

Philips Electronics India Limited and anr. Vs. the Workmen of Philips Electronics India Limited and ors.

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Court : Mumbai

Decided On : Mar-21-2007

Reported in : 2007(3)ALLMR500; 2007(6)BomCR441; (2007)IILLJ786Bom

Judge : S.C. Dharmadhikari, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 2A, 2(S), 10(1) and 12(5); Maharashtra Recognised Trade Union and Prevention of Unfair Labour Practices Act; [Income Tax Act, 1961](#); [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 3110 of 2006

Appellant : Philips Electronics India Limited and anr.

Respondent : The Workmen of Philips Electronics India Limited and ors.

Advocate for Def. : Arshad Shaikh, Adv., i/b., Sanjay Udeshi and Co. for Respondent No. 1

Advocate for Pet/Ap. : E.P. Bharucha, Sr. Adv., i/b., Daphtary Fereira and ;Diwan, Adv.

Disposition : Petition dismissed

Judgement :

S.C. Dharmadhikari, J.

1. P.C. Heard learned Counsel for both sides. This petition can be disposed of at the stage of admission itself. Hence, Rule. By consent, rule made returnable forthwith.

By this petition under Article 226 of the [Constitution of India](#), a finding on a preliminary issue rendered by the Court below vide its order dated 30th September, 2006 is sought to be quashed and set aside. The Industrial Tribunal, Mumbai has before it a reference made at the instance of first respondent herein. During the pendency of the said reference and pursuant to certain directions of this Court, preliminary issues have been framed. The same are as follows:

- (i) Whether the employees concerned in the proceeding are covered under the ambit of 'Workman' as per provisions of I.D. Act?
- (ii) Whether the grievance made on behalf of the employees is an 'Industrial dispute'?
- (iii) Whether the second party union has right to raise 'dispute' on behalf of the workmen?
- (iv) Whether the Reference is maintainable in view of filing and pendency of Civil Suit No. 2557 of 2002?

2. In my view, it is not necessary to decide the challenge to the orders at exhibits H and I to the writ petition, because, now both sides agree that the preliminary issues are as above and their submissions are confined to the findings rendered thereon and more particularly on issue No. 1, 2 and 4.

3. At the instance of the first respondent before me, Govt. of Maharashtra referred for adjudication, to the Industrial Tribunal, Mumbai a dispute between petitioner and respondent No. 1 vide its order dated 12th April, 2005. Jurisdiction of the State Govt. Under Section 10(1) read with 12(5) of the [Industrial Disputes Act, 1947](#) (for short I.D. Act) has been invoked for resolving the dispute more particularly mentioned in the order of reference. The schedule to the order of

reference reads thus :

1. To register their withdrawal from the VRS owing to the offer not having been fully accepted by you, manifested in the short payment made to them including the shortfall in commuted amounts;

2. To reinstate to them in service will full backwages, continuity in service and other consequential benefits w.e.f. the date they were rendered unemployed by your conditional acceptance of their offer till the date they actually taken back in service; and 3. To pay them damages for the hardships caused to them during the period of their enforced unemployment; 4. In alternative to demand No. 1 and 2 above to pay the workmen difference in commuted amounts paid to them as lumpsum and amount equivalent to 1/3 of the total amount due to them under VRS Mumbai 2001 and/or difference in the monthly payment with penal interest thereon @ 21% from the date of short payment.

4. After notices were issued, parties appeared before the Tribunal and filed their statement of claim and written statement. It is the case of the first respondent that it is a recognised union under the Maharashtra Recognised Trade Union and Prevention of Unfair Labour Practices Act (for short MRTU & PULP Act). It is representing workmen of petitioner at Mumbai, Vashi and Bhivandi. It is alleged that the company has been consistently making good profit but it has not accepted the just and fair demands. Even the present dispute arises out of breach of settlement/agreement. It is alleged that the settlement is dated 10th December 2001. It was intended to bring an end to about 40 cases/disputes pending in various courts. It was also intended that the Charter of Demands raised by the workmen would be negotiated and put an end to under the terms of this settlement. After making reference to the policies of Government of India liberalising the Regulations and requirements for setting up industries, it is contended that the company has shifted its focus from manufacturing to distribution of imported goods. It took liberty to revert to its original business of trading and that is how started getting rid of its employees. The strength of workmen has been reduced from time to time. Several activities/businesses have been phased out. The employees were put under pressure to opt for voluntary

retirement.

5. During the short period of six years i.e. from 1995 to 2001, it has spend about Rs. 2140 million by way of VRS expenses and alleged that the petitioner company has defrauded its employees in some or the other way giving instances/examples thereabout. The company indulged in pressure tactics by creating fear psychosis, shifting the workmen from Vashi to another places, leaving union/workmen no other option but to file various proceedings. The company has deliberately created a no work situation keeping the workmen idle without any work whatsoever. Company created a situation thereby prompting the workmen to opt for VRS but there was no response at all to the said scheme. A reference is made to the VRS scheme 1993 at the time Reference 9/93 was pending for adjudication. Reference has been made to various proceedings filed by adversary and passing of orders therein. It was alleged that the company is falsely making representation about suffering losses. Reference was also made to MOU signed on 21st November 2001 between parties.

6. It is further alleged that the Actuary, one Mr.C.S.Kawatkar, had connived with the first party company about deprival of huge sum of compensation. It is also alleged that the company assured the union about replacement of well known firm of Actuaries having long standing and established links with the company. Reference has been made to the promise given in Special Gen.Body Meeting called on 5th December 2001 providing same type of benefits as well as mode of payment. The employees were assured that an amount of Rs. 5 lakhs proposed to be paid as tax free lumpsum. The members were aware of the companys deadline and therefore decided to empower the President and General Secretary to negotiate with the company. Reference has been made to the negotiations held between the parties so also settlement with improved benefit signed on the date shown as 10th December 2001. Reference has been made to the terms and conditions made therein. It is alleged that accordingly settlement dated 10th December 2001 was announced and the company has issued forms to be signed by the employees. It is alleged that there was no VRS in existence that time. It is alleged that the workmen have accepted the benefits under the settlement dated 10th December 2001 but further alleged that the first party company had failed to

formulate the VRS. Provident Fund authorities refused to settle the dues as the same were not received from the company and inspite of bringing it to the notice to the company, no steps have been taken by it. In fact, the company has not prepared the scheme and according to the union, even on 20th February 2002 the company had not prepared the scheme though the last working day of the employees was 27th December 2001. The company had not provided any individual benefit statement despite repeated requests from the employees. This action was contrary to the earlier V.R.S. The Workmen were told not to worry about the details. Cheques for commuted pension were received from LIC and the workmen were surprised that the payment of commuted pension was less. It is alleged that even in the first week of February 2002 when first month cheques were received, it was realised that there was no mistake but the company has made less payment than agreed to. Therefore, letter dated 8th February 2002 was sent to the company. Reference has been made to this letter by giving several examples with full details of pension, payable pension, commuted and actual pension received and lumpsum paid to the employees, clearly showing how there was short payment. It is alleged that there has been reduction for about 20.44% of the pension to 33.1/3%.

