GAHC010057152018

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1744/2018

THE MANAGEMENT OF ASSAM CARBON PRODUCTS LTD.
REP. BY ITS MANAGING DIRECTOR, P.O- BIRKUCHI NARENGI GUWAHATI, DIST- KAMRUP(M), ASSAM, PIN- 781026

VERSUS

THE ASSAM CARBON WORKERS AND EMPLOYEES UNION AND ANR
P.O- BIRKUCHI, NARENGI, GUWAHATI, DIST- KAMRUP (M), ASSAM, PIN- 781026

2:THE PRESIDING OFFICER
LABOUR COURT
ASSAM
DEPUTY COMMISSIONER'S OFFICE
KAMRUP (M)
GUWAHATI
ASSAM
PIN- 78100

Advocate for the Petitioner : MR S N SARMA SENIOR ADVOCATE, MR. P K TIWARI,MR. A JAHID,MR. K KALITA

Advocate for the Respondent : MR A DASGUPTA, MS. B DAS,MR. B DAS,MR. R SARKAR

BEFORE

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of Hearing : **29.08.2024**
Date of Judgment : **23.09.2024**

JUDGMENT & ORDER (CAV)

1. Heard Mr. P.K. Tiwari, learned Senior Counsel for the petitioner assisted by Mr. K. Kalita, learned counsel and Mr. A. Dasgupta, learned Senior Counsel for the respondent, assisted by Ms. B. Das, learned counsel.

2. By filing this petition, under Article 226 of the Constitution of India, the petitioner is assailing the Award dated 25.01.2018 passed by the Labour Court, Guwahati in Reference Case No. 02/2017 published by Letter No. GLR.20/2017/2024 dated 17.02.2018.

3. The brief facts of the case are as hereunder:-

The Government of Assam in exercise of its power conferred under Section 10(c)(e) of the Industrial Dispute Act, 1947, referred a dispute before the Labour Court of Assam at Guwahati for its adjudication with the following terms of reference:-

i) Whether the management of M/S Assam Carbon Products Limited, Birkuchi, Narengi, Guwahati 781026 is justified in denying

the payment of Rs. 1,00,00,000/- (Rupees one crore) only committed in terms 2 (d) of the Memorandum of Settlement (MoS) dated 21.02.2012 to the Workmen now?

ii) If not, whether the workmen are entitled to the committed amount?

4. Upon receipt of the aforesaid reference, the Labour Court registered a reference case being Reference Case No. 2/2017 whereupon notices were issued to the Management of Assam Carbon Products Limited and to Assam Carbon Worker's & Employees Union, Guwahati.

5. Pertinent that by the settlement referred in the Memorandum of Settlement (MoS) dated 21.02.2012, a lock out was lifted. Prior to that there was another lock out from 20.09.2007 to 24.07.2008 and the present settlement is with regard to the second lock out.

6. Both the parties submitted their written statement before the Labour Court whereafter the Labour Court adjudicated the said reference and rendered its Award on 25.01.2018 answering the reference in favour of the Union which was thereafter published by the Government of Assam on 17.02.2018. Aggrieved by the aforesaid Award, the present writ petition has been filed by the Management.

7. Mr. P.K. Tiwari, learned Senior Counsel submits that the impugned Award is

perverse and that the Labour Court misread and misinterpreted the condition of settlement. He further submits that the Labour Court acted beyond its jurisdiction by questioning the MoS by observing that the Management did not make an effort to bring at least one of the signatories to the MoS dated 21.02.2012 from the side of Workmen to show that the said document was executed by the signatories after their full knowledge to the document and it was understandable to the person of ordinary prudence. In support of the aforesaid submission, he relies upon the decision of the Apex Court in the case of ***Herbertsons Limited Vs. Workmen of Herbertsons Limited & Others***, reported in ***(1976) 4 SCC 736.***

8. He further submits that the Labour Court by doubting the Settlement dated 21.02.2012, has travelled beyond the terms of reference and therefore committed manifest error. In support of the aforesaid submission, he relies upon the following decisions of the Apex Court:-

i) ***Oshiar Prasad & Others Vs. Employers in relation to Management of Sudamdih Coal Washery of M/S Bharat Coking Coal Limited, Dhanbab, Jharkhand,*** reported in ***(2015) 4 SCC 71 (para 22).***

ii) ***Delhi Cloth & General Mills Co. Limited Vs. Workmen & Others,*** reported in ***AIR 1967 SC 469 (Para 9).***

(iii) ***Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Limited & Another,*** reported in ***(1979) 3 SCC 762 (Para 11).***

iv) ***Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa & Others,*** reported in ***AIR 1964 SC 1746 (Para 7 & 8).***

