Supreme Court of India
Workmen Of M/S Hindustan Lever ... vs Management Of M/S Hindusian Lever ... on 5 January, 1984
Equivalent citations: 1984 AIR 516, 1984 SCR (2) 307
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
WORKMEN OF M/S HINDUSTAN LEVER LTD. & ORS.

Vs.

RESPONDENT:
MANAGEMENT OF M/S HINDUSIAN LEVER LTD.

DATE OF JUDGMENT05/01/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)
VARADARAJAN, A. (J)

CITATION:
1984 AIR 516 1984 SCR (2) 307
1984 SCC (1) 728 1984 SCALE (1)15

ACT:
Industrial Disputes Act 1947
Industrial Dispute-Jurisdiction of industrial tribunal-Determined from the order of reference-Status of person not questioned by employer-Tribunal whether entitled to suo motu decide as a preliminary issue.
Concluded Agreement between Management and Union-Management acting on the agreement for some years-Management whether later entitled to repudiate and disown agreement-Difference between unilateral repudiation and termination of agreement Indicated.
Industrial disputes-Adjudication of-Concept of res judicate-Whether applible.

HEADNOTE:
The appellant-Union and the respondent-company through their communications dated January 24,1957, April 24,1957 and May 1,1957 concluded an agreement relating to various items of industrial disputes which inter alia provided that the employer had agreed not to contest the issue whether field force including salesmen were not 'workmen' within the meaning of the expression in the Industrial Disputes Act and

that disputes of an All-India nature could be raised only at Delhi.

Two employees of the Respondent-company who were salesmen and protected workmen with the meaning of the expression in the Industrial Disputes Act, 1947 and who were office-bearers of the union, were charge sheeted and after a disciplinary enquiry their services were terminated. The appellant-union raised an industrial dispute contending that the termination of services of these two workmen were illegal and invalid, and that the enquiry was equally illegal, and improper, and that the action of the employer was an act of reprisal and victimization, because of their trade union activities. The Government referred the industrial dispute to the Industrial Tribunal.

The employer contended that the two workmen were not 'workmen' within the meaning of the expression in the Act and that the Government had no jurisdiction to refer the dispute to the Industrial Tribunal. It was further contended that the services of the workmen were terminated not by way of punishment but under the contract of service and that the disciplinary enquiry which was commenced was subsequently dropped.

The appellant-union however contended that the employer was estopped from challenging the status of the two workmen within the meaning of the expression

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in the Act on account of the subsisting, valid, concluded agreement between the parties and that in view of the award of the Industrial Tribunal, Delhi in I.D. No. 46/66. The contentions about the existence of the agreement and the status of salesmen were res judicata and could not be reopened so long as the agreement was in force and operative.

The Tribunal rejected the preliminary objections raised on behalf of the union and came to the conclusion that the three communications dated January 24,1957, April 24,1957 and May 1, 1957 Ex. W-2, W-3, W-4 respectively did not spell out a complete, concluded agreement between the parties on the points mentioned therein but it was an inchoate agreement in the stage of negotiations and the employer was not bound to stand by its offer made in the communication dated January 24,1957 denying itself the right to contest the status of the field force including salesmen as not being workman within the meaning of the Act. The award of the Industrial Tribunal, Delhi in I.D. No. 46/66 in which it was held that there was a concluded agreement between the parties and therefore the industrial disputes raised therein could not be adjudicated at Delhi did not operate as res judicata because the issue in that award was not directly and substantially in issue in the present reference. The Tribunal set down the reference for further hearing.

Allowing the Appeal:

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HELD: 1. The Tribunal committed a serious error, apparent on record in holding that there was no concluded agreement between the parties as emerging from Exs. W-2, W-3, and W-4. [329 F]

In the instant case, having meticulously examined various references pertaining to various industrial disputes between the parties at different centres in India since the agreement in 1957 it unquestionably emerges that the employer till the present reference never once even whispered that the agreement was not a concluded agreement or that it was an inchoate one left hanging at the stage of negotiations. It was only in the present reference the contention raised was that the agreement was not a concluded agreement. The employer which swore by the agreement and repeatedly succeeded in getting thrown out certain references at the threshold on account of the agreement contended that there was no concluded agreement, and ignoring the whole history, the Tribunal fell into an error in accepting this contention. The Tribunal wholly ignored the fact that it was a solemn agreement, of which effective and wholesome advantage had been taken by the employer and when it did not suit it, it wanted to turn round and not only repudiate it but disown it. No court of justice can ever permit such a thing to be done. [324 E-325 B]

Hindustan Lever Ltd. v. Ram Mohan Ray & Ors., [1973] 3 S.C.R. 624; Western India Match Co. v. Their Workmen [1964] 3 S.C.R. 560 at 566; and Aluminium Factory Workers, Union v. Indian Aluminium Co. Ltd. [1962] 1 L.L.J. 210, referred to

2. The Tribunal is directed to proceed to determine the dispute on merits without concerning itself with the consideration of the question whether the concerned workmen were workmen within the meaning of the expression under the Act. [332 E]

3. The concept of compulsory adjudication of industrial disputes was statutorily ushered in with a view to providing a forum and compelling the parties
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to resort to the forum for arbitration-so as to avoid confrontation and dislocation in industry. A developing country like India can ill-afford dislocation in industrial production. Peace and harmony in industry and uninterrupted production being the demands of the time, it was considered wise to arm the Government with power to compel the parties to resort to arbitration and as a necessary corollary to avoid confrontation and trial of strength, which were considered wasteful from national and public interest point of view. A welfare State can ill-afford to look askance at industrial unrest and industrial disputes. [326H-327B]

Dahyabhai Ranchhoddas Shah v. Jayantilal Mohanlal.,[1973] Lab. & Industrial Cases 967 referred to.