7. It is thus alleged that complaints were made to the company as also Union approached Life Insurance Corporation of India about receipt of less payment in respect of lumpsum as well as pension. It is also alleged that some of the members received 'certificate of annuity' from LIC and the Union was surprised that it has not received copy of Master Policy. A request was made to LIC for sending copy of Master Policy so also making other grievances. There is also a reference made to the correspondence between parties about the working of Actuary. A reference is also made to a letter dated 7th March 2002 addressed by the Company admitting mistake in calculation of pension. It is alleged that first party company (petitioner) was backing out after making short payment to the employees under the settlement dated 10th December 2001. An allegation is made about back dated V.R.S. by the company, containing provisions which were never subject matter of settlement. After making a reference to letter dated 30th April 2002 of the petitioner, it is alleged that the company has committed a mischief and perpetrated fraud on the employees by making illegal and

unwarranted deduction from commuted pension. It is alleged that neither was there any scheme in existence on 7th December 2001 nor it was displayed on notice board between 10th December 2001 and 14th December 2001. It is alleged that no scheme could be prepared three days earlier containing such terms and conditions. Thus, it is alleged that neither any scheme was in existence at the time of signing the settlement nor it was mentioned. The company has made changes in the settlement. Petitioners have opted for V.R.S. on the basis of the terms of settlement approved by them but they have not retired under any V.R.S. as no scheme was in existence at all. The alleged scheme is back dated and brought into existence to defraud employees. A copy of V.R.S Mumbai 2001 had not been provided to Union. The Union has raised other grounds challenging the existence of V.R.S. It is alleged that the employees were tricked into accepting V.R.S. by fraud, mis-representation and suppression of vital information. Employees are, therefore, seeking reinstatement as they are left with no alternative. An averment is also made about the Union and the workman having repudiated the settlement as noticed by the Tribunal in para 11 of its order and on this basis it is contended that the petitioner should reinstate the concerned employees.

8. The petitioner company filed written statement, Exh.C-17 and raised therein preliminary objections as also contentions on merits. It is contended that the employees have voluntarily retired under VRS -Mumbai 2001. They do not fall under the category of workmen. The statement of claim filed on behalf of 361 ex-employees of the petitioner cannot be entertained because these employees have voluntarily resigned under the VRS Mumbai 2001 supplemented by Memorandum of Settlement dated 10th December 2001. They have been relieved from services with effect from 27th December 2001. The question only relates to alleged short payment in the commuted benefits. The said issue has no connection with working conditions, employment benefits etc. In these circumstances, reference at the instance of such persons cannot be held to be maintainable. They are not covered by the definition of the term 'Workman' as defined under I.D. Act. In these circumstances, Tribunal has no jurisdiction to entertain the dispute/reference.

9. It is further alleged that each of the employees have signed and submitted individual resignation and thereby accepted the benefits paid to them in terms of

settlement. They have accepted the payments for wages as well as other statutory dues such as about Rs. 5 lakhs as one time compensation, monthly benefit in the form of Annuity, depending upon the period of 120 months or 60 months at the option of such ex-employees. They had also further option to 'commute' up to 1/3rd of those benefits to receive lumpsum payment at one time therefor, which amount will be exempted from payment of Income Tax. It is alleged that these substantial benefits would not have been otherwise available to them if they were to retire/resign in normal course or if they were to be retrenched, dismissed etc. In such background, the claim for alleged short payment benefits under VRS in present Reference cannot be bring them under the definition of 'workman'. Hence the reference is not tenable and the Tribunal has no jurisdiction to entertain and try the same. The person who has voluntarily resigned from service by putting an end to the jural relationship of employer and employee is not covered under the definition of the term 'workman' as appearing in Section 2(s) of the I.D. Act, 1947. In any case, it is stated that question of short payment is not covered under the Industrial Disputes Act.

10. It is further submitted that the Union purports to be representing 361 ex employees is making grievances about alleged short fall in payment which does not relate to conditions of service. It is a voluntary Act and the nature of contract is not covered under any specific provisions of the I.D. Act. It is in the form of general contract between employer and employee and is not governed by any Industrial Law. The amounts paid under VRS Mumbai 2001 as supplemented by Memorandum of Settlement were purely on contract basis and no right exists under I.D. Act. It is further stated that no explicit reference has been made to any particular item of Schedule II and III of the I.D. Act and hence the reference is bad in law.

11. It is further stated that 105 workmen have also sought to claim same reliefs in Reference 30/05. They are alleging that the settlement leading to VRS 2001 was arrived at by the first party company in collusion with the Union, behind the back of the workmen, hence it is not binding on them. It is stated that the two pleas in two references are not only inconsistent but are mutually destructive. A party cannot be permitted to take up inconsistent pleas and those that are mutually destructive.

A reference has been made to affidavit filed purportedly on behalf of 105 employees in this behalf. Those 105 workmen, common to the references 29/05 and 30/05 cannot be allowed to proceed with both references and the Court be pleased to call upon them to select either of these two references before they are taken up for hearing on merits.

12. It is further stated that as the Civil Suit No. 2557 of 2002 on the same subject matter is already pending before this Court, present reference proceedings before the Tribunal are not maintainable. The dispute is under general laws of contract which can be preferred before Civil Court, hence no jurisdiction lies with the Tribunal. In the said Suit No. 2557 of 2002, all 361 ex-employees are defendants and the company has prayed for a declaration about non entitlement of defendants Nos. 2 to 364 over and above what has been paid to them. The dispute about alleged short payment being already pending before this Court, hence, the Tribunal has no jurisdiction and the reference is liable to be dismissed on that count.

13. It is clear from a perusal of the record that various applications came to be filed including praying for framing and trying of preliminary issues and dismissal of the reference. After hearing parties, orders were passed which were challenged upto this Court and Supreme Court. The Supreme Court granted liberty to the petitioner to raise preliminary issue in pursuance to the order passed by the Supreme Court. So also, this Court in W.P. No. 2089 of 2006 dated 29th March 2006, directed the petitioner to file composite written statement raising pleas in respect of preliminary objections as well as on merits. A direction was given to dispose of preliminary issue raised by the company about maintainability of the reference and jurisdiction of the Industrial Court.

14. It is in pursuance of the orders and directions that the preliminary issues were framed and accordingly oral and documentary evidence was led by both sides. On behalf of the petitioner, one Sharad Sahastrabuddhe, Senior Manager (Personnel) and Constituted Attorney filed his affidavit in the form of examination in chief and he was cross examined by the Union. The Union examined one Dinesh Malekar, its Secretary and he was cross examined at length. During the course of their

evidence number of documents were tendered which have been taken on record.