9. He further submits that the Labour Court has totally misinterpreted the Settlement dated 21.02.2012 and erroneously has come to the finding that the lumpsum amount of Rs. 1,00,00,000/-(Rupees one crore) only was meant for the workmen for the works already performed. In this connection, he further placed his reliance in the following decision of the Apex Court:-

i) ***P. Virudhachalam & Ors Vs. Management of Lotus Mills & Another,*** reported in ***(1998) 1 SCC 650 (Para 8).***

ii) ***Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Limited,*** reported in ***(1991) 1 SCC 4 (Para 8).***

10. He further submits that the Labour Court erroneously shifted the onus on the Management of proving that the workmen could not meet the productivity norms set by National Productivity Council (NPC). In this regard, he places reliance on the decision of the Apex Court in the case of ***R.M. Yellati Vs. Assistant Executive Engineer,*** reported in ***(2006) 1 SCC 106 (para 17).***

11. Per contra, Mr. A. Dasgupta, learned Senior Counsel for the respondents submits that a settlement arrived pertaining to industrial dispute either in the course of conciliation proceeding or otherwise has the force of law and therefore, the same is binding on the parties to the agreement.

12. He further submits that under Section 18(3) of the Industrial Dispute Act 1947, a conciliatory settlement is on the same footing of the said Award passed by the Labour Court. He accordingly submits that such settlements are binding and has the force of law. He further submits that the conciliatory settlement in the present case is arrived on 21.02.2012 and the basic condition is fulfillment of NPC

norms, which is to be assessed from March 2012 and the wages of the worker was also revised subject to fulfillment of the said NPC norms. He further submits that it transpires from the evidence of MW-1 that the Management started their assessment from 01.02.2013 and that there is nothing on record that the Union could not fulfill NPC norms from March 2012 to February 2013.

13. He further submits that the Union in their cross examination having categorically stated that they have not failed to fulfill the norms set by NPC and that the Management having released the first part of the revised wages as on 01.04.2013, it establishes that the Union has fulfilled the NPC norms.

14. He further submits that the Writ Court under the certiorari jurisdiction does not exercise the power of Appellate Court or the Review Court but demolishes the order which it consider to be without jurisdiction or palpably erroneous. In support of the aforesaid submission, he places reliance upon the following decisions of the Apex Court:-

i) ***Central Council for Research in Ayurvedic Science & Another Vs. Bikartan Das & Others,*** reported in ***(2023) 11 SCR 731.***

ii) ***Surya Dev Rai-vs-Ram Chandra Rai & Others,*** reported in ***2003(6) SCC 675.***

iii) ***Hari Vishnu Kamath Vs. Ahmed Ishaque & Others,*** reported in ***AIR 1955 SC 233.***

15. He accordingly submits that the impugned Award warrants no interference of this Court under the Certiorari jurisdiction.

16. I have given my prudent consideration to the arguments made by both the learned Senior Counsels appearing for the parties and I have perused the materials available on record as well as the citations submitted at the bar.

17. It appears that since July 2007, the Worker's Union adopted "go slow tactics" and that they interfered in every decision of the Management in functioning of the factory and they also refused to perform duties properly. Consequently, the production of the factory was severely affected. It further appears that the Union also demanded that a study be conducted for arriving at capability of machines and productivity at the factory.

18. It further appears that in August 2007, National Productivity Council (NPC) study was conducted at the factory in the presence of the workmen. The NPC conducted its study and submitted its report. As per the report, it appears that machines of the factory were underutilized and as per the capacity of the machines, the production ought to have been double of the production made by the workers.

19. In view of continuous go-slow, indiscipline, lawlessness and consequently the Company having incurred huge financial loss, it appears that the Management decided to engage Contract Labour and got itself registered vide Registration Certificate dated 24.09.2007 under the Contract Labour (Regulation and Abolition) Act, 1970.

20. It further appears that on 25.09.2007, the workmen of the factory went on a lightning strike from 3:45 PM to around 5:15 PM and formed an unlawful assembly in front of the kiln and created disturbances.

21. It further appears that vide letter dated 26.09.2007, the Management informed the Union that none of the regular workman will be retrenched for engagement of the Contract Labour.

22. It further appears that at the behest of the Management, the Labour-cum-Conciliation Officer, Guwahati held conciliation between the Management and the Union and after discussions and as per suggestion of the Labour-cum-Conciliation Officer, the Management and the Union arrived at a settlement dated 15.10.2007.

23. It further appears that a joint letter dated 16.10.2007 was submitted by the Management and Union to the Labour and Conciliation Officer enclosing copy of the settlement dated 15.12.2007.

24. It further appears that in breach of the Settlement dated 15.10.2007, the Union continued to raise demands on settled issues and acting in breach of the settlement. It further appears that it resorted to various activities disrupting the functioning of the Factory. Accordingly, Management informed the Assistant Labour Commissioner about these disruptive activities of the Union vide its letters dated 21.11.2007 and 23.11.2007.

