Rangnath and Others Vs. The Director, Ground Water Survey and Development Agency and Others

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Court : Mumbai Aurangabad

Decided On : Jun-18-2015

Judge : Ravindra V. Ghuge

Appeal No. : Writ Petition No. 8065 of 2013

Appellant : Rangnath and Others

Respondent : The Director, Ground Water Survey and Development Agency and Others

Judgement :

Oral Judgment:

1. Rule. Rule made returnable forthwith and by the consent of the parties, heard finally.

2. The three petitioners have preferred this petition for challenging the judgment and order dated 26/03/2013 delivered by the Industrial Court in Revision (ULP) Nos.36/2012, 37/2012 and 39/2012 and the judgment of the Labour Court dated 21/02/2012 delivered in Complaint (ULP) No.316/1992.

3. It is submitted by the learned Advocate for the petitioners that petitioner No.1 joined employment on 05/02/1980 and was terminated on 16/07/1992 after having

put in about 12 years and 7 months in employment. Petitioner No.2 joined duties on 01/11/1988 and was terminated on 16/07/1992 after having put in 3 years and 9 months in service. Petitioner No.3 joined service on 23/11/1984 and was terminated on 16/07/1992 after having put in about 8 years in employment.

4. On 16/07/1992, in all 7 employees were terminated by the respondents. They preferred Complaint (ULP) No.316/1992 u/s 28(1) r/w Item 1 (a to g) of Schedule IV of the MRTU and PULP Act, 1971, through their Union and all of these employees were mentioned in Schedule 'A' to the complaint. The complaint was first decided by the Labour Court by its judgment dated 12/10/2000, thereby directing the respondents to reinstate the 7 employees mentioned in Schedule A to the complaint within 1 (one) month from the date of the judgment, with continuity and back wages w.e.f. 16/07/1992.

5. The respondents preferred Revision (ULP) No.59/2000 u/s 44 of the Act of 1971 before the Industrial Court. By its judgment dated 23/04/2003, the Industrial Court allowed the revision and quashed the judgment of the Labour Court dated 12/10/2000. The Complaint was remitted back to the Labour Court for fresh trial and to be decided within 1 (one) year.

6. Upon remand, the Labour Court decided the complaint afresh by its judgment dated 29/04/2004 vide which the complaint was allowed and the respondents were directed to give a top priority as far as its allotment of work in their favour, notwithstanding of the unskilled workers working with them i.e. to be complied with within a month from today?.

7. The above directions of the Labour Court dated 29/04/2000 were challenged by 7 employees mentioned in Schedule A to the complaint, who were earlier represented by the Lal Bawta General Kamgar Union, through Revision (ULP) No.37 of 2004. Similarly, the respondents also preferred Revision (ULP) No.46/2004 challenging the same judgment.

8. By its common judgment dated 30/08/2011, the Industrial Court allowed the revision petition filed by the 7 employees and held that the second revision petition became redundant as the judgment of the Labour Court dated 29/04/2004 was

quashed and set aside and the complaint was remanded to the Labour Court for the second time.

9. The Labour Court decided the complaint afresh by its judgment and order dated 21/02/2012, impugned in this petition and allowed the complaint. However, in lieu of reinstatement with continuity without back wages, it quantified the compensation to be paid to the concerned 7 employees.

10. Six out of the seven employees preferred Revision (ULP) Nos.35/2012 to 39/2012 and 96/2012 before the Industrial Court. By its judgment and order dated 26/03/2013, all the revision petitions were dismissed and the judgment of the Labour Court was thus sustained.

11. It is to be noted that only 3 employees from Schedule 'A? to the complaint have preferred this petition. Grievance of the petitioners is that though they have not worked for a long period, the compensation awarded by the Labour Court and sustained by the Industrial Court amounts to a travesty of justice. Petitioner No.1 is awarded compensation of Rs.17,500/- having put in 12 years and 7 months in service. Petitioner No.2 is awarded compensation of Rs.14,450/- having put in 7 years and 8 months in employment. Petitioner No.3 is awarded compensation of Rs.12,150/- having put in about 3 years and 4 months in employment.