15. By the impugned judgement and order the learned Member of the Industrial Tribunal rejected the preliminary objections about maintainability of the reference and right of the Union to represent and contest the reference. It has been held by the learned Member that the action on the part of petitioner in depriving the Union of the benefits as understood and agreed under the settlement without giving any idea, information and knowledge to the employees concerned and bringing about an end to their employment are subject matter of the reference. In para 40 of the impugned order, this is what is observed:

40. It is also pertinent to note that similar type of objections were raised on behalf of the first party company when the second party Union had challenged the action of the first party company in respect of VRS 1993. Reference (IT) 9/96 was came to be filed on behalf of the workmen and similar controversy has been raised by the first party company about status of the employees as 'workman as well as non existence of industrial dispute. After full contest in the matter, Award dated 12.06.2000 was passed granting relief to the workmen rejecting the objections. Writ Petition No. 2541 of 2000 was filed by first party company which was dismissed by the Honble Court vide order 13.12.2000. The first party company has preferred appeal against the said order in the Writ Petition. While admitting the appeal and passing interim order, direction was given to the first party company to deposit the entire amount including interest as per Award of the Industrial Tribunal, within time limit. From the submissions made, it is clear that the said amount was deposited by the first party company and thereafter agreement has been arrived at between parties, which was filed before the Honble Division Bench. The Appeal stood disposed off in terms of consent terms. The first party company has paid the amount of difference to the workmen concerned in that litigation. Similar type of controversies raised herein again. So this fact supports the submissions made on behalf of the second party union that the company has formed habit to raise such dispute. All this controversy clearly fall under the industrial dispute, so also employees concerned are covered under the definition of 'workman'. The issues Nos. 1 and 2 are therefore answered in the affirmative.

16. It is this judgement and order on the preliminary issue, which is subject matter of challenge in this petition.

17. Mr. Bharucha, learned Senior Counsel appearing for petitioner submits that the facts are clear inasmuch as the reference is at the instance of ex-employees who have resigned from the petitioner company pursuant to V.R.S. He submits that they are continuing to get the benefits under V.R.S. The V.R.S. was introduced by the first petitioner in December 2001. Total 372 employees voluntarily signed and submitted individual resignation letters opting for V.R. and the letters were accepted. The employees were relieved of the service with effect from 27th December 2001. Pursuant to the scheme, the employees got usual benefits which they would have received upon superannuation/retirement. In addition, several amounts under the scheme, as agreed, have been paid and disbursed. The benefits are that a sum of Rs. 5 lakhs is paid as one time tax free compensation, monthly annuity upto maximum of Rs. 12,198 for 120 months or Rs. 20415 for 60 months and the option to commute 1/3rd of the monthly benefits. Out of 372 ex-employees 363 were entitled to monthly benefits. 361 (ex-employees) opted for commutation.

18. Mr. Bharucha relies upon Clause A-3 of the V.R.S. He submits that the company had reserved its rights to commute pension to LIC. The employee would have an option to commute pension (not exceeding 33 and 1/3rd %) which, if exercised, will be payable by the LIC. If the employee opts for commutation, then, the pension amount will stand reduced to the extent of commutation. Total 367 ex employees received commuted amount from LIC. He submits that after the ex-employees had received their lumpsum payment, erstwhile Union wrongly represented to the petitioner that there was short fall in payment of V.R.S. amount and that they had been paid less amount by way of commutation and monthly benefits. He submits that a group of 105 ex employees purportedly represented by one Kishore Lad alleged collusion between Union and the petitioner and sought to have the V.R.S. declared ultra vires. These very persons/ex-employees are represented by the respondent Union and are claiming the amounts as above. He submits that the employer -employee relationship ceased or came to an end with effect from 27th December 2001. The ex-employees are no longer 'workmen'

under the I.D. Act.

19. Mr.Bharucha contends that, the only issue raised by the ex-employees in Reference (IT) No. 29 of 2005 was with respect to the issue of shortfall in payment of commuted amounts. The ex-employees no longer being 'workmen' under the I.D. Act, any dispute raised by them would not be an Industrial dispute as defined in the I.D. Act. In the premises, the petitioners submit that Reference (IT) No. 29 of 2005 is not maintainable.

20. Mr.Bharucha further states that the case of an employee who retires on reaching the age of superannuation as per the rules of the employer cannot be compared to an employee whose employment ceases by his own voluntary act of resignation as in the case of V.R.S. The present case has nothing to do with a pension scheme. The present case is with respect to a V.R.S. V.R.S. is in the form of a contract between the company and the employee. It does not form part of the service conditions of the employees.

21. He further submits that this is a case where the jural relationship of employer/employee had come to an end as a result of voluntary resignation by the workmen pursuant to a V.R.S. The dispute regarding the quantum of payment under V.R.S. is not a part of the service conditions. The resignation under V.R.S. is an independent contract and a voluntary act on the part of an employee to sever the employer employee relationship.

22. He further submits that in the present case there was no service condition entitling an employee to retire on completion of a qualifying period of service. The instant V.R.S. was not based on any service condition. The instant VRS was a pure contract whereby in consideration of certain benefits, the employee voluntarily resigned his employment and put an end to the jural relationship of employer/ employee. The instant case is one of resignation. The reference (IT) No. 29 of 2005 has been filed with respect to a monetary claim i.e. the alleged shortfall in payment of commuted amounts under the VRS. The subject matter of the said reference is no way connected with the working conditions of the petitioner No. 1s ex-employees. Each of the 361 ex-employees had entered into individual contracts with the first petitioner under which they had accepted the benefits as per the

Scheme and the settlement as consideration for their resignation from their services. The 2nd respondent completely ignored the fact that the benefits under the scheme and the settlement were purely contractual and not part of service conditions. The I.D. Act does not provide for payment of compensation on acceptance of VRS as a matter of right unlike retrenchment or closure or lay-off. The employees did not have any right under their service conditions to retire voluntarily. In the premises, the petitioners submit that the present dispute can be settled only by a civil court.

