YEARS,
NO.1, UNGRA ROAD,
GOPALAPURA GUBBI TALUK,
KASABA HOBLI, GOPALAPURA,
TUMKUR – 572216.
39. SRI SHASHIKUMAR B.C.
S/O. SRI B.S. CHUNCHEGOWDA,
AGED ABOUT 38 YEARS,
NO.156, 3RD CROSS, BHANDARAHALLI,
RIGHT SIDE BILAKI, KAWALGUNDI,
SHIVAMOGGA – 577229.
40. SRI SIDDAPPA KHOT
S/O. SRI MUTTAPPA,
AGED ABOUT 35 YEARS,
NO.17, NEAR B J S LAYOUT,
ANJANADRI NEW EXTENSION LAYOUT,
THAMMENAHALLI PALYA,
VTC: ACHITNAGAR, PO: ACHITNAGAR,
BANGALORE NORTH,
BENGALURU – 560107.
41. SRI RAMESH .R
S/O. SRI RAJA,
AGED ABOUT 43 YEARS,
NO.63, 1ST CROSS,
NEAR VENUGOPAL SWAMY TEMPLE,
BAGALAGUNTE, NAGASANDRA POST,
BENGALURU – 560073.
42. SRI SHIVARAJU S.A.
S/O. SRI ANNEGOWDA,
AGED ABOUT 33 YEARS,
NO.474, 6TH B CROSS,
NEAR GOVERNMENT SCHOOL,
BHUVANESHWARI NAGARA,
T. DASARAHALLI,
BENGALURU – 560057.
43. SRI H. LINGARAJU
S/O. SRI HUCCHANNA,
AGED ABOUT 47 YEARS,

NO.460/A, 16TH CROSS,
BAGALAGUNTE, BANGALORE NORTH,
BENGALURU – 560073.

44. SRI KALAKANA GOWDA D.H.
S/O. SRI DODDAANDANAGOWDA,
AGED ABOUT 35 YEARS,
NO.78, S K S NILAYA, 4TH CROSS,
ADAKEMARANAHALLI, MAKALI,
DASANAPURA, BENGALURU – 562162.
45. SRI PANDUKUMAR H.T.
S/O. SRI THOPEGOWDA,
AGED ABOUT 42 YEARS,
NO.141, 1ST MAIN, 6TH CROSS,
EXCEL NAGARA, RAVUTTHANAHALLI ROAD,
BEHIND NEW AGARWAL BHAVAN,
DASANAPURA, BENGALURU – 562123.
46. MR. SOHEL AHAMED .S
S/O. MR. ABDUL KAREEM,
AGED ABOUT 40 YEARS,
NO.6, 2ND FLOOR, 6TH CROSS,
NEXT TO VIJAYA HOSPITAL,
PRASHANTH NAGARA, T. DASARAHALLI,
BENGALURU – 560057.
47. SRI MOHAN B.R.
S/O. SRI RAMACHANDRA MURTHY,
AGED ABOUT 44 YEARS,
NO.106, LAKSHMIDEVI NILAYA,
ANNAPOORNESHWARI LAYOUT,
THIPPENAHALLI MAIN ROAD,
NAGASANDRA POST,
BENGALURU – 560073.
48. SRI JITHENDRA
S/O. SRI SRINIVASU N.S.
NO.249, 7TH MAIN, NEAR MYSORE ROAD,
NEW KAVIKA LAYOUT, BAPUJINAGARA,
BENGALURU – 560 026.
49. SRI SUBHAS SOLANKAR,
S/O. SRI MAHADEV SOLANKAR,
AGED ABOUT 38 YEARS,

NO.16, 3RD CROSS, T.DASARAHALLI,
M T S COLONY, BENGALURU – 560057.

50. SRI GANGADHARA .A
S/O. SRI AJJAPPA,
AGED ABOUT 51 YEARS,
NO.9, SHIVAKRUPA,
KEMPEGOWDA GARDEN,
ABBIGERE, PIPELINE ROAD,
NEAR MAHALAKSHMI TEMPLE,
BENGALURU – 560090.
51. SRI MAHALINGAPPA KOPPA
S/O. SRI HAVAPPA,
AGED ABOUT 43 YEARS,
NO.145, 7TH MAIN, 2ND CROSS,
ATTURLAYOUT, NEW TOWN YELAHANKA,
BENGALURU – 560063.
52. SRI CHIDANANDA MURTHY G.K.
S/O. SRI T. KENCHAPPA,
AGED ABOUT 39 YEARS,
GOWDANAKATTENAHALLI,
BASOOR, BASOOR POST,
KADURU TALUK,
CHIKKAMAGALURU – 577116. ... RESPONDENTS