4. The Act did not confer till the introduction of Chapters V-A and V-B, any special or enforceable benefits on the workmen. The Act was designed to provide a self-

contained Code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegate industrial relation, so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping place with improved industrial relations reflecting and imbibing socioeconomic justice. If this is the underlying object behind enactment of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely to eschew industrial strife, confrontation and consequent wastage. [327 C-E]

5. It is inappropriate to usher in the technical concept of res judicata pervading the field of civil justice into the field of industrial arbitration. The principle analogous to res judicata can be availed of to scuttle any attempt at raising industrial disputes repeatedly in defiance of operative settlements and awards. But this highly technical concept of civil justice may be kept in precise confined limits in the field of industrial arbitration which must as far as possible be kept free from such technicalities which thwart resolution of industrial disputes. [326 D-G]

Shahdara (Delhi) Sharanpur Light Railway Co. Ltd. v. Shahdara(Delhi) Sharanpur Railway Workers Union, (1969) 1 L.L.J. 734 at 742; and Workmen of Straw Board Manufacturing Co. Ltd. v. M/s Straw Board Manufacturing Co. Ltd. [1974] 3 S.C.R. 703 referred to.

6. Unilateral repudiation is distinct from termination and an agreement/settlement remains in force and binding till terminated and does not come to an end by unilateral repudiation. [328 E]

In the instant case, the parties entered into a solemn agreement. It is not suggested that the agreement has been terminated. The only argument put forward on behalf of the employer was that the union has repudiated the agreement by raising disputes of an all-India nature at a regional level and thereby committed breach of the agreement. This contention is entirety without merits. What has happened is that the Union raised certain disputes which according to the Union were of a regional nature and which it was not estopped from raising in the teeth of the terms of the binding agreement between the parties. On the other hand the employer contended that the disputes so raised were of an all-India nature. Both sides swore by the agreement, the difference in approach being whether the dispute was of an all-India nature or of regional nature. The divergence in approach

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was as to the interpretation, the coverage, the ambit and the width of the agreement Both the parties swore by the

agreement but differed in their approach and interpretation and the forum namely the Industrial Tribunal consistently upheld at the instance of the employer that there was a binding valid agreement subsisting between the parties. This constitutes adherence to agreement, performance of the agreement, implementation of the agreement and being bound by the agreement. This conduct in no sense can be said to constitute repudiation. [327 F-328 C]

7. The Tribunal derives its jurisdiction by the order of reference and not on the determination of a jurisdictional fact which it must of necessity decide to acquire jurisdiction. [330 G]

8. In industrial adjudication, issue are of two types: (i) those referred by the Government for adjudication and set out in the order of reference, and (ii) incidental issues involving mixed questions of law and facts. The Tribunal may frame preliminary issues if the point on which the parities are at variance, go to the root of the matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to the references are precluded from raising. If the employer does not question the statues of the workmen, the Tribunal cannot suo motu raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the expression under the Act. [331 G-332 A]

9. Whether a particular person is a workman or not depends upon factual matrix. Workman is defined in Sec. 2(s) of the Act. The ingredients and the incidents of the definition when satisfied, the person satisfying the same would be a workman. Negatively if someone fails to satisfy one or other ingredient or incident of the definition, he may not be held to be workman within the meaning of the expression in the Act. [330 C]

10. There is no provision in the Act which obliges the Industrial Tribunal or other forums set up under the Act to decide even in the absence of a contention from the employer, a preliminary issue whether the person who has invoked its jurisdiction is a workman or not. There is no such obligation cast statutorily on the Tribunal. If the employer does not raise the contention about the status of the workman approaching the Tribunal, the Tribunal has no obligation to decide. The status of the person whether he is a workman or not. The Tribunal must proceed on the assumption that no such contention is raised and is required to be adjudicated upon. [330 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1865 of Appeal by Special leave from the Order dated the 24th December, 1981 of the Labour Court, Delhi in ID. No. 120 of 1977.

M.K. Ramamurthi, V.P. Choudhary Jitendra Sharma and P. Gaur, for the Appellant.

G.B. Pai, O.C. Mathur, D.N. Mishra, S. Sukumaran and Ms. Meera Mathur, for the Respondent.

The Judgment of the Court was delivered by DESAI, J. If solemn agreements proposed by the employer and readily acceeded to by the workmen and holding the forte for over a quarter of a century are crudely disowned compelling the workmen to knock at the door of the apex court for removing the road-block in the access to justice set up by preliminary objection of technical nature, industrial peace and harmony chanted by the employer would be not merely an empty mantra but a futile exercise of chasing a mirage and unfortunately that is the situation here.

Hindustan Lever Ltd., a multi-national company, respondent herein addressed a communication dated January 24, 1957 recording the out-come of mutual deliberations between the Hindustan Lever Ltd. (employer' for short) and the Hindustan Lever Mazdoor Sabha ('union' for short) recognised representative union of the workmen employed by the employer. The relevant portion may be extracted:

> "Ex. W-2 24th January, 1957
> The President,
> Hindustan Lever Mazdoor Sabha,
> Bombay.
> Dear Sir,

Referring to our recent meeting about field force, we would like to place on record that:

> (1) We recognise you as the representative union for all sections of field force all over India. (2) You have agreed to treat all matters relating to wages/salaries and terms and conditions of service on an all India basis and not on a regional basis as far as field force is concerned. (3) For all matters of an all-India nature relating to field force, you will communicate with the Personnel Director. We hope that all such matters will be settled by direct negotiation but if at any stage you decide to refer the matter to conciliation, you will do so only at Bombay. We, on our part, give you the assurance that if the matter is referred to a Tribunal in Bombay then its award will be applied by you to field force all over India. For this reason, you will agree that it will be only proper for the Tribunal to examine the matter in an all India perspective.
>
> 4) Although we do not anticipate any problems of a purely local nature, in case such problems do arise your members will first try to arrive at a solution by approaching their own managers and if this fails, your local Committee should refer the matter to the local Commercial Manager or Office Manager.

5) For future disputes we shall not contest issues about field force on the basis of their not being 'workmen' but shall contest issues only on the merits in the same way as we do for other employees.

Please confirm that you agree with the points mentioned above.

Yours faithfully, Sd/- B.K. Bindani The union responded to this communication as per its letter dated April 24, 1957 which reads as under:

"Ex. W.3 The Personnel Manager, Hindustan Lever Limited, Scindia House, Ballard Estate, Bombay-1. 24th April, 1957 Dear Sir, With reference to your letter Personnel KSB/BN/49 dated 24.1.1957 and in the light of further discussions we had with you on the subject, we would like to state as under:

1. We thank you for recognising us as the Representative Union for all sections of the Field Force employees all over India.