25. It appears that vide letter dated 23.11.2007, Labour Officer directed the Union to refrain from the illegal activities and to call off agitational path.

26. It appears that on 27.11.2007, despite the said letter of the Labour Officer dated 23.11.2007, the workmen went on lightning strike from 9:45 AM and continued their strike.

27. It further appears that on 29.11.2007, being confronted with the continuous

strike and to safeguard the plant and machineries of the Factory, the Management declared lockout in the Factory.

28. It further appears that on 24.07.2008, the lockout was lifted by the Management.

29. Pertinent that for the period of strike and lockout, the Union demanded wages for workmen which gave rise to Reference Case No.14/2008. The issue for adjudication for the Labour Court was *"Whether the Workmen are entitled to wages for the period of strike from 27.11.2007 to 29.11.2007 and for the period of lockout from 29.11.2007 to 24.07.2008".* The Labour Court by its order dated 26.06.2014 decided the reference against the Union and in favour of Management holding strike to be illegal and lockout to be legal and also holding that workmen are not entitled to wages for the said period. Against Order dated 26.06.2014 the workmen preferred WP(C) No. 4064/2016 which was dismissed by Judgment & Order dated 01.04.2024.

30. It further appears that on 16.07.2009, there were large scale disturbances in the Factory resulting in loss and damage to the Company's property. The situation was brought under control by the intervention of police. Consequently, the Management suspended 10(ten) workers immediately who were directly involved in the incident.

31. Pertinent that against these 10(ten) workers, domestic enquiries were held resulting in dismissal of these workers from service for gross misconduct. The fairness of domestic enquiry was assailed before the Labour Court. However, the Labour Court vide its Judgment dated 30.09.2013 passed in Case No.4/2010 upheld the fairness of the domestic enquiry and the orders of dismissal of the

workmen.

32. It further appears that since the morning of 04.12.2010, a large number of workmen blocked the road leading to the Factory, thereby restraining the workmen and the executives from entering the Factory.

33. It further appears that on 06.12.2010, the workmen led by the Union resorted to lightning strike and abstained from attending duties. Being confronted with this situation, the Management declared lockout in the factory on the same day, i.e. 06.12.2010. The lockout was finally lifted on 09.03.2012.

34. In these circumstances, the Union raised an industrial dispute before the Assistant Labour Commissioner and consequently the Assistant Labour Commissioner held series of conciliation proceedings on the issues. In these proceedings, the workmen were represented by 2(two) Unions, viz. Assam Carbon Workers & Employees Union and Assam Carbon Staff & Workers Union.

35. It further appears that on 21.02.2012, the Management and the 2(two) Unions arrived at a settlement in presence of the Assistant Labour Commissioner, Guwahati.

36. Pertinent that as per Clause 2D of the Settlement, the workmen will observe strict adherence to NPC norms and achieve and maintain agreed productivity norms from the date of resumption of operation and on its part, the Management as a goodwill gesture, will offer for the retrospective period 1(one) lump sum payment towards both of the 2(two) charter of demands and all other financial demands in any form as on the date of this settlement (the total financial implication on the Company being restricted to Rs.1,00,00,000/-(Rupees one crore) only as full and final settlement as a special case and without creating any

precedence. Such lump sum payments will be disbursed in 4(four) quarterly installments commencing after workmen have achieved and maintained the productivity norms as agreed above continuously for 3(three) months and thereafter every quarter. Any failure in achieving and maintaining the agreed productivity norms in any month will disentitle the workmen to such lump sum amount.

37. It further appears that after the Settlement dated 21.02.2012, the workmen resumed production at a slower pace. As a result, productivity norms as per the NPC report could not be achieved in any of the quarters post 21.02.2012. However, the Management, with a view that release of some amount will encourage the workmen to step up their productivity, released the first part of the revised wages w.e.f. 01.04.2013.

38. It further appears that on 12.11.2013, the Management issued an even dated letter to the General Secretary of the Union enclosing the detailed worksheet from February, 2013 to October, 2013 has shown the low productivity levels of the workmen.

39. It further appears that instead of stepping up the productivity and achieving the agreed productivity norms continuously for 3(three) months, the Union continued to make demands for release of further payment. Consequently, after several discussions with the Union, the Management released the second part of the revised wages w.e.f. 01.08.2014. However, even after payment of the second part of the revised wages, the workmen failed to achieve and maintain the productivity norms as per NPC.

40. It appears that in the year 2015, 8(eight) of the dismissed workmen filed an

application under Section 2A of the Industrial Disputes Act, 1947 before the Labour Court, which was registered as Case No.2/2015 claiming reinstatement in terms of the Memorandum of Settlement dated 21.02.2012. In the said case, the Management in its written statement contended that since the Union has not complied with the terms of the Settlement dated 21.02.2012 and as such, it cannot claim benefit under the said settlement.