23. Further, without prejudice to the aforesaid stand of petitioners, Mr. Bharucha submitted that no industrial disputes exist and there cannot be any adjudication pursuant to the I.D. Act. Neither the order of reference dated 12th April 2005 nor the statement of claim sets out the names of the ex-employees purported to be represented by the Union. None of the ex-employees have themselves made any grievance to the petitioner No. 1. It is the Union which has initiated Reference (IT) No. 29 of 2005 without any authority or locus. Considering that the ex-employees had voluntarily resigned under the VRS, and had entered into individual contracts with the first petitioner, the Union, cannot proceed with the reference unless specifically authorised by each individual ex-employee. The Union has not been able to adduce any evidence to show that the ex-employees are its members or that they have authorised the Union to raise the present dispute. The ex employees are from the first petitioners Andheri, Bhiwandi and Vashi Units and are not members of the Union since after the VRS, the first petitioner did not have a Union. The Union filed an affidavit dated 29th March 2006 stating therein that it represented 361 ex-employees. This was ex facie incorrect as 78 ex-employees had resigned from the membership of the Union with effect from 27th December 2001 and 9 others had died. 105 out of the 361 ex-employees were also being purported to be represented by one Kishore Lad either to file the Reference or to withdraw the same. Thus, both Kishore Lad and the Union seek to represent a sizable number of the same ex-employees of the first petitioner who have ceased to be workmen. Neither the Union nor the said Kishore Lad has been in a position to show that they had been authorised by the concerned workmen to contest the Reference. The second respondent wrongly held that the Union is the representative Union and that the ex employees are its members without calling

for the records of membership of the Union. The second respondent wrongly held that the first petitioner having filed suit No. 2557 of 2002, it was bound to know who the ex-employees were. The fact is that the Union was not able to show how it was representing the 361 ex-employees.

24. The second respondent committed a fundamental error going to the root of the matter in holding that the 1st Petitioner knew who its ex-employees were. The issue was whether the either the Union or the said Kishore Lad had the requisite authority to represent the ex-employees. In the premises, the petitioners submit that Union does not have the locus standi to represent the ex-employees in the present dispute. The Union having raised the dispute of alleged shortfall in payment of commuted amounts, the 1st petitioner filed Suit No. 2557 of 2002 in this Court. The suit is still pending. The suit was filed prior to Reference (IT) No. 29 of 2005. Thus, the subject matter of the Reference was already pending before this Court by way of suit, when the reference was filed. In any event, the Union has subjected itself to the jurisdiction of this Court in the suit by taking out a notice of motion therein. In the premises, the petitioners submit that the 2nd respondent does not have the jurisdiction to deal with the subject matter of the present reference on account of Suit No. 2557 of 2002 being pending before this Court.

25. Mr.Bharucha further contended that when reliefs are claimed on the basis of general law of contract, a suit filed in the civil court cannot be said to be not maintainable, even though such a dispute may also constitute an industrial dispute within the meaning of Section 2(k) or Section 2A of the I.D. Act. The dispute in the present case with regard to the alleged shortfall in payment of commuted amounts is with respect to VRS which is in the form of an individual contract entered into by each ex-employee with the 1st petitioner. The VRS is not governed by any service conditions or by the provisions of the I.D. Act. Thus, a suit in a civil court is maintainable. In view of the fact that such suit in a civil court being Suit No. 2557 of 2002, the subject of which is already pending before this Court and Reference (IT) No. 29 of 2005 filed subsequently on the same subject matter is not maintainable.

26. There are other contentions raised by Mr.Bharucha.

27. In my view, the arguments in the written submissions on the aspect of mutually destructive pleas, absence of cause of action and challenge to the order of reference, so also on the application for production of documents are concerned, the same need not be decided and dealt with, more so, in the light of my final conclusion. Absence of Cause of Action and Raising of mutually destructive pleas are matters which cannot be raised in the present case as preliminary issues and tried as such. These issues would remain for consideration at a later stage.

28. On the other hand, Mr. Shaikh appearing for the respondent No. 1 Union submits that this is a petition under Article 226 of the [Constitution of India](#). He submits that the findings rendered at a preliminary stage by the Industrial Court cannot be re-appreciated and re-appraised by this Court as if it is a Court of Appeal. He submits that the scope for interference under Article 226 is limited. He submits that the issue of maintainability of the reference has been answered on the basis of the averments and allegations in the Statement of Claim and such other materials. For the purposes of deciding the issue of maintainability of the reference, it is not necessary to render any conclusive finding on merits. The merits of the matter can always be considered at a later stage. This being the position, the petition be dismissed. Mr. Shaikh has relied upon decision of a learned Single Judge in ICI Ltd. v. Presiding Officer and Ors. 1993 1 CLR 753 and a decision of Division Bench of this Court in ICI Ltd. v. Presiding Officer, National Industrial Tribunal and Ors. 1994 2 CLR 494. So also, the decision of Supreme Court in Workmen of Dimakuchi Tea Estate (Assam Chah Karmachari Sangha and Dimakuchi Tea Estate 1958 LLJ 500. He has also relied upon the judgements which have been relied upon by the first respondent Union before the Industrial Court and handed in a compilation of the same.

29. Mr. Shaikh submits that the industrial court has answered the four preliminary issues framed by it in the affirmative. On the first issue as to whether employees concerned in the proceedings are covered by the definition of the term 'workman' as appearing in Section 2(c) of the I.D. Act, the Tribunal has not gone into all details but has relied upon the materials produced at this preliminary stage before it including oral evidence of the parties and the pleadings. The Industrial Court has gone into the rival contentions and has dealt with decisions brought to its notice. It

has also relied upon a decision of this Court in the case of I.C.I. India Ltd. v. Presiding Officer, National Industrial Tribunal and Ors. reported in 1994 2 CLR 494. Further it has made a distinction on the basis of the materials produced between Resignation and Voluntary retirement, Superannuation and Compulsory Retirement in the light of principles laid down by the Supreme Court. Similarly, the learned Member of the Industrial Court has made a reference to an Award in Reference (IT) No. 9 of 1996, referring to a VRS of 1993. The learned Member has rightly observed that the award is in favour of the Union/employees. In the said Award all objections of the petitioner, who was admittedly a party to the same, have been considered and such objections include maintainability of the Reference/Industrial dispute. The award rendered by the Industrial Tribunal was confirmed by this Court and even in Appeal a Division Bench of this Court did not interfere with the decision of the Single Judge but directed deposit of the amount in this Court. Now, self same contentions have been raised and, therefore, in the submission of Mr. Shaikh, for the reasons assigned by the learned Single Judge of this Court, the present petition be also dismissed. Mr. Shaikh submitted that the point in issue is therefore no longer res integra and although by consent the order of learned Single Judge is set aside the very same demand which is in issue herein was accepted by the Petitioner in the aforesaid earlier proceedings.

30. The judgement of the Division Bench dated 9th March 2005 in W.P. 3112 of 2004 was delivered while challenging the refusal of the Government to make the present reference. In this judgement the Division Bench has clearly held that the demand leading to the present reference was in fact an industrial dispute and that the present workers are workmen of the company under Section 2(S) of the I.D. Act even though they had actually left the companys services.

31. The order of the Supreme Court dated 6th May 2005 in SLP (Civil) No. 9472 of 2005 filed by the company against the Division Bench order merely leave it open to the company to raise the preliminary issue before the Tribunal or the High Court.