2. We agree that certain major issues such as a salary wages, bonus, provident fund, Gratuity, leave etc. will be treated as far as possible on an all-India basis.

3. We agree that for all matters of an all-India nature, we will communicate with the Personnel Director. As for the other points raised by you, we agree to follow the procedure, as far as legally permissible.

4. Local matters, if not settled by negotiations, will have to be dealt with otherwise. For instance, the Sabha may go in for conciliation or may be free to resort to any other legitimate and/or peaceful method.

5. We are indeed glad to note that you will not contest issues about field force on the basis of their not being 'Workmen' but you will contest issues only on their merits in the same way as you do for other employees. We wish to take the opportunity also to confirm your agreement with us that in regard to demands relating to Field Force contained in Ref. N.48 of 1956, now pending adjudication at Delhi, you will not contest the issue on the basis of their not being 'Workmen' but you will contest the issue on the merits of the demands as you do for other employees.

Yours faithfully, Sd/- P. Pullat President 1st May, 1957"

A further communication ensued from the employer dated May 1, 1957. It is not necessary to reproduce the whole of it save and except that the employer wanted to be assured that the union by its communication dated April 24, 1957 unequivocally intended to confirm the items of agreement relating to various items of industrial disputes between the parties as set out in its communication dated January 24, 1957 and further sought clarification of the two points raised by the union.

The substantial question is whether there emerged a concluded agreement between the parties and binding on the parties till it is terminated according to law? The question of the existence of a concluded agreement and its validity arises in the following circumstances.

Shri A.K. Sircar and Shri R.L. Gupta were protected workmen within the meaning of the expression in the Industrial Disputes Act, 1947 ('Act' for short) and were admittedly the office-bearers of the union and consequently leaders of the workmen. The employer served a charge-sheet on Shri A.K. Sircar on April 10, 1974 and on the next day, a charge-sheet was served on Shri R.L. Gupta. There followed a disciplinary enquiry and ultimately the services of Shri A.K. Sircar and Shri R.L. Gupta were terminated by the employer. The union raised an industrial dispute contending that the termination of services of the aforementioned two workmen was illegal and invalid and the enquiry was equally illegal and improper and that the action of the employer was an act of reprisal and victimization because of the trade- union activities of the aforementioned two office-bearers of the union: The appropriate Government referred the industrial dispute to the Industrial Tribunal on July 16, 1977.

The employer in its written statement inter alia contended that Shri A.K. Sircar and Shri R.L. Gupta were not workmen within the meaning of the expression in the Act and therefore the appropriate Government had no jurisdiction to refer the dispute to the Industrial Tribunal and consequently the Industrial Tribunal had no jurisdiction to hear and deal with the reference. It was further contended that in a reference between the employer and the union in another dispute to the Industrial Tribunal in Maharashtra State, a contention was raised by the employer that salesman of the employer is not a workman within the meaning of the expression in the Act and this objection was upheld by the Industrial Tribunal and a petition for special leave against the decision of the Industrial Tribunal to the Supreme Court was rejected on October 1, 1975. It was further contended that the services of the aforementioned two workmen were terminated not by way of punishment but under the contract of service and the disciplinary enquiry which was commenced earlier was subsequently dropped.

The union in its counter-affidavit inter alia contended that the employer was estopped from challenging the status of the two concerned workmen as not being workmen within the meaning of the expression in the Act on account of a subsisting valid concluded agreement between the parties inter alia providing that the employer will not contest the issue about status of field force (which expression includes salesman) on the basis of their not being workmen but shall contest the issue only on the merits in the same way as they do for other employees. It was also contended that in view of Shri Roop Chandra award the issue about existence of the agreement and the status of salesman is res judicata and cannot be reopened till the agreement remains in force and operative.

The rival pleadings led to the Industrial Tribunal framing the following issues:

> "1) Whether the management is estopped from challenging the status of these two concerned workmen as "workman' within the meaning of the Industrial Disputes Act.
>
> 2) Whether the award dated 17-11-66 of the Additional Industrial Tribunal, Delhi would operate as res judicata between the parties ?

3) If issue No. 1 is answered in the negative whether the concerned (sic) are 'workman' within the meaning of the I.D. Act ?

4) What is the effect of the order dated 6-1-75 passed by the I.T. Maharashtra in reference 203 of 1973 and order dated 1.10.1975 of the Supreme Court in Petition for special leave 1602 of 1975 ?

5) Whether the reference is incompetent and bad in law for reasons mentioned in prel. objections (III), (IV), (V) and (VII) and (VIII) ?

Issue Nos. 1,2, 4 and 5 were directed to be heard as preliminary issues. On Issue No. 1, the Industrial Tribunal held that the three communications Ex.W-2 dated January 24, 1957, Ex. W-3 dated April 24, 1957 and Ex. W-4 dated May 1, 1957 did not spell out a complete concluded agreement between the parties on the points set out therein but it was an inchoate agreement in the stage of negotiations and therefore the employer was not bound to stand by its offer made in the communication dated January 24, 1957 denying to itself the right to contest the status of the field force including salesman as not being workman within the meaning of the expression in the Act. On Issue No. 2, it was held that the award of Shri Roop Chandra in I.D. No. 46 of 1966 in which it was held that there was a concluded agreement between the parties as disclosed in Exs. W-2, W-3 & W-4 and therefore the industrial dispute therein raised could not be adjudicated upon at Delhi, it being an All-India dispute and ought to have been raised at Bombay, did not operate as res judivata because the issue in the award was not directly and substantially in issue in the present reference. Parties did not advance any argument on Issues Nos. 4 and 5 and therefore with reference to Issue No. 4, the Tribunal observed that the same may not be disposed of without further hearing the parties and no finding was recorded on Issue No. 5. The Tribunal accordingly rejected the preliminary objections raised on behalf of the union and set down the reference for further hearing. Hence this appeal by special leave by the union.