41. Pertinent that on 20.06.2016, the Labour Court passed an Award dismissing the said Case No.2/2015. It was held by the Labour Court that Union had not complied with the Settlement dated 21.02.2012 and as such could not have claimed benefit thereunder.

42. It further appears that thereafter in the year 2017, the Union raised a dispute with regard to implementation of Clause 2(d) of the settlement dated 21.02.2012 before the Assistant Labour Commissioner alleging non-compliance of the said clause of the settlement by the Management and denying them a sum of Rs. 1,00,00,000/-(Rupees one crore) only in 4(four) installments.

43. Accordingly, on 17.02.2017, the appropriate Government issued a Notification wherein the subject two issues extracted hereinabove was referred to the Labour Court for adjudication. This resulted in registration of Reference Case No.2/2017.

44. Thereafter, on 25.01.2018, the Presiding Officer, Labour Court passed the award in Reference case No. 2/2017 deciding both the issues in favor of the Union and against the Management and on 22.02.2018, The Assistant Labour Commissioner, Kamrup (M) issued a Notification publishing the said Award.

45. Since the Memorandum of Settlement dated 21.02.2012 is the basis of the

terms of reference, let me first analyze the relevant terms of the said Settlement. Clause 2 of the said Settlement dated 21.02.2012 is extracted hereunder for ready reference:-

"*2. That the workmen would achieve and maintain the productivity norms as per the base productivity study report by the National Productivity Council(NPC), Management would then agree to the following settlement of the Charter of Demand of the Unions*

a. Revise the wages of the workmen covered under this agreement at average of Rs 1569/- per workman per month. Detailed calculations would be worked out in due course as per prevailing practice at other Units. Revision will be effective after achievement of productivity continuously for two months. Effective date for this revision will be the 1st day of the following month after workmen have continuously achieved and maintained productivity at all specified processes and work stations according to the NPC norms during the preceding two months continuously without any break. This revision is also subject to workmen achieving, maintaining and adhering productivity as per NPC Norms continuously and consistently, during the period of operation of this agreement. If, in any particular month, productivity as per NPC norms are not achieved and maintained at any of the processes or work stations, the amount of revision in wages will be forfeited and the workmen of the factory will have no claims on such amounts, what so ever.

b. Management has further agreed to pay at average of Rs 1890/- per workman per month and increase in the rate of VDA by paisa 10 (Rs 2.50 to Rs 2.60)on the points over the prevailing points as on 21.02.2012, towards the settlement of COD against Unions letter nos. Nil dated 17.06.2010 and 21.07.2010. Detailed calculations would be worked out in due course as per prevailing practice at other Units. Revision will be effective after the workmen would achieve and maintain productivity continuously for 5 (five) months. Effective date for this revision will be the 1st day of the following month after
workmen have continuously achieved and maintained productivity at all specified processes and work stations according to the NPC norms during the preceding 5 (five) months continuously without any break from the date of release of previous COD. This revision is also subject to workmen adhering and achieving productivity as per NPC Norms continuously and consistently, during the period of operation of this agreement. If in any particular month, productivity as per NPC norms are not achieved and maintained at any of the processes or work stations, the amount of revision in wages will be forfeited and the workmen of the factory will have no claims on such amounts, what so ever.

c. That the revision on wages would be production/productivity linked and any failure to achieve and maintain productivity as NPC Norms will disentitle the workmen of the revision amount. The revision of wages would be prospective and workmen will have no claim whatsoever on the retrospective period wages beyond the lump-sum amount as agreed in this agreement.

d. The strict adherence to NPC norms and achieving and maintaining agreed

productivity Norms from the date of resumption of operations.

Management, as a goodwill gesture, will offer, for the retrospective period) one lump sum payment towards both of the 2(two) Charter of Demands and all other financial demands in any form as on the date of these settlement (the total financial implication on the company being restricted to Rs.1 crore (one crore only} as full and final Settlement, as a special case, and without creating any precedence. Such lump sum payments will be disbursed in 4 quarterly installments commencing after workmen have achieved and maintained the productivity norms as agreed above continuously for 3(three) months and thereafter every quarter. Any failure in achieving and maintaining the agreed productivity noms in any month will disentitle the workmen to such lump sum amount and management will deduct the lump sum amount from the wages of workmen in the same manner as it is paid. This is because, this amount is being paid to workmen as a goodwill gesture based on the assurance, that the agreed productivity norms will be achieved and maintained during the operation of this agreement and subsequently thereafter without any interruption until further agreement is made."

46. It is submitted at the bar that the first two payments of the settlement terms has been paid by the Management. The dispute is as regard the payment of Rs. 1,00,00,000/- (Rupees One Crore) only.