12. The petitioners have relied upon a recent judgment of the Hon'ble Supreme Court in the case of Bhavnagar Municipal Corporation etc. Vs. Jadeja Govuba Chhanubha and another, reported at 2015 AIR SC 609 to fortify its contention that the amount of compensation should be commensurate to the number of years put in service. Mr.Barde hastens to add that his primary prayer before this Court is for seeking reinstatement of the petitioners and pay them minimum wages.

13. The relevant prayers put forth by the petitioners in clause A, B and D are as follows:

A. By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon'ble High Court may be pleased to quash and set aside the Judgment and Order dated 26/03/2012 passed by learned Member, Industrial

Court, Ahmednagar in Revision (ULP) Nos.36, 37 and 39/2012 ;

B. Pending hearing and final disposal of this writ petition, the Hon'ble High Court may be pleased to direct the respondents to prove the work and pay them as per the Minimum Wages Act ;

D. Such other just and equitable relief as the facts and circumstances of the case warrants may kindly be awarded in favour of the petitioners.?

14. Mr.Barde submits that this Court can award such relief to the petitioners as it may find equitable and the same can be done in the light of prayer clause 'D', set out hereinabove.

15. Mr.Barde has further submitted in the light of the objection of the learned AGP that the Union probably was tired of the frequent orders of remand by the Industrial Court, thereby remitting the complaint to the Labour Court for fresh decision. It, therefore, appears to have deserted the petitioners in the midst of the litigation. The petitioners could not be rendered remediless and therefore they preferred revision petitions before the Industrial Court. Since then, they have been prosecuting their complaints and their legal rights. He, therefore, submits that the objection raised by the learned AGP deserves to be negated as desertion by the Union should not render the petitioners remediless.

16. The learned AGP has vehemently opposed the petition. It is submitted that the petitioners were temporaries. They were engaged as and when the work was available. Since the respondents had no work available, they terminated their services. Though they may have completed 240 days in the continuous employment of the respondents, they could not seek reinstatement as they were temporaries and there were no posts available.

17. It is further submitted that the petitioners are out of employment for the past about 23 years and as such the compensation awarded by the Labour Court, which is affirmed by the Industrial Court, has been rightly granted.

18. It is submitted that the respondents do not fall under the definition of Industry? u/s 2(j) of the Industrial Disputes Act, 1947. Therefore, the complaint was

untenable before the Labour Court. It is also submitted that once the complaint was preferred through the Union, there cannot be a substitution of the complainants without obtaining leave of the Court.

19. In so far as the contention of the respondents is concerned that they do not fall within the definition of Industry?, I do not find much merit in the same. The Labour Court has framed an issue as regards whether the respondents are an Industry?. It has been concluded that the respondent is an Industry? by setting out detailed reasons and by considering the ratio laid down by the Hon'ble Supreme Court in the case of Banglore Water Supply and Severage Board Vs. A.Rajappa and others, AIR 1978, SC 548. The reasons put forth by the Labour Court in support of its conclusions are based on the oral and documentary evidence before it.

20. It is noteworthy that the respondents have not challenged these conclusions before the Industrial Court by filing any revision petition, much less before this Court. It, therefore, tantamounts to acceptance of the said conclusions on the light of the principle acceptance sub silentio?. In the writ petition filed by the petitioners, the respondents cannot pray for such relief. As such, I am unable to accept the objection raised by the respondents.

21. The respondents have further objected to the applicants having prosecuted the complaint in their individual capacity by defacto stepping into the shoes of the complainant Union without seeking permission of the Labour Court to be added as complainants in the complaint. The explanation put forth is that the Union appears to have deserted the petitioners, who were named in Schedule A to the complaint. They could not be rendered remediless and therefore they pursued their cause of action, personally.

22. The contention of the respondents cannot be accepted for two reasons. Firstly, that no revision petition was filed before the Industrial Court. Through the affidavit in reply filed by the respondents, this objection has been raised. Secondly, this issue has been put to rest by this Court in the matter of Pralhad Atmaram Jadhav Vs. Managing Director, Kulkarni Black and Decker Limited, 1995 (70) FLR 746 in which a similar challenge was considered by this Court.