At the outset, we must record our unhappiness on the attitude adopted by the employer in contending as late as 1981 that the three communications Exs. W-2, W-3 and W-4 did not constitute a concluded agreement between the parties with respect to the points settled therein and the Tribunal ignoing the history and repeated advantage taken by the employer of this concluded agreement on numerous occasions accepted the contention of the employer. IT is therefore necessary first to point out how from 1957 till as late as 1966 and even thereafter the employer non-suited the union, if that is a proper term, by setting up the very agreement which now the employer wants to urge that it is not a concluded agreement. The three important clauses of the agreement emerging from the correspondence relevant to the present dispute are that (i) the Hindustan Lever Mazdoor Sabha was recognised by the employer as a representative union for all sections of field force all over India in the employment of the employer and (ii) the union agreed to bring all matters relating to wages/salaries and terms and conditions of service on an All-India basis and not on regional basis as far as field force is concerned and (iii) that in future disputes, the employer will not contest issue about member of the field force being workmen but shall contest issues only on their merits in the same way as the employer would do for other employees. Freed from technical jargon, the employer agreed and undertook not to contest in any industrial dispute

the status of the field force as not being workman within the meaning of the expression in the Act and that reference, if any, would be contested on the merits of the industrial dispute in respect of which reference is made to the Industrial Tribunal. The out-come of the agreement would be that if a dispute of an all-India nature in respect of the field force is raised at a regional level, founding its contention on one of the terms of the agreement, the employer would be in a position to get any regional reference rejected on the ground that there is a subsisting valid agreement between the parties that such dispute of an all-India nature in respect of the field force can be raised at Bombay only and within the jurisdiction of the Industrial Tribunal at Bombay only.

There is no dispute between the parties that if there is an agreement such would be the out-come of it. This is not only not in dispute but it is conceded that a settlement was arrived at in respect of industrial disputes between the employer and the union concerning the field force including salesman in 1957, 1959 and 1964. An averment to this effect is made in Paragraph 'H' of the petition for special leave and Anx.5 was annexed to the petition which purports to be the settlement dated December 22, 1964. It is signed by Shri C.J. Mahimkar, Joint Personnel Manager on behalf of the employer and Shri A.K. Basu, General Secretary of the union at the relevant time. The various industrial disputes in respect of which settlement is arrived at were between the employer and the workmen of the company who were the members of the field force (salesmen, sales supervisors etc.) employed in any part of India. This settlement was arrived at under the Industrial Disputes Act and was registered according to the requirements of the Act. This implies that the status of the salesman as being workman within the meaning of the expression of the Act was not only not disputed but specifically conceded and that must obviously be pursuant to the subsisting agreement. This is however an inference so it is better now to move on to adjudication and award by a forum with jurisdiction to decide the point.

The Chief Commissioner of Delhi referred an industrial dispute whether workmen whose names were set out in the order- of reference be paid compensation in addition to the usual remuneration for the period they had marketed Erasmic Blades and what directions were necessary in this behalf. The reference was between the employer the present respondent and the appellant union.

In this reference, the workmen who claimed remuneration were Delhi based salesmen of the employer. The employer appeared and contested the reference. The only important contention raised on behalf of the employer which must be noticed reads as under:

> "That the concerned workmen are members of the field force of the company; that the field force unit is a separate unit known as Field Force Unit; that they are liable to be transferred anywhere in India; that the Field Force Unit is controlled by Company's Head Office in Bombay; that it was agreed between the company and the Hindustan Lever Mazdoor Sabha, Bombay that all matters relating to Field Force Unit would be dealt with by both parties at Bombay on all-India basis and if no settlement is reached, the dispute shall be raised in Bombay in accordance with Industrial Disputes Act; and that any settlement or Award therein would be made applicable and shall be binding on all members of the field force all over India." (Emphasis supplied).

The employer also contended that in view of the agreement between the parties, the dispute referred to the Industrial Tribunal regarding the field force could not be raised at Delhi. It was also contended that in view of the agreement subsisting between the parties, the employer had agreed not to contest the issue that its salesman were not workmen within the meaning of the expression in the Act. A further contention was raised that the union has committed breach of the agreement by raising the dispute at Delhi.

The union while conceding that there was an agreement between the parties as alleged by the employer contested the issue by saying that the dispute was not of an all-India nature as it was concerning only some Delhi based salesmen of the employer and therefore the dispute was not covered by the agreement.

The Industrial Tribunal (Shri Roop Chandra) on the rival contentions of the parties, raised the following issues:

> "ISSUES "1) Is there any agreement between the Company and its workmen through the Hindustan Lever Mazdoor Sabha that all matters relating to members of the field force would be dealt with by both the parties in Bombay on an all India basis and that if no settlement is reached, the dispute would be raised in Bombay in accordance with the Industrial Disputes Act ?
>
> 2) Does the said agreement prevent the workmen in this case from raising the dispute in Delhi ?
>
> 3) Are the employees concerned not 'workmen' within the meaning of the term under the Industrial Disputes Act ? If so, has the tribunal no jurisdiction ?
>
> 4) Whether workmen have committed a breach of the agreement alleged to have been entered into between the management and the union in 1957 and if so, is the management not entitled to raise the plea that the salesmen are not 'workmen' within the meaning of Industrial Disputes Act. ?"

It would thus appear at a glance that it was the employer who wanted the reference to be rejected on the preliminary objection that there was a valid subsisting concluded agreement between the parties which had a direct bearing on the industrial dispute involved in the reference and that because of the agreement and as a necessary corollary of the agreement the Tribunal had no jurisdiction to entertain the dispute.

Now see the out-come of this contention of the employer. On Issue Nos. 1 and 2, Shri Roop Chandra as per his award dated November 17, 1966 held that in view of Exs. W-2, W-3 and W-4 marked in evidence in the reference before him as Exs. M-1, M-2 and M-3 produced and relied upon by the management that is the employer, the Industrial Tribunal at Delhi would have no jurisdiction to entertain it. It was never contended by the employer before Shri Roop Chandra that the three documents did not end in a concluded agreement. On a contrary parties were ad idem that there was

a concluded agreement between the parties. The difference was in their approach as to the applicability of various clauses of agreement to the dispute raised in the reference before the Tribunal. The employer contended that the dispute was of an all-India nature and therefore could not be raised at Delhi. The union on the other hand, contended that the dispute was of a regional nature concerning only 16 Delhi based salesmen of the Company and therefore the dispute could not be styled as an all-India dispute.