47. Reading of the aforesaid terms of the Settlement, apparent that the terms of settlement was subject to the workmen achieving and maintaining the productivity norms as per the based productivity report prepared by the NPC, inter-alia the Management as a goodwill gesture will offer for the retrospective period one lumpsum payment towards both of the two charter of demands and all other financial demands being restricted to Rs. 1,00,00,000/- (Rupees One crore) only as full and final settlement, as a special case, and without creating any precedence. It further appears that it was agreed that such lumpsum payment will be disbursed in four quarterly installment commencing after the workmen have achieved and maintained the productivity norms as agreed continuously for three months and thereafter every quarter. It further appears that it was agreed that any failure in achieving and maintaining the agreed productivity norms in any month,

the workmen will be disentitled to such lumpsum amount and the Management will deduct the said lumpsum amount from the wages of the workmen in the same manner as it is paid. It further appears that it was specifically agreed that this arrangement is made because the said lumpsum amount is being paid to the workmen as a goodwill gesture based on the assurance that the agreed productivity norms will be achieved and maintained during the operation of the settlement agreement and subsequently thereafter without any interruption until further agreement is made.

48. The said lumpsum payment of Rs. 1,00,00,000/- (Rupees one crore) only having been not paid, the dispute has arisen. The terms of reference therefore as framed by the Government of Assam interalia is as whether the Management is justified in denying the payment of Rs. 1 crore only committed in terms to the MoS dated 21.02.2012 to the workmen. Therefore, the question which had arisen before the Labour Court is whether there is any justification for the Management in denying the said payment of Rs. 1,00,00,000/- (Rupees one crore) to the workmen.

49. It is well settled that the Labour Court while answering the reference, has to confine its enquiry to the questions referred and has no jurisdiction to travel beyond the questions or/and the terms of the reference while answering the reference. A fortiori, no enquiry can be made on those questions which are not specifically referred to the Tribunal while answering the reference. Reference is made to the decision of the Apex Court in the case of ***Oshiar Prasad (Supra),*** wherein the Apex Court in paragraph 22 has held as hereunder***:-***

"***22.*** *It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to*

confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference."

50. Reference is also made to ***Delhi Cloth & General Mills Co. Limited (Supra),*** wherein the Apex Court at paragraph 9 has held as hereunder:-

"*9. From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word "incidental" means according to Webster's New World Dictionary:*

> *"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:"*

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lockout and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a lockout. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lockout was improper. The third issue has also a sub-issue, namely, if the lockout was not legal, whether the workmen were entitled to wages for the period of the lockout. Similarly, the fourth issue proceeds on the basis that there was a sit-down-strike in the Swatantra Bharat Mills on 23-2-1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike."

51. Reference is also made to ***Pottery Mazdoor Panchayat (Supra),*** wherein the Apex Court at para 11 has held as hereunder:-

"11. Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management."

52. Reference is also made to ***Hochtief Gammon (Supra),*** wherein the Apex Court in paragraphs 7 & 8 has held as hereunder:-

"7. In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under Section 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself has been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in Section 10. One of these amendments was that Section 10(1)(d) now empowers the appropriate Government to 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. In other words under Section 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

8. Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under Section

18(3)(b) as it now stands."

53. Keeping in mind the above principle, let me now examine the award of the Labour Court impugned before this Court in this proceedings. It appears that the Labour Court has held that the lump sum amount of Rs.1,00,00,000/- (Rupees one crore) only was meant for the workmen for the works already performed. Apparent that in support of its finding, the Labour Court selectively read Paragraph 8 of the Memorandum of Settlement *de hors* the context, i.e. "*Management as a goodwill gesture will offer, for the retrospective period, one lump sum amount towards both of the two Charter of demands and all other financial demand in any form on the date of this settlement....*". It appears that the Labour Court totally ignored the fact that the establishment was under lockout from 07.12.2010 to 08.03.2012 and lockout was only lifted on 09.03.2012 after the Settlement dated 21.02.2012 and prior to 07.12.2010, the establishment had witnessed large scale disturbances, abstentions of workmen and go-slow tactics during the period 16.07.2009 to 06.12.2010. Hence, there was no question of Management offering a lump sum amount of Rs.1,00,00,000/-(Rupees one crore) only for the works already performed prior to the Memorandum of Settlement. Be that as it may, the Management had agreed to pay the lump sum amount of Rs.1,00,00,000/- (Rupees one crore) only in 4(four) installments for the retrospective period not for the work performed but as a goodwill gesture and as a special case without creating any precedence. Moreover, payment of each quarter was to commence only after workmen achieved and maintained agreed productivity norms continuously for 3(three) months and thereafter every quarter and any failure of workmen in achieving the agreed productivity norms in any month had the effect of disentitling the workmen to such amount.