23. A Trade Union of workmen known as Kulkarni Black and Decker Workers Union had filed a complaint before Labour Court at Kolhapur. Subsequently, the worker himself came up before the Industrial Court by filing a revision application in the backdrop of the withdrawal of the revision petition. The concerned worker Pralhad Atmaram Jadhav contended that he had not instructed any person to withdraw the proceedings. Objection was raised that the said Misc. Application could not have been filed by him as he was not a party to the original complaint, which was filed by the Union.

24. This Court (Coram : B.N.Srikrishna, as His Lordship then was), while dealing with the said issue, has observed in paragraph Nos.3 to 6 as under:

3. In my view, this is a classic instance of procedure being treated as the mistress instead of handmaid of justice. Instead of being overawed by the technicalities of the argument before the Industrial Court, if the learned Judge of the Industrial Court had gone by first principles, there would have been no difficulty.

4. The contention that the petitioner was not a party to the original proceedings and, therefore, he could not have filed the Revision application appears to arise because of misconception of the exact provision of law under which the application was made. Strictly speaking, the Industrial Court does not exercise all powers under the Civil Procedure Code while trying a complaint under the Act, though a limited provision for exercise of some powers is made in section 30(3) of the Act. There is no revisional power as such conferred upon the Industrial Court. The so-called Revisional power is under section 44, which is really the power of judicial superintendence over orders of the Labour Court. A similar provision under the Bombay Industrial Relations Act, 1946 in section 85 is also identically worded as the present section 44 of the Act. Noticing the striking similarity between the language used in section 44 of the Act and the language used in Article 227 of the Constitution of India conferring the power of judicial superintendence on the High Court, the view has been taken by this court in Mahila Griha Udyog Vs. Kamgar Congress 1983 (46) FLR 244 and H.P. Sabha Vs. Dr. (Miss) Rama Sen Gupta MANU/MH/0288/1985 : (1994) IIILLJ 34 BOM as also in Pest Control (I) Pvt.Ltd., Vs. Pest Control (I) Pvt.Ltd., Employees' All India Union and others 1993 1 CLR

230, that section 44 of the Act must be read as conferring the power of judicial superintendence over orders of the Labour Court on the Industrial Court. A practice has, therefore, frown up of entertaining applications challenging Non-Appealable orders by styling them as Revision Applications, though, in stricto sensu, there is no revisional power as such vested in the Industrial Court. The power of judicial superintendence can be exercised suo moto or on the application of some one bringing to the notice of the Court the requisite facts. In the instant case, since the Union was perhaps unwilling to act on behalf of the petitioner, the petitioner being aggrieved about the denial of backwages to him, brought the facts to the notice of the Industrial Court, in what he styled as a Revision Application, and invoked its power of judicial superintendence. The Industrial Court was, therefore, in error in taking the view that this power could not have been invoked except by the party who had originally filed the complaint. After all, when a Trade Union files a complaint for obtaining relief to its member-workman, the relief is granted to the workman and not to the Trade Union. Conversely, if the relief is denied fully or in part, it is the concerned workman who is aggrieved. To hold that such an aggrieved workmen has not remedy under section 44 is to take a very unrealistic and pedantic view of the matter. This contention which seems to have appealed to the learned Judge of the Industrial Court and was reiterated here by Mr.Bodake, learned Advocate for the Respondent, leaves me unimpressed.

5. Though the Industrial Court took the view that an application which was dismissed by it as withdrawn could not be restored, here also, the situation does not appear to be free from doubt, because the petitioner did make allegation in his application that his Revision Application had been withdrawn without any instructions from him and without his knowledge. However, it is unnecessary for me to go any further into this aspect of the matter. Whatever the limitations might have been on the powers of the Industrial Court. This court's power if untrammelled and this court can do all that is necessary to do complete justice between the parties.