The Tribunal held that the dispute was of an all-India nature, related to the duties and liabilities of all members of the field force employed all over India and it involved such a major issue as salary and wages. Approaching the matter from this angle, the Tribunal further held on the basis of the agreement, that the dispute could only be taken cognizance of at Bombay. The Tribunal was of the opinion that the agreement was valid and did not contravene Sec. 28 of the Indian Contract Act because where the parties choose to have the matter entertained in one of the two or more courts having jurisdiction to entertain the matter, such an agreement does not contravene Sec. 28. The Tribunal further held that the agreement had the sanctity of a contract and the parties must be held to the contract. The Tribunal concluded by observing that the union was not justified in raising the dispute in Delhi in view of its agreement with the employer as evidence by the three documents and that it is not expedient in the interest of justice and peace and harmony in industry that the Tribunal should adjudicate the matter of an all-India nature. So saying the Tribunal rejected the reference. The question is who took advantage and benefit of the agreement ? Unquestionably, the employer who now decades after successfully contending before another Tribunal that there was a valid and concluded agreement, wants to contend that the three documents Exs. W-1, W-2 and W-3 do not spell out a concluded agreement but an inchoate one which remained at the stage of negotiations only. But that is not the end of the vacillation on the part of the employer.

Mr. Pai, learned counsel on behalf of the employer on the other hand contended that the union has expressly repudiated the agreement and therefore, it is not open now to the union to take recourse to the agreement. It was submitted that if the union has committed a breach of the agreement, if there was any, the employer is absolved from observing or complying with the agreement. To substantiate this submission, our attention was invited to a reference made by the Lt. Governor, Delhi to the Addl. Industrial Tribunal constituted for the Union Territory of Delhi, then presided over by Shri Hans Raj for adjudication of the following two issues:

> '1. whether the deduction of leave by the management for the year 1967 is illegal and/or unjustified and if so, to what relief are the affected workmen entitled and what directions are necessary in this respect ?
>
> 2. Whether the management was obliged to grant special increment to all of its workmen in Delhi Branch and if so, to what relief the affected workmen are entitled and what directions are necessary in this respect ?"

The union filed a statement of claim and subsequently filed an additional or amended written statement in which inter alia it was contended 'that the workmen of the concern throughout India were agitated because of this measure and its wholly illegal implementation and the applicant Sabha

led the opposition of the scheme and the resistance of the workmen to it.' This averment was relied upon to urge that the union raised a dispute of an all-India nature at Delhi which was the regional centre and this would imply intentional breach or repudiation of the agreement. Before we examine this contention, it is necessary to refer to para 10 of the amended statement of claim in which the union states as under:

> "That the binding nature of the agreement has been flagrantly flouted by the Management and the very basis of collective bargaining for industrial peace has been attacked."

This would show that the union accused the employer of breach of agreement. On the other hand, the employer in its written statement contended as under:

> "No claim on behalf of the employees of the Field Force can be taken up by Hindustan Lever Mazdoor Sabha, Delhi Centre and this Hon'ble Tribunal has no jurisdiction to entertain the same in view of an agreement arrived at and between the Company and the Hindustan Lever Mazdoor Sabha in 1957."

(emphasis supplied) It would be crystal clear that the employer wanted the reference to be rejected at the threshold on the preliminary objection that in view of the concluded binding agreement between the parties, the dispute referred to for adjudication being of an all-India nature, the union was precluded from raising the same at a regional level and the Tribunal had no jurisdiction to entertain the same. Apart from the extracted specific contention in paragraphs 5 and 6, the contention is elaborated by the employer and it was specifically contended that in the award dated Nov. 17, 1966 by Shri Roop Chandra, Addl. Industrial Tribunal, Delhi, it was held that a valid agreement was in existence between the parties and no dispute pertaining to the members of the Field Force can be raised anywhere except in the State of Maharashtra. It was further contended that the award of Shri Roop Chandra was confirmed by the High Court of Delhi by summarily dismissing the Writ Petition No. 1163/67 filed by the union against the award and when the union approached the Supreme Court in Appeal No. 42/68, the same was rejected thereby affirming the existence and binding character of the agreement. These assertions by the employer flow from the pleadings. To revert to the narration, Shri Hans Raj proceed on leave and then retired and when a new Presiding Officer was appointed, the reference with one application filed by the union to summon certain documents came up before the Tribunal. By a laconic order, unsupported by any reasoning, the Tribunal observed that the salesmen are not workmen and so the documents need not be summoned. It was this order on the application which was chal-

lenged in the writ petition filed by the union. It is difficult to appreciate what permitted the Tribunal to hold that the salesmen are not workmen within the meaning of the expression in the Act and why it did not consider the specific contention that the employer was estopped from raising the contention as to the status of the salesmen in view of the binding agreement between the parties. But for the present purpose, it is sufficient to notice that the employer and the union both swore by the agreement and at any rate the employer never contended that there was no concluded agreement between the parties covering one of the points in the dispute namely, the status of the

members of the Field Force including salesmen.

Mr. Pai next turned to another round of litigation between the parties. It appears that effective from September 6, 1966, the employer reorganised its marketing organisation into two divisions, the Main Lines Division and the Speciality Lines Division. The Calcutta Branch of the employer was concerned only with marketing. The workmen at Calcutta were directly affected by the reorganiszation. On a dispute raised by the union, the Government of West Bengal referred the following dispute for adjudication to the Industrial Tribunal "Is the human rationalisation as a measure of economic reorganisation of the company reflected through job-integration that have either been effected or proposed to be effected justified ?"

Pending adjudication of the dispute, some workmen filed applications under Sec. 33A of the Industrial Disputes Act before the Tribunal alleging that during the pendency of the adjudication their service conditions had been altered adversely and their salary for the month of October, 1966 had not been paid. The Tribunal granted the applications of the workmen and the employer approached the Supreme Court by special leave. The main reference was finally disposed of in favour of the employer upholding the reorganisation of marketing organisation. The union questioned the correctness of this award before the Supreme Court. Both the groups of appeals came up for hearing together and the decision of this Court is reported in Hindustan Lever Ltd. v. Ram Mohan Ray & Ors. This Court upheld the right of the employer to organise and reorganise its work in the manner it pleases. Accordingly the appeals filed by the union were rejected.