54. Pertinent that the factum of the parties coming into a settlement for payment of Rs. 1,00,00,000/-(Rupees one crore) is presumed in the reference

made and the consequential denial of the said payment whether is justified or not is referred for adjudication. It is trite law that the Labour Court derives jurisdiction to adjudicate only the issue referred. Thus, the Labour Court cannot go beyond the terms of the reference. In the present case, the question that the Labour Court has jurisdiction to decide is "whether the Management was justified to deny the lumpsum amount of Rs. 1,00,00,000/- (Rupees one crore) only to the workmen or not".

55. It appears that the Labour Court questioned the Memorandum of Settlement by observing that the Management did not make an effort to bring at least one of the signatories to the Memorandum of Settlement dated 21.02.2012 from the side of workmen to show that the said document was executed by the signatories after their full knowledge to the document and it was understandable to a person of ordinary prudence. Therefore, it is evident that the Labour Court sought to determine as to whether the terms of Settlement were explained to the workmen and as to whether workers voluntarily accepted the Settlement knowing all the consequences. The principle of law is well settled that when a recognized Union negotiates with an employer, the workers as individuals do not come into picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized Union, which is expected to protect the legitimate interest of labour, enters into a settlement in the best interest of labour. Reference is made to ***Herbertsons Limited Vs. Workmen of Herbertsons Limited & Ors*** reported in ***(1976) 4 SCC 736*** wherein the Apex Court at paragraphs 17 & 18 has held as hereunder:-

"*17. The tribunal thought that the question of the quantum of membership of the second respondent did not call for a finding at all in view of this Court's order. As observed above that was not a correct assumption. On the other hand we feel that this view of the tribunal has led it to approach the matter in an entirely erroneous manner. The tribunal is, rightly enough,*

conscious that under Section 18(1) of the Industrial Disputes Act the settlement is binding on the company and the members of the third respondent union. Even so, the tribunal devoted nearly half of its order in scanning the evidence given by the company and Respondent 3 to find out whether the terms of the settlement had been explained by the President of the union to the workmen or not and whether the workers voluntarily accepted the settlement knowing all the consequences". This to our mind is again an entirely wrong approach.

18. When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the third respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration."

56. Further, the Labour Court appears to have doubted the evidence of MW-1 Shri Basanta Saikia even though he is one of the signatories of the Memorandum of Settlement dated 21.02.2012.

57. Further, it appears that the Labour Court doubted the authenticity of the Memorandum of Settlement because other than MW-1, the Management did not bring any other signatories of the said Settlement from the side of the workmen to show that the said document was executed by the signatories after their full knowledge to the document. Thus, the Settlement being the basis of the reference, the factum of such settlement having stood presumed, the Labour Court acted beyond its jurisdiction in questioning the authenticity of such settlement.

58. It further appears that the Labour Court, while making efforts to interpret the Settlement, contradicted itself by holding that the last paragraph of Clause 2 of the Memorandum of Settlement dated 21.02.2012 was a camouflage resorted to by the Management to deprive the workmen from the legitimate claim of payment. Apparent that the said finding of the Labour Court is manifestly erroneous and

suffers from grave jurisdictional error.

59. Pertinent that the settlement arrived at during the conciliation proceedings are binding on the workmen as per the mandate of Section 18(3)(d) of the Industrial Dispute Act, 1947. Section 18(3)(d) of the Industrial Disputes Act, 1947 is reproduced hereunder for ready reference:-

"*18(3)(d) - where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.*"

60. Thus, the settlement arrived during conciliation proceedings are binding not only on the signatories to the settlement but also on all parties to the Industrial Dispute and has the same effect as an Award of the Labour Court. Reference is made to ***P. Virudhachalam & Ors. (Supra),*** wherein the Apex Court at paragraph 8 has held as hereunder:-

"*8. The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award. They all stand on a par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Section 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based on written agreements between the parties. It is impossible to accept the submission of learned counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must*

be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlements gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18 (1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5-5-1980 between Respondent 1-management on the one hand and the four out of five unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act."