(BY SMT. SPOORTHI V., HCGP FOR R-1;
SRI K.B. NAVEEN KUMAR, ADVOCATE FOR R-2 TO R-52)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS
LEADING TO THE ISSUANCE OF THE ORDER OF REFERENCE DATED
22.06.2022 IN NO.LD-IDM/370/2022/LD.DO.6LS (ANNEXURE-R);
QUASH THE ORDER OF REFERENCE DATED 22.06.2022 IN NO.LD-
IDM/370/2022/LD.DO.6LS (ANNEXURE-R).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON
19/01/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The question that falls for consideration before this Court is:

"Whether the order of reference made under Section 10 (1) of the Industrial Disputes Act, 1947 ('ID Act' for short) would raise a question of industrial dispute in the event the employee has voluntarily retired from service and has accepted the benefits of voluntary retirement, can be treated as a workman as defined under Section 2(s) of the ID Act?"

2. The petitioner-company is assailing the legality and correctness of the order of reference made by respondent No.1.

3. Before advertng to the facts of the case, it is necessary to consider the proposition of law in the power of making reference and the condition precedent to the Government in making the reference.

4. Section 10(1) of the ID Act reads as under:

"10. Reference of disputes to Boards, Courts or Tribunals.—(1) *Where the appropriate Government is of opinion that any industrial dispute*

exists or is apprehended, it may at any time, by order in writing—

- (a) refer the dispute to a Board for promoting a settlement thereof; or*
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:*

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section

notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.”

5. Section 10(1) opens with the sentence where the appropriate Government is of opinion that “any industrial dispute exists” or “is apprehended” implying the appropriate Government to form an opinion of the existence of an industrial dispute. In the case of ***Shambu Nath Goyal Vs. Bank of Baroda Jullundur***¹ (*Shambu Nath Goyal*), referring to the language of Section 10(1), the Apex Court pointed out that the power conferred on the Government by this provision to refer the dispute can be exercised only when there is an existing or apprehended industrial dispute. Implicit in the power of making reference is “the existence of the satisfaction that what is referred to is an industrial

¹ (1978) 2 SCC 353

dispute,” as held by the Apex Court in the case of **Miss A. Sundarambal Vs. Government of Goa, Daman and DIU and others**² (*Miss A. Sundarambal*). In the said case, the Apex Court after referring to the earlier dicta, the Court held that “in making a reference under Section 10(1), the appropriate Government” is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any less administrative in character. Thus, while exercising the power or for making a reference, under Section 10(1), the appropriate Government has to form an opinion, and performs an administrative act and not a judicial or quasi judicial act. The criteria rather “a condition precedent to the order of reference”, is the satisfaction of existence of an industrial dispute or the satisfaction that an industrial dispute is apprehended and order of reference cannot be made mechanically without forming an opinion. For formation of the necessary opinion, the “appropriate Government” must

² (1998) 4 SCC 42

also be satisfied that a person whose dispute is being referred for adjudication is a "workman". If the dispute is not between the employer and his workman, it is not an "industrial dispute" and the Government can justifiably refuse to refer the dispute. When the Government reaches an administrative decision whether there exists an existing or apprehended industrial dispute, in either event, it can exercise the power under this section.

6. The Apex Court in the case of ***Steel Authority of India Ltd. Vs. Union of India (UOI) and others***³ (*Steel Authority of India Ltd*) has held that the appropriate Government while exercising jurisdiction under Section 10 of the 1970 Act, the appropriate Government is required to apply its mind. Its order may be an administrative one and the same is not beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the materials placed before it by the workmen and / or management, as the case may be, while doing so, it may

³ (2006) III LLJ 1037 SC

be inappropriate for the same authority on the basis of the materials that a notification under Section 10 (1) (d) of the ID Act, 1947 be issued, although it stands judicially determined that the workmen were employed by the contractor and the State must prima-facie satisfy itself that there exists a dispute.

7. In ***National Engineering Industries Ltd. Vs. State of Rajasthan and others***⁴ (*National Engineering Industries*) the Apex Court held that the High Court has jurisdiction to entertain the writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the ID Act. The Apex Court held that the existence of the Industrial Tribunal which would clothe the appropriate government with power to make reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in

⁴ (2000) 1 LLJ 247 SC

existence or apprehended, appropriate government lacks power to make any reference.

8. In ***ANZ Grindlays Bank Ltd. Vs. Union of India (UOI) and Ors.***⁵, the Apex Court held that normally a writ petition under Article 226 of the Constitution of India should not be entertained against the order of appropriate government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference, however, it was held that where the infirmity in the reference can be shown only after evidence has been adduced, the validity of reference made by the Government can be examined under Article 226 of the Constitution. In light of the dicta laid down by the Apex Court in the decisions stated supra, the facts and circumstances of the present case needs to be looked into.