32. Mr. Shaikh has also relied upon the order of the Division Bench of this Court dated 27th January 2006 in W.P. No. 1563 and 1564 of 2005, which were directed

against the order of Reference made by the Appropriate Government in this case. He submits that the Division Bench has clearly opined that the reference would be maintainable. He submits that such tentative findings having been rendered repeatedly in matters to which petitioners are party it would not be proper for this Court to interfere with the preliminary findings rendered by the industrial court. He submits that these are not matters in which a pure question of law is raised. These are mixed questions of facts and law and in the light of the materials produced before the Industrial Court, it has answered all four preliminary issues in the affirmative and rightly. He has invited my attention to the judgement of the Tribunal and the reasons assigned which, according to him, are cogent and satisfactory and required no interference.

33. Mr. Shaikh submits that the arguments in this case proceed on the basis that there is V.R. under the settlement. The company admits that there is retirement but the relationship cannot come to an end automatically or does not cease in any event in the facts of this case because the dispute is about receipt of amounts/benefits under the scheme. The relationship, therefore, clearly subsists in the facts of this case. Once, there is a breach alleged, then, until and unless that issue is resolved and if obligations are ultimately held to be not fulfilled by the company, then the relationship must continue. Then, there is no question of any Resignation or retirement and the workman would be entitled to appropriate reliefs. This is the basis of the entire reference and, therefore, the question at the root of the case is, 'In What Circumstances, can it be said that the relationship comes to an end?'. Merely because, the petitioner has set up a rival case, it cannot be said that the reference is not maintainable automatically. The matter will have to be tried and probed in further and greater details. Such being the case, the petition be dismissed.

34. For properly appreciating the rival contentions, it would be worthwhile if a reference is made to the pleadings. The dispute commenced with the Charter of Demands forwarded by the first respondent. The charter of demand based upon which the reference was made arises out of the Memorandum of Settlement between parties. The Memorandum of Settlement records that Phillips Employees Union is the only union of the bargainable employees of the Mumbai commercial

establishments and has enjoyed 100% membership of such staff. The company as well as Union have signed bilateral agreements from time to time. The industrial relations situation in the commercial establishments at Mumbai has not been cordial for the last few years. Serious differences have arisen between the company and Union on various issues, which resulted in numerous litigation in different judicial and quasi-judicial forums by the company and Union and little progress could be made in discussions between the two parties to resolve these disputes and differences. There was a growing discontent amongst the employees on the stalemate and the management saw this as an obstacle in the way of bringing about a more productive and cost effective way of working. Both the parties sensed, felt and experienced the current realities of the situation and decided to begin a dialogue, which would culminate into a solution mutually beneficial to both the parties. At one time the Company was a market leader in its consumer electronics and lighting business. As a result of globalisation and the entry into the market of overseas competitors operating at extremely thin margins based, inter alia, on low cost levels, the company started facing stiff competition both from domestic as well as newly established international players. The rapid technological changes and increasing automation in the workplace not only resulted in dramatic changes in the methods of work and skill requirements, but also reduced the associated costs. These changes compelled company to restructure its operations to remain viable. Looking at the current and future realities of the economic, political and labour situation as well as the extremely dynamic market requirements, representatives of the management and the Union decided to sit across the table to resolve their differences. Thus, a series of comprehensive discussions were held on all outstanding issues. Representatives of both parties tried to impress upon each other the constraints faced by each of them. Both parties agreed that in the emerging markets the viability of the Mumbai establishments itself is an area of concern, and hence in the event of a severance, employees interests should be protected to the extent possible.

35. It is in the above backdrop that negotiations took place resulting into an understanding which is contained in the memorandum of settlement. The benefits under the settlement are as under:

Employees who have not attained the age of 55 years as on 1st November 2001 will be entitled to: Salary (including all monies, allowances appearing in Form No. 16) for the balance number of months from 1st November 2001 till their reaching the age of 60 years subject to a maximum of Rs. 5 lakhs.

A monthly pension of Rs. 20,145/ per month payable for 60 months or Rs. 12,898 per month payable for 120 months. The number of monthly pension instalments will be selected by each employee and will be either 60 or 120. The first pension instalment will be payable on 1st February 2002. The subsequent pension payments will be payable on 1st of every succeeding month.

The Company reserves its right to secure pension through LIC VRS Scheme. Every employee would have an option to commute pension (not exceeding 33 1/3%) which if exercised will be payable by LIC. The pension amount will also stand reduced (not exceeding 33 1/3%) in case an employee chooses to opt for the commutation.

B. Employees who have attained the age of 55 years as on 1st November 2001 will be entitled to:

Salary (including all allowances appearing in Form No. 16) for the balance number of months from 1st November 2001 till their reaching the age of 60 years subject to a maximum of Rs. 5 lakhs. If salary (including all allowances appearing in Form Number 16) for the balance number of months till reaching the age of 60 years exceeds Rs. 5 lakhs, a monthly pension, as defined in para D payable for 60 months or 120 months. The number of monthly pension instalments will be selected by each employee. The first pension payment will be payable on 1st February 2002. The subsequent pension payments will be paid on 1st of every succeeding month. The Company reserves its right to secure pension through LIC V.R.S. scheme. Every employee would have an option to commute pension (not exceeding 33 1/3%) which if exercised will be payable by LIC. The pension amount will also stand reduced (not exceeding 33 1/3%) in case an employee chooses to opt for the commutation.C. The amounts payable shall not exceed either 3 months salary for each completed year of service (rounded off to the nearest year) or salary multiplied by number of months of remaining service before

his normal date of retirement. (Salary for the purpose will be calculated under Rule 2(B)(A) and as defined in Rule 2(h) of Part A of the Schedule of the [Income Tax Act, 1961](#). D. The pension payable under para B-2 will be computed according to the following formula:

a) If the pension is payable for 60 months Rs. 20,415 per month or $0.21489 \times (A \times B \text{ minus } 5,00,000)$ whichever is less and;

b) If the pension is payable for 120 months Rs. 12,989 per month or $0.13576 \times (A \times B \text{ minus } 5,00,000)$ whichever is less; Where A = Number of months from 1st November 2001 till the attainment of the age of 60; and, B = Salary (all monies and allowances appearing in Form No. 16);

36. The settlement records that parties understand that benefits as above are gross amounts inclusive of any benefits available under Mumbai VRS - 2001 Scheme. It was also understood between parties that the pension amounts are higher than those available under the above V.R.S. and such additional amounts are in lieu of and/or full and final settlement of pending issues enlisted under the heading 'other terms and conditions'. The objective of the scheme is to bring about operational efficiency through restructuring of the workforce and according to parties, this can be achieved only when all employees opt for V.R. benefits and both parties work conscientiously towards this objective. In the light of the agreement/settlement between parties, pending issues were resolved and they further agree to unconditional withdrawal of cases in various courts other than judicial/quasi judicial forum. This settlement was applicable exclusively for Mumbai establishment. The scheme under the settlement was in force from 10th December till 14th December 2001 and employees whose applications for V.R.S. are accepted shall stand relieved from 27th December 2001 and the relationship would come to an end as on 27th December 2001. However, Clause 'J' of the scheme reads thus:

J. The Memorandum of Settlement shall not be effective until the members of the Union have opted for the new Scheme and are made payments.