61. Reference is also made to the decision of the Apex Court in the case of ***Barauni Refinery Pragatisheel Shramik Parishad (Supra).*** Paragraph 8 of the aforesaid decision is reproduced hereunder for ready reference:-

"*8. Since the High Court has answered the first point in the affirmative i.e. in favour of the workmen, we do not consider it necessary to deal with that aspect of the matter and would confine ourselves to the second aspect which concerns the binding character of the settlement. Section 2(p) of the Industrial Disputes Act, 1947 defines a settlement as a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the officer authorised in this behalf by the appropriate government and the Conciliation Officer. Section 4 provides for the appointment of Conciliation Officers by the appropriate government. Section 12(1) says that where any industrial dispute exists or is apprehended the Conciliation Officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner. Sub-section (2) of Section 12 casts a duty on the Conciliation Officer to investigate the dispute and all matters*

connected therewith with a view to inducing the parties to arrive at a fair and amicable settlement of the dispute. If such a settlement is arrived at in the course of conciliation proceedings, sub-section (3) requires the Conciliation Officer to send a report thereof to the appropriate government together with the memorandum of settlement signed by the parties to the dispute. Section 18(1) says that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of the conciliation proceedings shall be binding on the parties to the agreement. Sub-section (3) of Section 18 next provides as under:

> *"18.(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10-A or award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-*
> *(a) all parties to the industrial dispute;*
> *(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;*
> *(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;*
> *(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."*

It may be seen on a plain reading of sub-sections (1) and (3) of Section 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties

to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated August 4, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union."

62. In the present case, the Memorandum of Settlement dated 21.02.2012 was arrived at in the course of conciliation proceeding and as such, was binding on the parties.

63. The Labour Court, while observing that though the workers were cautioned that NPC norms must be fulfilled for securing the 4(four) installments of lump sum amount of Rs.1,00,00,000/-(Rupees one crore) only and the performance of the workers would be assessed quarterly before making the first installment of the lump sum amount, held that from Exhibit: 9(1) to 9(151), it is not established that the performance of the workers was assessed quarterly. Pertinent that Exhibit: 9(1)

to 9(66) were the worksheets from 01.02.2013 to October, 2013 showing low productivity of the workmen. Likewise, Exhibit: 9(67) to 9(151) were the worksheets showing low productivity of the workmen during the calendar year 2014 and 2015, i.e. 01.01.2014 to 31.12.2014 and 01.01.2015 to 31.12.2015. It is, therefore, evident that from 01.02.2013 to October, 2013 and during the year 2014 and 2015, the workmen were continuously assessed and in none of the quarters of the aforementioned years, they could fulfill the productivity norms laid down by the NPC.

64. Apparent that the Labour Court erroneously held that from the evidence of Union witness, it was seen that against Exhibit: 9 of the Management, the Union submitted a reply but the same was not produced before the Labour Court by the Management. Thus, the Labour Court failed to appreciate that the Union could have filed a copy of its reply or could have called for the same while adducing evidence. Failure of the Union to adduce a particular evidence could not be held against the Management. Even otherwise, reply of the Union against Exhibit: 9 of the Management cannot constitute relevant evidence to establish that the workmen fulfilled the productivity norms laid down by the NPC and thereby complied with the conditions of the Memorandum of Settlement.

65. Apparent that the Labour Court placed reliance on the letter exhibited from the workmen side (Exhibit-B) to come to a finding that the sincere and hard work of the workmen was appreciated by the Chairman of the Assam Carbon Products Limited and that the hard work of the workmen resulted in good records of production in quality and quantity for a period of 3(three) years. Pertinent that the Exhibit-B letter was written by the workmen themselves, wherein they had attributed appreciation of their conduct and hard work to the Chairman of the Assam Carbon Products Limited in his speech on 13.07.2017. Therefore, Exhibit-B

cannot be construed to be an evidence to establish that the workmen fulfilled the productivity norms and thus complied with the conditions of Memorandum of Settlement.

66. Apparent that the Labour Court further observed that there is no evidence to show that even a single workman was show caused for not securing the target set by the NPC. The factum of no workman being show caused for the failure to achieve the target set by the NPC was one of the reasons for the learned Labour Court to hold the workmen entitled to an amount of Rs.1,00,00,000/-(Rupees one crore) only in 4(four) installments without there being any evidence to show that the workmen met the productivity norms set by the NPC continuously for a period of 3(three) months in any of the quarters. Pertinent that, the learned Labour Court also did not record any finding as to whether the workmen indeed met the required productivity norms set by the NPC in terms of the Settlement.

67. It appears that the Labour Court shifted on the Management the onus of proving that the workmen could not meet the productivity norms set by NPC and thus failed to fulfill the conditions of the Settlement. Apparent that, the dispute in the present case was made by the Union and the terms of reference were set at its behest and as such, the burden of proof was on the Union to establish that the conditions of the Memorandum of Settlement were complied with by the workmen to get their legitimate lumpsum payment of Rs.1,00,00,000/- (Rupees one crore) only.

Reference is also made to ***R.M. Yellati Vs. Assistant Executive Engineer*** reported in ***(2006) 1 SCC 106,*** wherein the Apex Court at Paragraph 17 has held as hereunder:-

"*17. Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.*"

68. In the present case, the Workmen Union has not brought any documents whatsoever to show that the workmen have fulfilled the requisite NPC norms which is the conditions precedent for payment of the aforesaid lumpsum of Rs. 1,00,00,000/-(Rupees one crore) only.