⁵ AIR 2006 SC 296

9. Undisputed facts are that:
- i. Voluntary retirement scheme was floated by the petitioner-company in the year 2020;
 - ii. 46 respondents had voluntarily opted to avail the benefits under the scheme;
 - iii. 5 respondents had voluntarily tendered resignation;
 - iv. Nominated a person of their choice as a nominee under the scheme in case of untoward incident.
 - v. Management accepted the offers of voluntary retirement/resignation and relieved respondent Nos.2 to 52 from the service.
 - vi. Respondent Nos.2 to 52 had claimed gratuity under the Payment of Gratuity Act, 1972 by submitting prescribed application in Form No.1
 - vii. 46 respondents relived in terms of voluntary retirement scheme after obtaining a no-due certificate and remaining 5 respondents were

relieved after accepting their resignation and also after settling the entire service benefits.

viii. 46 respondents have signed memorandum of settlement in accordance with Section 2(p) read with Section 18(1) of the ID Act by the end of August 2020.

ix. The company made payments under the Scheme and also cleared all the statutory benefits and also obtained provident fund settlement

x. 34 respondents were also paid the balance amount during May, 2021.

10. In light of the undisputed facts, it is not a case where the infirmity in the reference can be shown only after the evidence has been adduced. The reference made by the Government on 22.06.2022 is as under:

“ವಾದಾಂಶಗಳು

1. ಶ್ರೀ ಸಿ.ಎಸ್. ಪ್ರಕಾಶ್ ಹಾಗೂ ಇತರೆ 50 ಜನ ಕಾರ್ಮಿಕರು (ಅನುಬಂಧ ಲಗತ್ತಿಸಿದೆ) ತಮಗೆ ಆಡಳಿತವರ್ಗದವರಾದ ಮೆಃ ತ್ರಿವೇಣಿ ಟರ್ಬೈನ್ಸ್ ಲಿ.,

ನಂ.12/ಎ, ಪೀಣ್ಯ ಕೈಗಾರಿಕಾ ಪ್ರದೇಶ, ಬೆಂಗಳೂರು-560058 ಇವರು ಸ್ವಯಂ ನಿವೃತ್ತಿ ಯೋಜನೆಯಡಿ ನೀಡಲಾದ ಪರಿಹಾರ ಮೊತ್ತವನ್ನು ಪರಿಷ್ಕರಿಸಿ ಹೆಚ್ಚಿಸಬೇಕೆಂದು ಕೋರಿರುವುದು ನ್ಯಾಯಸಮ್ಮತವೇ?

2. ಹಾಗಿದ್ದಲ್ಲಿ, ಶ್ರೀ ಸಿ.ಎಸ್. ಪ್ರಕಾಶ್ ಹಾಗೂ ಇತರೆ 50 ಜನ ಕಾರ್ಮಿಕರು ಯಾವ ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರು?"

11. The order of reference to the Industrial Tribunal for adjudication is "Whether Sri. C.S. Prakash and 50 other employees are justified in demanding the enhancement of compensation by revaluing the scheme by the Management of M/s. Triveni Turbines Ltd., No.12/A, Peenya Industrial Area, Bengaluru - 560 058 and if so, what relief Sri. C.S. Prakash and 50 others are entitled to?"

12. The reference made is without application of mind and without arriving at a *prima-facie* conclusion as to whether respondent Nos.2 to 52 come within the definition of "workman" under Section 2(s) of the ID Act when the jural relationship of the employer and employee came to an end and also without examining as to whether any dispute is in existence or the dispute is apprehended as mechanically

referred to the matter for adjudication. The question of industrial dispute would arise only in the event that the employee is a "workman" within the meaning of Section 2(s) of the ID Act and the person who raises the dispute must be a "workman" within the meaning of Section 2(s) of the ID Act. Section 2(s) of the ID Act defines the workman as under:

"2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

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

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

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

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

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

13. The definition of the 'workman' under Section 2(s) of the ID Act include only persons who are presently employed or who have been dismissed or discharged or retrenched from service. In the Labour jurisprudence, there are three types of termination of service:

- a) Termination by operation of law, i.e., retirement on attaining the age of superannuation;

- b) Voluntary separation such as by way of resignation or opting for voluntary retirement;
- c) Termination by employer by way of dismissal, termination, etc., for the misconduct.

14. Settled legal proposition is that jural relationship of the employer and employee comes to an end in case of retirement, voluntary retirement, resignation.

15. In the instant case, employees who have voluntarily retired from service and having accepted the benefits under the voluntary retirement package announced by the management cannot be treated as workman as envisaged under Section 2(s) of the ID Act.