6. I am, therefore, of the view that the Industrial court erred in permitting the withdrawal of the Revision Application (ULP) No.23 of 1985 without giving opportunity to the petitioner to put forward his grievances against the impugned

order of the Labour Court.?

25. It is thus clear that since the Union was perhaps unwilling to appear on behalf of the concerned employee and prosecute his rights and grievances, the employee himself came forward for taking up the cause of action. In the instant case, the same scene appears to have been enacted and the petitioners were virtually left in the lurch, in suspended animation, if I may say so. It is, in these circumstances, that the objections of the respondents are rightly rejected.

26. Having answered the above two issues, this leaves me with the last and crucial issue. The petitioners are praying for reinstatement in employment and consequential reliefs. In the alternative, they pray that the compensation awarded to them being extremely meager, should be enhanced. Mr.Barde submits in humility that the conclusions of the Labour Court, sustained by the Industrial Court, virtually amount to adding insult to injury?. He has narrated the tenures put in by the petitioners in employment and the amounts of compensation awarded.

27. He, therefore, relies upon the judgment of the Apex Court in the Bhavnagar Municipal Corporation's Case (supra) and points out that the concerned employee had worked on daily wages as a Conductor from October 1987 till March 1989, which is a period of about 18 months. Placing reliance on the said judgment, he submits that the Apex Court has recently granted a sum of Rs.2,50,000/- as a compensation package to the said employee considering the length of service and the wages that he was receiving.

28. The relevant observations of the Apex Court set out in the said judgment are from paragraph Nos.10 to 17 read as under:

10. The only question that remains to be examined in the above backdrop is whether reinstatement of the respondent as a Conductor is imperative at this late stage. We say so because the appellant claims to have worked for a period of just about 18 months that too nearly three decades ago. The respondent today may be past fifty if not more. The Transport Department where he was working appears to have been wound up and transport work out sourced. That apart, this Court has in a series of decisions held that the illegality in an order of termination on account of

non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. This Court has, in cases where such termination is found to be illegal, directed compensation in lieu of reinstatement. We may at this stage refer to some of those decisions:

11. In Mahboob Deepak v. Nagar Panchayat Gajraula and Anr. (2008) 1 SCC 575, this Court held that since the appellant had worked only for a short period, interest of justice would be sub-served if the direction for reinstatement was modified and compensatory payment of Rs.50,000/- in lieu thereof directed to be substituted. Similarly in Sita Ram and Ors. v. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, this Court took into consideration the period during which the services were rendered by the workman and instead of reinstatement directed a lump sum payment of Rs.1,00,000/- in lieu thereof.

12. In Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. (2008) 4 SCC 261, this Court made a similar order as is evident from the following passage:

"10. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent instead and in place of the relief of reinstatement in service. Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be sub-served if the appellant is directed to pay a sum of Rs. 50,000/- to the first respondent." [emphasis supplied]

13. To the same effect is decision of this Court in Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. (2009) 15 SCC 327 where this Court held that while awarding compensation in lieu of reinstatement host of factors should be kept in mind. The Court said:

16. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was

engaged as a daily wager, in our considered view, a compensation of Rs.50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice." [emphasis supplied]

14. Reference may also be made to the decision of this Court in Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors. (2010) 6 SCC 773, where this Court referred to the previous decisions on the subject to declare that even when a retrenchment order passed in violation of Section 25(F) may be set aside, reinstatement need not necessarily follow as a matter of Court. The following passage from the decision is apposite:

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee." [emphasis supplied] 15. To the same effect is the decision of this Court in Incharge Officer and Anr. V. Shankar Shetty (2010) 9 SCC 126, where this Court said:

"5. We think that if the principles stated in Jagbir Singh and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable."

[emphasis supplied]

16. The case at hand, in our opinion, is one such case where reinstatement must give way to award of compensation. We say so because looking to the totality of the circumstances, the reinstatement of the respondent in service does not appear to be an acceptable option. Monetary compensation, keeping in view the length of service rendered by the respondent, the wages that he was receiving during that period which according to the evidence was around Rs.24.75 per day should sufficiently meet the ends of justice. Keeping in view all the facts and circumstances, we are of the view that award of a sum of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) should meet the ends of justice.