69. Pertinent also that since in an earlier Case No.2/2015, wherein 8(eight) of the dismissed workmen had prayed for their reinstatement in terms of the Memorandum of Settlement dated 21.02.2012, the Labour Court by its Award dated 20.06.2016 had dismissed the case on the ground that the Union had not complied with the Settlement dated 21.02.2012, the said finding of the Labour Court in Case No.2/2015 was binding in the present Reference Case No.2/2017 and the same could not have been overlooked by the Labour Court.

70. Apparent that, the Labour Court answered the reference against the

management without arriving at the finding that the Workmen fulfilled the productivity norms set by the NPC and without there being any evidence in support of such finding, the Labour Court held the Workmen entitled to the payment of Rs.1,00,00,000/-(Rupees one crore) only in terms of the Settlement dated 21.02.2012. The condition precedent for release of the said lumpsum payment of Rs.1,00,00,000/-(Rupees one crore) only to the workmen being their fulfillment of the productivity norms set by the NPC, the same having not been proved, the Award of the Labour Court is based on no evidence and therefore the same is totally perverse.

71. In ***Central Council for Research in Ayurvedic Sciences & Another-vs-Bikartan Das & Ors*** reported in ***(2023) 11 S.C.R. 731***, the Apex Court has dealt with the scope of writ of certiorari. Some of relevant paragraphs of this judgment are quoted below for ready reference:-

> "*49. Before we close this matter, we would like to observed something important in the aforesaid context:*
> *Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.*

50. The first cardinal principles of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purpose to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ

court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

56. In Surya Dev Rai -vs- Ram Chandra Rai and others, reported in 2003 (6) SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath -vs- Ahmed Ishaque and others, AIR 1955 SC 233 occasioning failure of justice.

59. So far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. To attract the writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on the face of the record. Mere formal or technical errors, even of law, are not sufficient, so as to attract a writ of certiorari. As reminded by this Court time and again, this concept is indefinite and cannot be defined precisely or exhaustively and so it has to be determined judiciously on the facts of each case. The concept, according to this Court in K.M. Shanmugam -vs- The S.R.V.S (P) Ltd. and others, reported in AIR 1963 SC 1626, 'is comprised of many imponderables.....it is not capable of precise definition, as no objective criterion could be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element.' A general test to apply, however, is that no error could be said to be apparent on the face of the record if it is not 'self-evident' or 'manifest'. If it requires an examination or argument to establish it, if it has to be established by a long drawn out process of reasoning, or lengthy or complicated arguments, on points where there may considerably be two opinions, then such an error would cease to be an error of law.

61. At this stage, it may not be out of place to remind ourselves of the observations of this Court in Syed Yakoob (supra) on this point, which are as follows:

> *"Where it is manifest or clear that the conclusion of law recorded by an inferior or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Certiorari would also not lie to correct mere errors of fact even though such errors may be apparent on the face of the record. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that*

recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding. It is also well settled that adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal and these points cannot be agitated before the writ court."

63. However, we may clarify that findings of fact based on 'no evidence' or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.

64. Thus from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

65. A writ of certiorari, being a high prerogative writ, is issued by superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well- established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits."

72. Reading of the aforesaid decision of the Apex Court, it is apparent that the exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India, more particularly while issuing a writ of certiorari, the High Court does not exercise

the powers of an Appellant Court. It further does not review or reweighs the evidence but it only demolishes the order which it considers to be without jurisdiction or palpably erroneous. In other words, the writ of certiorari can be issued if an error of law is apparent on the face of the record. Apt that findings of fact based on no evidence or purely on surmises and conjectures or which are perverse is an error of law and therefore a writ of certiorari can be issued against such findings.

73. In the present case, what emerges from the above is that the Management has not paid the lumpsum payment of Rs.1,00,00,000/-(Rupees one crore) only to the workmen in terms of clause 2 (d) of the Settlement as the workmen failed to achieve the productivity norms set by the NPC which is the conditions precedent of release of such payment to the workmen. The Labour Court by answering the reference against the Management, without there being any proof of the workmen fulfilling the productivity norms set by the NPC and by questioning the authenticity of the subject settlement acted without jurisdiction and therefore the impugned Award dated 25.01.2018 of the Labour Court is palpably erroneous and perverse.

74. As such, the impugned Award dated 25.01.2018 is illegal and unsustainable in law. Hence, writ petition succeeds.

75. Resultantly, the impugned Award dated 25.01.2018 passed by the Labour Court, Guwahati in Reference Case No. 02/2017 published by Letter No. GLR.20/2017/2024 dated 17.02.2018 is set aside and quashed.

76. The writ petition stands allowed and disposed of.

JUDGE

Comparing Assistant