37. It appears that the petitioner had raised identical objections in Reference (IT) No. 9 of 1996 which arises out of a voluntary scheme for retirement dated 20th October 1993. If the award, copy of which is produced before me, is perused it would show that in the judgment/award dated 12th June 2000, one of the issues was maintainability of reference under provisions of I.D. Act. This issue was raised in the light of specific objection of the petitioner company that once a scheme of the present nature is framed, then claims made by the Union would not fall within the definition of the term 'Industrial Disputes' as employees cannot be categorised as 'workman' under Section 2(S) of the I.D. Act. Matters pertaining to V.R.S/ Resignation do not constitute any Industrial Dispute and hence no adjudication is permissible under the Act.

38. Issue No. 1 which was framed was answered by the Industrial Court by relying upon the judgement of this Court in the case of ICI India v. Presiding Officer, reported in 1993 (1) CLR 753, wherein this Court followed a Supreme Court decision in the case of Workmen of Dimakuchi Tea Estate (Assam Chah Karmachari Sangh) v. Dimakuchi Tea Estate reported in : (1958)ILLJ500SC . Relying upon this decision, the Industrial Court held that the concerned employees fall within the definition of the 'workman' and their dispute is an industrial dispute and, therefore, reference was maintainable. From the Award dated 12th June 2000 of the Industrial Court Mumbai in the above reference, a writ petition was preferred by the petitioner before this Court being W.P.2150 of 2000. Learned Single Judge of this Court (Dr.S.Radhakrishnan, J) by his judgement and order dated 13th December 2000 dismissed the petition and a perusal of the judgement would demonstrate that the petitioner before me did not urge that the reference itself was not maintainable.

39. Aggrieved by the judgement of the learned Single Judge, an appeal was preferred by the petitioners being Appeal No. 36 of 2001. That appeal was admitted and interim order was made. In the appeal, consent terms were filed by parties. The amount was paid to the employees as per the terms.

40. As far as the present reference is concerned, it arises out of the Union raising a demand and Charter in that behalf being forwarded. The grievance of the Union

was that when the notice of demand was served on the petitioner complaining about short fall in the payment of V.R.S. amount and breach in that behalf, it was not responded to by the petitioner before me. Reference is made to the letters of the Union dated 11th June 2002 and 20th August 2002. The matter was taken for conciliation but the Conciliation Officer failed to take further steps as required by I.D. Act despite repeated requests and reminders. Aggrieved by the action of the Conciliation Officer, the Union preferred W.P. No. 3112 of 2004 which was heard along with W.P. No. 3175 of 2004 by a Division Bench of this Court. These petitions were placed before a Division Bench, which by its judgement and order dated 9th March 2005 repelled identical contentions as are raised before me in the following terms:

5. In the present case also Union and employees have raised a dispute that the company has made unauthorised deductions from the V.R.S. amount payable to the employees and the grievance made by the employees would fall within the definition of 'Industrial dispute' as defined by Section 2(S) of the Industrial Disputes Act. The learned Counsel appearing for respondent No. 3, however, relying upon the decision of the Apex Court in A.K. Bindal and Anr. v. Union of India : (2003)IILLJ 1078 SC , submitted that the dispute raised by the employees cannot be referred to the Industrial Tribunal. In that case the issue before the Apex Court was regarding revision of pay scale of officers of Fertiliser Corporation of India and Hindustan Fertiliser Corporation. During the pendency of the proceedings the Central Government announced a scheme for voluntary retirement for the employees of the Central Public Sector Undertakings. The Office Memorandum dated 5th May 2000 where by the scheme was introduced provided that for sick and unviable units, the VRS package of Department of Heavy Industry will be adopted. Under the said scheme the employee was entitled to ex-gratia payment equivalent to 45 days emoluments (pay + D.A) for each completed year of service or the monthly emoluments at the time of retirement, whichever is less. This was in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs. had not been revised with effect from 1.11.1992 and, therefore, it had provided adequate compensation in that regard in the second VRS which was announced for all Central Public Sector Undertakings on 6.11.2002. In the context of this factual background, the Supreme

Court held as follows:

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

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However, they, in their wisdom thought that in the fact situation V.R.S. was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety per cent of employees have availed of the VRS Scheme and have left the companies (FCI and HFC) the Writ petition no longer survives and has become infructuous.

6. The facts in the present case are clearly distinguishable as the grievance raised by the Union is that the employees were not paid the amount of commuted

pension and monthly pension as promised in VRS and there was a short fall in payment. In the circumstances, the Conciliation Officer is not right in contending that after having accepted the VRS the relationship between the employee and management has come to an end. The grievance of the petitioners had a direct nexus with the 2001 VRS which had been accepted by them and certain benefits have been given to them and for that limited purpose they could be said to be workmen within the meaning of Industrial Disputes Act.

41. It directed the Conciliation Officer to take steps in accordance with law, after the dispute is placed for conciliation before him. Aggrieved by this Courts order, the matter was carried to the Honble Supreme Court, but the Supreme Court refused to interfere and directed that the contentions raised before it can be raised as and by way of preliminary issue before the Industrial Tribunal.

42. A perusal of the record shows that the conciliation proceedings resulted in failure and a report in that behalf was made by the Conciliation Officer to the State Government. Thereupon, the subject reference was made. It further appears from the record that even the order of reference was challenged by the petitioner by filing W.P. No. 1563 of 2005 in this Court. The order of reference dated 12th April 2005 and 20th April 2005 were challenged by raising identical contentions by the petitioner. Turning down these contentions, a Division Bench of this Court, after referring to the law laid down by the Supreme Court on the subject (VRS and its consequences), had the following to observe:

7. On behalf of the respondents learned Counsel firstly relied upon the judgement in the case of Shambu Nath Goyal and Bank of Baroda, Jullundur, 1978 I L.L.J. 434, to point out that it was not open to the Court to canvass the order of reference closely to see if there was any material before the Government to examine its conclusion as if it was a judicial or quasi judicial determination, but it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act and, therefore, the tribunal had no jurisdiction to make the award. The Court observed that it will be open to the Tribunal to consider the issue.