The appeals filed by the employer against the award in favour of the workmen in the applications under Sec. 33A were equally rejected by this Court holding that non-payment of wages in the circumstances of the case amounts to an alteration in the conditions of service. Frankly, this decision sheds no light on the point under discussion because neither side relied upon the agreement nor did the agreement figure into the dispute. However, it is interesting to note that when the main reference was before the Tribunal, a preliminary objection was raised on behalf of the employer to the effect that by an agreement entered into in January 1957 by and between the employer and union, it was agreed that all matters relating to the matters of the outdoor marketing staff, to wit members of the field force can be raised at Bombay only and as such the company as well as the Sabha are bound by the aforesaid agreement. Therefore, not only the employer affirmed the agreement, did not contend that it was an inchoate one but specifically placed that it is a concluded binding agreement between the parties.

It appears that there was one more reference I.D. No. 43/72 between the parties at Delhi. Following the decision of this Court in the case just herein discussed, the reference was rejected.

Mr. Pai next referred to an order in Reference (I.D.) No. 203/70 by the Industrial Tribunal Maharashtra between the employer and the workmen-employees under it. The demand which was referred for adjudication included revision of pay scales with adjustment, revision of the wage-scale of sub- clerical grade, gratuity disturbance allowance/and settling- in-allowance to the office staff, allowance to office staff while on tour, acting allowance, overtime wages, cash allowance and leave travel facilities. The employer raised number of preliminary objections, one such being that

Salesmen, Marketing Research Investigators, Market Research Supervisors, Sales Supervisors, Trade Marks Investigators, Seed Buyers and Supervisors of clerical staff are not workmen within the meaning of the expression in the Act, and hence no industrial dispute can be raised on their behalf and consequently the Tribunal had no jurisdiction to adjudicate upon the same. The union countered this preliminary objection by asserting that the contention about the status of the aforementioned categories is barred by the principle of res judicata in view of the award dated April 13, 1967 made by the 3rd Industrial Tribunal, West Bengal. The Tribunal rejected the contention of the union observing that the dispute between them is not of an all-India nature and therefore, the employer is entitled to raise the question about the status of the work-

men included in the aforementioned categories. This would imply that the reference was rejected not on the ground that there was no agreement but on the ground that the dispute involved in the reference was not covered by the agreement. In the same reference, a plea of estoppel raised on behalf of the union to the effect that the company was precluded in view of the subsisting agreement from questioning the status of the salesmen and allied categories as workmen was overruled by the Tribunal observing that Exs. W-2, W-3 and W-4 leave no doubt that the employers' agreement not to dispute the status of the Field Force was only on the clear understanding that it will be so, if dispute is raised on all India basis. The Tribunal then observed that the dispute admittedly was not an all-India dispute and therefore, rejected the plea of estoppel.

It is at this stage necessary to refer to one more reference between the parties being I.T. No. 233/67. The dispute referred to was a demand by the workmen to withdraw the reorganisation integration imposed on the Supervisors attached to the Sales Department and impending in the case of Field Force (Salesmen) and other staff attached to the Sales, Accounts, Transport and allied department. This demand was rejected by the Tribunal following the decision in Hindustan Lever Ltd. v. Ram Mohan Ray & Ors. (supra) The rejection of the demand has no impact at all on the point under discussion.

Having meticulously examined various references pertaining to various industrial disputes between he parties at different centres in India since the agreement in 1957, it unquestionably emerges that the employer till the present reference never once even whispered that the agreement was not a concluded agreement or that it was an inchoate one left hanging at the stage of negotiations. But in the present reference the contention raised was that the agreement was not a concluded agreement because that is how the Tribunal has approached the problem. The Tribunal has observed in this behalf as under:

> "According to the management the three letters do not constitute an agreement because in an agreement there should be an offer and the offer must be accepted as such. They have argued that the offer made in Ex. W- 2 have not been accepted as such in Ex. W-3 ....."

The employer which swore by the agreement and repeatedly succeeded in getting thrown out certain references at the threshold on account of the agreement, now wants to contend that there was no concluded agreement, and ignoring the whole history, the Tribunal falls into an error in accepting

this contention. The weight of evidence not only not at all referred to by the Tribunal but frankly wholly ignored clearly and unmistakably leads to one and one conclusion alone that according to the employer there was the concluded agreement between the parties. It is a solemn agreement, the agreement of which effective and wholesome advantage has been taken by the employer and when it now does not suit it, it in breach of the solemn agreement wants to turn round and not only repudiate it but disown it as having never been entered into. No Court of justice can ever permit such a thing to be done.

Mr. Pai, however, raised a very technical contention that the preliminary objection raised by the union that the employer is estopped from questioning the status of the salesmen or members of the Field Force being not workmen within the meaning of the expression in the Act must be rejected either on the principle of issue of estoppel or promissory estoppel and neither of the three contentions is available to the union notwithstanding the fact whether the agreement exists or stands repudiated and therefore, the Tribunal was justified in rejecting the contention of the union. Mr. Pai in support of the submission urged that at no time as the status of the salesmen as not being workmen or otherwise was ever directly and substantially in issue in earlier references, the issue cannot be rejected on the ground of res judicata and at any rate there was no decision on this issue and therefore the principle of issue estoppel cannot preclude the employer from raising the contention. Mr. Ramamurthi, on the other hand, contended that it is not the contention of the union that the issue about the status of the salesmen is res judicata but what is res judicata is the existence and binding character of the agreement which was directly and substantially in issue between the parties in the award given by Shri Roop Chandra and in various other awards.