16. Under identical circumstances, in the case of ***Everestee Vs. District Labour Officer***⁶ (*Everestee*) the Kerala High Court taking the definition of workman as defined under Section 2(s) opined that voluntarily tendering resignation pursuant to a scheme for voluntary retirement,

⁶ (1999) II LLJ 851 Ker

the resignation having been accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the employee, he cannot be treated as a “workman” coming under Section 2(s) of the ID Act and held that the definition under Section 2(s) only includes who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer.

17. The Co-Ordinate Bench of this Court, in the case of ***The Karnataka Lingayat Education, Society and others Vs. Siddappa G. Namba and others***⁷ (*Karnataka Lingayat Education Society*), opined that there is no mention of a retired employee/workman to be included within the meaning of workman under Section 2(s) of the ID Act. The Division Bench of this Court while confirming the judgment of the learned Single Judge in ***Karnataka Lingayat Education Society*** has held that the definition of workman under

⁷ ILR 2017 KAR 5139

Section 2(s) of the Act would not include a retired employee/workman.

18. The respondents tried to contend that the petitioner-company has adopted an illegal manner, pressure, force in getting the VRS scheme from the respondents and awarding meager compensation without giving proper evaluation in different heads, which leads to a dispute before the authority and also the Labour Court and hence, respondents contended that respondent No.1 was justified in referring to the industrial dispute. The fact remains that after acceptance of voluntary retirement from the respondents, they were relieved from the services, later on, the respondents submitted Form No.1 for payment of gratuity, obtained a no-due certificate and 46 respondents who opted for voluntary retirement signed a separate memorandum of settlement, which was one of the requirements stipulated in the VRS Scheme, as per the memorandum of settlement, the company settled the dues, which were acknowledged by 46 respondents, and encashed

the cheques received by them, 46 respondents acknowledge the receipt of the gratuity paid to them in accordance with the provision of the Payment of Gratuity Act, 1972.

19. Once the workman has opted for voluntary retirement and having taken all the benefits under the VRS Scheme, the workman cannot now contend/dispute that the voluntary retirement was obtained by force or undue influence. The relationship of the employer and employee comes to an end on receipt of his retirement benefits. This is not a case where the infirmity in the reference can be shown only after evidence has been adduced, it would be a futile exercise, if the dispute were referred to the Industrial Tribunal. Once an application is made by the employee and accepted by the employer, the contract gets concluded and both the parties are bound by the terms and conditions as contained under the voluntary retirement scheme. The Apex Court in the case of **A.K. Bindal and others. Vs. Union of India (UOI) and others**⁸ at para No.34 held as under:

"34. This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary

⁸ AIR 2003 SC 2189

retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

20. Respondent Nos.2 to 52, having taken the entire benefits, cannot seek the revaluation of the amount of voluntary retirement scheme benefits and the reference

made by the appropriate government would not be justified. The legal position is well settled that it is a precondition to deposit the entire amount received, including the service benefits before making any further claim.

21. The Apex Court in the case of **Ramesh Chandra Sankla and others vs. Vikram Cement and others**⁹ has held at paragraph Nos.89 and 91 as under:

"89. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the Court must take into account balancing interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in Shiv Shankar Dal Mills v. State of Haryana MANU/SC/0032/1979 : (1980) 1 SCR 1170, Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be

⁹ AIR 2009 SC 713

dependent upon considerations of justice, equity and good conscience.

x x x

91. *Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute Claim Petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a 'technical' contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person "who seeks equity must do equity". Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference, particularly when the Company has also approached this Court under Article 136 of the Constitution."*

22. "The person who seeks equity must do equity" and the workmen claim benefits as workmen of the company, but they do not want to part with the benefits they have received towards retirement and the severance of the relationship between master and servant. It simply cannot be permitted. The respondent herein having failed to deposit the settlement amount, initiation of proceedings and adjudication by the respondent is not justifiable.

23. In the instant case, neither the dispute is in existence nor is the dispute apprehended since respondent Nos.2 to 52 have admitted that they have opted for voluntary retirement from service and also the benefits received under the scheme. This being the position, this Court is of the considered view that the Government ought to have arrived at a subjective satisfaction as to whether a *prima-facie* dispute is in existence or is apprehended from the material on record, it is evidently clear that the appropriate government has mechanically referred the

matter without discharging its obligation as required under law and a serious error of law has been committed by the appropriate authority, which is apparent on the face of the record. Therefore, the order of the reference made by the government deserves to be quashed. Accordingly, this Court pass the following:

ORDER

- i. Writ petition is ***allowed***.
- ii. Impugned order dated 22.06.2022 in No.LD-IDM/370/2022/LD.DO.6LS at Annexure-R is hereby ***quashed***.

**SD/-
JUDGE**