Reliance was placed on the judgement in the case of ICI India Ltd. v. Presiding Officer, National Industrial Tribunal and Ors., 1994 2 CLR 494 to contend that the expression 'Industrial Dispute' as defined under Section 2(k) of the Act would include a dispute of the past and present workmen and that the dispute about revision of pensionary benefits could be raised by the existing workmen and the dispute takes in its sweep the benefit which is available even to a retired employee. Based on this submission, it is submitted that there is atleast a judgement of the Division Bench of this Court which has taken the view that even an ex-employee in the matter of pension could be party to the reference.

On behalf of the workmen in Writ Petition No. 1564 of 2005 learned Counsel placed reliance on the judgement in the case of UCO Bank & Ors. and Sanwar Mal, : (2004)IILLJ490SC to contend that the expression resignation and retirement carry two different meanings, a resignation brings about complete cessation of master and servant relationship whereas in voluntary retirement the relationship for the purpose of grant of retiral benefits, in view of the past service, is maintained.

8. It would not be appropriate for us, considering the rival contentions and the facts, to address ourselves on those issues at this stage in the absence of a finding on facts based on which the issues raised will have to be answered. It may also be mentioned that in respect of an earlier VRS scheme in respect of the same employer a learned Single Judge had taken the view that there was an industrial dispute and that in a similar situation the company had played fraud on the workmen and consequently rejected the employers contention for setting aside the award of the Industrial Tribunal. The learned Counsel, however, informs us that in an Appeal preferred against that judgement compromise terms were filed. It is not necessary again for this Court to address ourselves to that issue.

43. Despite these observations of the Division Bench, the matter was carried to the Supreme Court and ultimately this Court on 29th March 2006 directed as under:

1. The petitioners withdraw their applications on record of the Reference (IT) No. 29 of 2005 and marked as Exhibits C-10 and C-12 with liberty to raise preliminary

objections, if any, in the written statement, to be filed by the petitioners. The impugned order to the extent they relate to Exhibits C-10 and C-12 shall not survive. Rest of the order under challenge shall remain unaffected.

2. The petitioner company is directed to file a composite Written Statement (i.e. both in respect of preliminary objections, if any, and on merits) and serve copy thereof to the Union on or before 21st April 2006.

3. The Industrial Tribunal is requested to first dispose off the preliminary issues, if any, raised by the company to the maintainability of the reference on the question of jurisdiction, keeping in mind the order of the Honble Supreme Court of 6th March 2006 (Exh.L)

4. In the event parties decide to adduce evidence then the concerned parties to file Affidavit in lieu of examination in chief. The contesting parties shall be entitled to cross examine the witness/witnesses.

5. Recording of evidence on preliminary issue to be completed on or before 19th June 2006.

6. The Tribunal is requested to hear the arguments of parties and make Part I Award in respect of preliminary issues on or before 3rd July 2006.

7. In the event the Tribunal holds that the reference is maintainable, the Tribunal shall be free to proceed with the reference on merits one week after delivery of copy of the order that may be passed and thereafter shall proceed with the reference in accordance with law.

8. Part - I Award if decided by the Tribunal in favour of the respondent and against the petitioner company, then the petitioner company shall be entitled to challenge the same in appropriate forum.

44. In my view, it may be true that a challenge to the findings on the preliminary issues is kept alive by the order passed by this Court. However, time and again this Court has considered identical contentions. The Supreme Court has not interfered with the orders passed by this Court and directed that a preliminary

issue be framed and tried in accordance with law and uninfluenced by the observations of this Court. However, for reasons recorded hereinbelow, it is not possible for me to ignore observations of two Division Benches of this Court made while dealing with identical contentions. More so, when they are laying down a Principle of Law and when I am in agreement with them.

45. The present reference as far as Maintainability is concerned will have to be considered in the light of the Charter of Demand, the correspondence on record and the version of Union in oral evidence.

46. The version of Union is that the comprehensive settlement dated 10th December 2001 concluded the long pending charter of demand placed by the Union, Notice of change issued by the company, withdrawal of about 40 Court cases and also pre-mature/early retirement of the workmen.

47. In the deposition of Dinesh Malekar, Organising Secretary of the Union, the entire backdrop leading to the settlement has been set out in details. It is alleged by the Union that the settlement stipulated retirement of workmen after the last working date i.e. 27th December 2001. In the deposition the union states thus:..It was agreed that Rs. 5 lakhs would be paid first upto 1/3rd of the monthly payments would be commuted and, for those workmen, who opted for commutation, would be paid as lumpsum in the first week of January 2002 and that the monthly payments would start from 1st February 2002. I say that based on the specific monetary benefits as enumerated in settlement dated 10th December 2001, I too, as a workman of the first party company agreed to the terms of the settlement dated 10th December 2001. I further state that since the benefits enumerated in the settlement were specific and very unambiguous. The first party company retired me with effect from close of office hours on 27th December 2001 as per the terms of settlement. According to the terms of settlement, I was entitled to receive a lumpsum payment of Rs. 5 lakhs, pension of Rs. 12,898 for a period of 120 months amounting to a total sum of Rs. 15,47,760/- over a period of ten years or if opted for 60 months, pension of Rs. 20,415/- per month which worked out to Rs. 12,24,900/- for a period of five years. In the alternative, the settlement also unambiguously and clearly provided for an option to commute not more than

1/3rd pension benefit to be paid as lumpsum and which amount as per the provisions of the settlement, worked out to Rs. 5,15,920/-. In case a workman decided to exercise the commutation option, the terms of the settlement further provided that monthly payments were to be reduced to 2/3rd of the original monthly pension i.e. Rs. 9598/ for the option of 120 months and Rs. 13,610/-for the option of 60 months. My age at that time was only 49 years. Under normal circumstances, I would have retired at the age of 60 years in the year 2002 but was prematurely retired as per the terms of the said Settlement dated 10th December 2001. I had at that time, i.e. on 27th December 2001, put in 18 years of service and my salary was about 20,000/-per month. It was unfortunate that I had to retire at such a young age. I was quite upset for months together that the first party company that I served for 18 long years made me retire prematurely. At the time of retirement I was working in the office administrative department of the first party company.

...I say that the retirement of the 373 workmen was exclusively based on the provisions of the settlement dated 10th December 2001 and the specific benefits enumerated thereunder

...After the vociferous protests, the officials of the first party company backed out and categorically promised the Union Managing Committee members that the members of the Union would not be pressurised to sign any more forms till the actual voluntary retirement scheme was formed and finalised by the first party company. I say that however, till the last working day, i.e. 27th December 2001, no actual voluntary retirement scheme could be readied, formed or finalised by the first party company. No forms, therefore, came to be signed by the employees. Later on the first party company tried to once again sneak in this second unsigned form in one of its affidavits in Honble Bombay High Court in Writ Petition No. 3175 of 2004, but when the workmen challenged about the authenticity/ veracity of the same through an affidavit, the first party company, expectedly, did not press for the same.