In order to appreciate rival contentions it is necessary to focus attention on the issues framed by Industrial Tribunal presided over by Shri Roop Chandra in I. D. No. 46 of 1966. These issues have been extracted earlier. The most important issue was Issue No. 1 about the existence of a binding agreement between the parties which would preclude the employer from ever questioning the status of the salesmen till the agreement remains subsisting and till it is terminated. The issue was: 'is there any agreement between the company and its workmen covering inter alia the question about the status of salesmen? And the answer was: 'there is such a valid and subsisting agreement and that position was adopted by none other than the employer and the employer succeeded in getting the reference thrown-out at the threshold on the ground that in view of the subsisting valid agreement between the parties, the union was estopped from raising a dispute of an all-India nature at a regional level and it can only be raised at Bombay and therefore, the Industrial Tribunal at Delhi had no jurisdiction to entertain the same. Even if the technical principle of res judicata is imported in the field of industrial adjudication, the issue about the existence of an agreement was substantially and directly in issue between the parties in the earlier proceedings and was decided in the affirmative that there exists such an agreement. In the reference from which the present appeal arises, the employer contended that there is no such concluded agreement as pleaded by the union, and therefore, the issue that arises is: whether there is such an agreement as pleaded on behalf of the union. But that was the specific issue in Reference I.D. No. 46 of 1966 between the same parties. To that extent, one can say that unless change of circumstances are established, the issue would be res judicata. But we consider it inappropriate to usher in this technical concept of res judicata pervading the field of civil justice into the field of industrial arbitration. The apprehension was

voiced by this Court in Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. Shahdara (Delhi) Saharanpur Railway Workers Union (1) when it said that it is doubtful whether the principles analogous to res judicata can properly be applied to industrial adjudication. We are not unaware of the legal position that principle of res judicata was invoked and applied by this Court in Workmen of Straw Board Manufacturing Co. Ltd. v. M/s. Straw Board Manufacturing Co. Ltd.(2) One can safely say that principle analogous to res judicata can be availed of to scuttle any attempt at raising industrial disputes repeatedly in defiance of operative settlements and awards. But this highly technical concept of civil justice may be kept in precise confined limits in the field of industrial arbitration which must as far as possible be kept free from such technicalities which thwart resolution of industrial disputes. We however proceed on the assumption that an industrial dispute may be rejected on the principle analogous to res judicata. The matter however may be looked at from a slightly different angle. The concept of compulsory adjudication of industrial disputes was statutorily ushered in with a view to providing a forum and compelling the parties to resort to the forum for arbitration so as to avoid confrontation and dislocation in industry. A developing country like India can ill-afford dislocation in industrial production. Peace and harmony in industry and uninterrupted production being the demands of the time, it was considered wise to arm the Government with power to compel the parties to resort to arbitration and as a necessary corollary to avoid confrontation and trial of strength which were considered wasteful from national and public interest point of view. A welfare State can ill- afford to look askance at industrial unrest and industrial disputes. (See Dahyabhai Ranchhoddas Shah v. Jayantilal Mohanlal(1). The Act did not confer till the introduction of Chapters V-A and V-B, any special benefits or enforceable benefits on the workmen. The Act was designed to provide a self-contained Code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relation norms so that the forums, created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping passe with improved industrial relations reflecting and imbibing socioeconomic justice. If this is the underlying object behind enactment of the Act the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely to eschew industrial strife, confrontation and consequent wastage.

The parties in this case entered into a solemn agreement. It is not for a moment suggested that the agreement has been terminated. The only argument put forward on behalf of the employer was that the union has repudiated the agreement by raising disputes of an all-India nature at a regional level and thereby committed breach of the agreement. This contention is entirely without merits. What has happened is that the union raised certain disputes which according to the union were of a regional nature and which it was not estopped from raising in the teeth of the terms of the binding agreement between the parties. On the other hand the employer contended that the disputes so raised were of an all-India nature. Both sides swore by the agreement the difference in approach being whether the dispute was of an all-India nature or of regional nature. The emerging situation would be that neither the union repudiated the agreement nor the employer and till the present dispute, both swore by the agreement. The divergence in the approach was as to the interpretation the coverage, the ambit and the width of the agreement. Both the parties swore by the agreement but differed in their approach and interpretation and the forum namely the Industrial Tribunal

consistently upheld at the instance of the employer that there was a binding valid agreement subsisting between the parties forbidding the union from raising a dispute of an all-India nature at the regional level and succeeded in getting the reference thrown out at the threshold on the ground that the dispute was of an all-India nature and not of a regional level as contended by the union. This constitutes adherence to agreement, performance of the agreement, implementation of the agreement and being bound by the agreement. This conduct in no sense can be said to constitute repudiation of agreement by the union. Unilateral repudiation of an agreement, as contended by Mr. Pai, does not result in termination of a solemn agreement because the wrongful repudiation can be corrected by enforcement of agreement through machinery provided by the statute. And that is what the employer has succeeded in achieving. The employer relying on the agreement got a number of references rejected on the preliminary objection founded on the agreement. The employer cannot therefore be heard to say that the attempted repudiation by the union, if any, permits the employer to disown the same when it suits it. Unilateral repudiation is distinct from termination and an agreement/settlement remains in force and binding till terminated and does not come to an end by unilateral repudiation. But it must be made clear that there is no substance in the contention of Mr. Pai that the union repudiated the agreement. If thus the employer swore by the agreement relied upon it and successfully contested the claim of the union it cannot now be permitted to back out from such solemn agreement and apart from the technicality of the issue being res judicata or issue estoppel, industrial peace and harmony good behaviour and fair relation with workmen estopes the employer from either repudiating the agreement or contending that the agreement was not a concluded agreement but an inchoate one. In this connection we may profitably refer to Western India Match Co. v. Their Workmen(1) wherein this Court observed as under:

> "It is not out of place to mention in this connection that on some previous occasions the management itself has treated these categories as workmen within the meaning of the U.P. Industrial Disputes Act. The management's contention that the Tribunal has erred in thinking that the inspectors, salesmen and retail salesmen are workmen must therefore be rejected."

Same view was adopted in Aluminium Factory Worker's Union v. Indian Aluminium Co Ltd.(1) In that case certain correspondence which passed before and after the awards between the parties was referred to. This correspondence showed that the appellant/union and the staff association of the company fully accepted the principle that Supervisors would no longer be regarded as workmen and that Supervisors had resigned from membership of the workmen unions. These averments in the correspondence regarding the status of the Supervision being not workmen was held binding between the parties and both the Industrial Tribunal and this Court declined to examine the contention about the status on merits If the union can be held bound to such an inferred agreement from correspondence, the employer conceding the status or to be precise conceding not to contest the status of salesmen would equally be binding on the employer. It would thus appear that the employer management was held bound not by any specific agreement but an agreement spelt- out of its conduct in Western India Match Co. case and assertions in correspondence in India Aluminium Co. case treating certain categories of the workmen as workmen or not as workmen or not as workmen respectively within the meaning of the expression in the Act then at a later stage the employer and the union respectively were estopped from contending to the contrary. The case

before us is much stronger in that there is a concluded binding agreement between the parties neither repudiated nor terminated till today which provides that the employer on its part will not contest the status of the membership of the Field Force including the salesmen employed by the Company as workmen within the meaning of the expression in the Act. Therefore the Tribunal committed a serious error apparent on recorded in holding that there was no concluded agreement between the parties as emerging from Exs. W-2, W-3 and W-4.