17. In the result, we allow these appeals but only in part and to the extent that the award made by the Labour Court and the orders of the High Court shall stand modified to the extent that the respondent shall be paid monetary compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) in full and final settlement of his claim. The amount shall be paid by the appellant-Corporation within a period of two months from today failing which the said amount shall start earning interest @ 12% p.a. from the date of this order till actual payment of the amount is made to the respondent.?

29. I find one feature of the judgment of the Apex Court in the Bhavnagar Case (Supra) in distinction to the case in hand. The Labour Court, in the instant case, while delivering the judgment dated 21/02/2012, has not granted back wages to the petitioners. In the Bhavnagar Case (supra), 65% back wages were granted by the High Court (paragraph No.4 of the said judgment). The learned AGP has submitted that looking at the nature of work available and the non-availability of posts, neither can the petitioners be foisted upon the respondents nor do they deserve enhancement in compensation since the respondents are a limb of the State Government and are financially weak.

30. I have considered the above factors with due circumspection and in the light of the judgments of the Apex Court considered by this Court in the matter of State of Maharashtra Vs. Santosh Gorakh Patil, 2015 (3) Mh.L.J. 992. The relevant observations of this court, based on the ratio laid down by the Apex court, are found in paragraph Nos.9 to 15, which read as under:

9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.

10. Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:

"We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

11. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:

"In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in

the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum."

12. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:

"4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

13. The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:

"It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee. ....."

14. Taking into account that the respondent was granted last drawn wages from the year 2000, under orders of this Court and keeping in view the fact that he is out of employment for last 28 years, an amount of Rs.50,000/- as compensation, in lieu of reinstatement and continuity of service, would be an appropriate relief.

15. As such, this petition is partly allowed. The impugned judgment and award, dated 5.4.1994, is modified. The petitioner is directed to pay compensation of Rs.50,000/- (Rs. Fifty Thousand only/-) in lieu of reinstatement and continuity of service to the respondent, besides the wages paid to the respondent under Section 17B of the ID Act.?

31. All the present petitioners are out of employment for the last 23 years. All of them are said to be in their late 50's and are nearing retirement. I find it fruitless to reinstate them in employment. The respondents have not assailed the conclusions drawn by the Labour Court and the Industrial Court to the extent of having established continued service with the respondents and having been terminated from employment on 16/07/1992. However, foisting the petitioners on the respondents is likely to cause more harm than good.

32. As such, quantifying compensation appears to be the most reasonable approach in the light of the above referred judgments of the Apex Court. I am in agreement with the contentions of Mr.Barde that the compensation awarded is extremely meager. Mr.Barde submits that though the petitioners were entitled for gratuity, they have not been paid the said amount. Considering all these factors and the ratio laid down by the Apex Court, an amount equivalent to Rs.40,000/- per year of service, in my view, would be an appropriate compensation to the petitioners.

33. Petitioner No.1 shall therefore be paid compensation of Rs.4,75,000/- (Rs. Four lac seventy five thousand only). Petitioner No.2 shall be paid compensation of Rs.2,80,000/- (Rs.Two lac eighty thousand only) and Petitioner No.3 shall be paid compensation of Rs.1,20,000/- (Rs.One lac twenty thousand only). The amounts of compensation granted by the Labour Court and if paid to the petitioners, shall be deducted from these amounts of compensation and the respondents shall pay the said amounts within a period of 4 (four) months from

today. Failure to do so, shall invite interest @ 8% p.a. until actual payment of amounts.

34. In the light of the above, this petition is partly allowed. The impugned judgment and order of the Labour Court dated 21/02/2012 in Complaint (ULP) No.316/1992 and the judgment of the Industrial Court dated 26/03/2013 in Revision (ULP) Nos. 36/2012, 37/2012 and 39/2012 respectively stand modified in the above terms.

35. Rule is, therefore, made partly absolute in the above terms.