The Tribunal negatived the contention of the union that the employer was estopped from challenging the status of the workmen also on the ground that there can be no estoppel against the statute We must confess that even Mr. Pai did not appear to be very enthusiastic to support the finding of the Tribunal that even if there is a binding agreement between the parties and therefore the employe is estopped from questioning the status of salesmen as being workmen, it cannot be availed of by the union because there can be no estoppel against a statute. We find it very difficult not only to understand but to appreciate the approach and the finding of the Tribunal in this behalf. There is no statutory provision that a status of a person invoking the jurisdiction of the Tribunal must be adjudicated upon notwithstanding that no contention to that effect is raised. No statutory provision was brought to our notice which would be rendered nugatory or ineffective if the Status of workman is not questioned. Nor it can be said that the employer has contracted out of the benefits of a statute. Whether a particular person is a workman or not depends upon factual matrix. Workman is defined in Sec. 2(S) of the Act. The ingredients and the incidents of the definition when satisfied. the person satisfying the same would be a workman. Negatively, if someone fails to satisfy one or other ingredient or incident of the definition he may not be held to be workman within the meaning of the expression in the Act. There is no provision in the Act which obliges the Industrial Tribunal or other forums set up under the Act to decide even in the absence of a contention from the employer, a preliminary issue whether the person who has invoked its jurisdiction is a workman or not. There is no such obligation cast statutorily on the Tribunal. If the employer does not arise contain about the status of the workman approaching the Tribunal the Tribunal has no obligation to decide the status of the person whether he is a workman or not. Conversely if the employer agrees not to question the status in future it would only imply that such a contention would not only be not raised but if raised it would not be pressed and if pressed should be negatived in view of the binding agreement. The resultant situation would be that the Tribunal must proceed on the assumption that no such contention is raised and required to be adjudicated upon. If the contention is not raised the Tribunal is under no obligation suo motu or on its own to raise and decide such a contention to cloth itself with jurisdiction to adjudicate upon the dispute. The Tribunal derives its jurisdiction by the order of reference and not on the determination of a jurisdictional fact which it must of necessity decide to acquire jurisdiction. Therefor the Tribunal was clearly in error in holding that the contention convassed on behalf of the union would permit it to raise estoppel against a statute. Undoubtedly it is true that there can be no estoppel against the law of the land. If a party is estopped by doing a thing which it is under a legal disability to perform or forbearing to do something which it is his duty to do the result would be an enlargement of the contractual or other rights allowed by law or their alteration. The Court enforces the performance of statutory duty and declines to interfere for the assistance of persons who seek its aid to relieve them against the express statutory provision. Approving the dicta in Maddison v. Alderson(1) this Court observed in K.Ramadas Shenoy v. The Chief Officers, Town Municipal Council, Udipi and Ors.,(2) that an excess of statutory power could

not be validated by acquiescence in or by the operation of estoppel. Is that the situation here? The Tribunal observed that notwithstanding the fact that the employer has agreed to recognise the union as representative of the Field Force including the salesmen, agreement between the parties cannot override the statute and if therefore Shri A.K. Basu is not workman under the Act, the agreement between the Union and the employer cannot confer on the Tribunal any jurisdiction to give any relief to him under the Act. The Tribunal completely misdirected itself when it assumed and arrogated to itself the obligatory duty in the absence of an impermissible contention, to raise one and proceeded to adjudicate upon, notwithstanding the fact if the agreement is subsisting no such contention can be raised and if raised has to be ignored as an irrelevant pleading. In this connection, it may be recalled that when a reference is made under Sec.10 of the Act, Rule 10-B of the Industrial Disputes (Central) Rules, 1957 obliges the workman involved in the reference to file with the Tribunal a statement of demands relating only to the issues as are included in the order of reference and simultaneously serve a copy of the same to the employer. Sub-rule(2) enjoins the employer within two weeks of the receipt of the statement of claim to file its rejoinder and simultaneously serve a copy of the same on the workman. Ordinarily, the Tribunal after ascertaining on what issue the parties are at variance raises issues to focus attention on points in dispute. In industrial adjudication , issues are of two types: (i) those referred by the Government for adjudication and set out in the order for reference and (ii) incidental issues which are sometimes the issues of law or issues of mixed law and fact. The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to the reference are precluded or prohibited from raising; to wit if the employer does not question the status of the workmen, the Tribunal cannot suo motu raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the expression of the Act. And it is not obligatory upon the employer necessarily to raise the contention that the concerned workman was not a workman within the meaning of the expression under the Act. Therefore, the Tribunal was wholly in error in holding that if the contention of the union were to prevail, the well laid rule of no estoppel against a statute would be violated.

Having examined all the dimensions of the matter, it is crystal clear and is indisputably established that the agreement relied upon by the union is a valid subsisting agreement. It is in force. It is neither repudiated nor terminated. It is binding upon both the parties. Once the agreement is held to be binding, the employer is estopped from contending that the workmen involved in the dispute who were salesmen were not workmen within the meaning of the expression under the Act. Therefore, the Tribunal was in error in undertaking to examine that contention and answer it. That part of the order/award of the Tribunal is unsustainable and must be quashed and set aside.

We accordingly, direct the Tribunal to proceed to determine the dispute on merits without concerning itself with the consideration of the question whether the concerned workmen were workmen within the meaning of the expression under the Act. This appeal accordingly succeeds and the award of the Tribunal to the extent indicated herein is quashed and set aside and the matter is remitted to the Industrial Tribunal with a direction to proceed further in the light of the observations made in this judgment. The respondent shall pay to the appellant costs quantified at

Rs. 3,000.

N.V.K. Appeal allowed.