...The workmen have accepted the terms and conditions of the Settlement dated 10th December 2001, have agreed to abide by the said terms and conditions, and

have thus claimed benefits under the settlement. I humbly state that from the contents of the form, as mutually agreed in the settlement dated 10th December 2001 to be filled in, one cannot by any stretch of imagination claim the same to be an individual offer by individual workman as falsely alleged by the First Party Company.

...I say that in the first week of January 2002, the General Manager of the first Party company requested me to collect the cheques of commuted pension of the workmen from LIC. When these were handed over to me, I glanced at the amount of my cheque which was much less than the terms of settlement and I asked the officials of LIC about it. I was told that LIC had made no calculations and that the company had made a consolidated payment to them and that the company and its Actuary had given them a list of employees together with the actual amount of lumpsum to be paid to each of the workmen. I was told that no official or Actuary of LIC had made any calculations and if I had any queries about the same, I should take it up with the first party company as the LIC officials would not be able to help me out in this regard. Even the working calculations were not given to me. I was told that the company had formed a Trust and some officials of the company were Trustees. My persistent queries had annoyed some of the LIC officials. After some time, when I asked for the certificates of the lumpsum payments, I was told that since no computation had been made by LIC, LIC could not issue any certificate. I was informed that I would have to approach the company for any certificate. I was also told that if there was any short payment I would have to take it up with the company as LIC had no other role to play except make the payment as per the instructions and the list of the company. I handed over the cheques so collected from LIC to the officials of the First Party Company and at that time too the officials of the Company had brushed aside my queries regarding the short payment. I was told that queries would have to be raised to the higher authorities and the Actuary with whom the Company officials had actually worked out the lumpsum payments. Immediately, I brought it to the notice of the second party union that there appeared to be a short payment in most of the cases. The Union wanted to confirm with the officials of the company but except vague replies and empty assurances the response was not at all satisfactory. The settlement provided that upto 1/3 of the pension could be commuted. Since the monthly payments were to

be started from 1st February 2002, it was decided to wait till the first week of February 2002 to check whether keeping in line with the reduced lumpsum payment, the pension payment would accordingly be enhanced or not.

...I say that in the first week of February 2002, confirming my worst fears, I received my first pension cheque and noticed that total of one third of my pension was deducted. The First Party Company, in flagrant violation of the settlement dated 10th December 2001, had duped me by paying me less lumpsum amount in respect of commuted pension. I say that this really shocked me as the settlement dated 10th December 2001 had covered the benefits that were to accrue from the long pending Charters of demands. I say that I had pinned my hopes on both the pending charter of demands, as my basic salary was not revised for more than 10 years. I say that immediately I brought this fact to the attention of the General Secretary of the Union, who informed me about receiving complaints from other affected employees too. I say that on checking the amounts of the first pension cheques received by the workmen, it was clear that one third of the pension had been deducted towards commutation, but the commuted pension had been reduced. The second party union, therefore, immediately wrote number of letters to the first party company about the short payment, giving full particulars of the short payment. Several examples were given to show how much commuted pension payment ought to have been made and how much was actually paid. I further submit that it was clear that all the workmen who had opted for commuted payment had been short paid in flagrant violation of the settlement dated 10th December 2001.

...I once again say that after the discovery of short payment, the second party Union wrote many letters to the first party company seeking redressal of the grievances of the workmen who had been duped and paid a considerable amount less in respect of the compensation assured to them under the Settlement dated 10th December 2001 and detailing developments including modus operandi engaged by the company. A number of these letters are exhibited with the Statement of Claim, Unions reply to the first party companys written statement as well as other applications made before this Tribunal. These letters are at Exh.U6, U12, U19, U23, U26. Identify the said letters and the signatures appended on the

same and further say that the contents thereof are true and correct. The company replied to some of these letters falsely claiming that all payments were made as per settlement.

...I further state that later on, after a few months after the lumpsum payment was made, when it became clear to the First Party Company that the fraud committed by the First Party Company was exposed and that there was no way that it could be suppressed any more, the First Party Company framed a back dated scheme as an after thought, which was called VRS-Mumbai 2001. However, the contents of the said scheme are clearly false as they bear no comparison with the benefits under the settlement dated 10th December 2001. It is clear that any scheme framed under the settlement had to be in consonance with the benefits under the settlement dated 10th December 2001. However, the contents of the so-called VRS Mumbai 2001 and the contents of the settlement are completely diverse, which clearly show that the scheme was non existent at the time of the early retirement of the workmen. I further state that in between the company, clearly as an after thought, also tried to frame with the help of its paid Actuary, a Voluntary Early Retirement Plan. Somehow, the company wanted to ensure that its Corporate fraud perpetrated on its own employees is covered up.

48. Thus, the clear case of the Union is that the petitioner company under the settlement, contemplating retirement, after conferring all benefits including payment of mandatory sums, foisted a backdated Voluntary Retirement scheme Mumbai 2001 which is not what is contemplated by the Memorandum of Settlement dated 10th December 2001. Thus, an allegation of fraud, mischief and fabrication is made. Assuming that settlement binds both parties, the entire benefits as computed thereunder have not been given is the allegation. The payment is made after making some unauthorised and illegal deductions. Thus, when the benefits under the scheme have not been paid in full and there is no accord and satisfaction, then, to my mind, it cannot be said that the relationship of employer-employee is snapped straight away. Having perused the evidence as a whole, I am of the view that prima facie the reference is maintainable at least to the extent of shortfall in payment. This is the prima facie conclusion arrived at by two Division Benches of this Court. Even after Trial of preliminary issues the same

conclusion will have to be reached on the basis of the oral and documentary evidence.

49. Even in the cross examination of the witness of the Union, the suggestions put to him are more in the nature of eliciting an Admission with regard to payment and whether it is in full and final settlement. The distinction between the earlier V.R.S. and the present has been made out by the witness inasmuch as in the present settlement/scheme, the payment is routed through LIC whereas in earlier scheme, that was directly made by the company to the workmen. In my view, considering the deposition of the witness and the stand of the Union as reflected therefrom, it cannot be said that the relationship of employer employee has come to an end with effect from 27th December 2001 as contended by Mr.Bharucha.

50. Even the settlement has to be perused as a whole and if it is seen in this manner and noticing Clause (J) as reproduced above, it would be proper at this stage to hold that the Reference is maintainable. Assuming that the relationship has come to an end as far as the allotment of work and duties of the Mumbai Establishment, atleast, for the purpose of working out the settlement and the benefits thereunder it would continue. In other words, it continues so long as a dispute subsists about benefits and payment between parties. It is not possible to hold that the dispute is not an industrial dispute but a contractual dispute. In this behalf, I can usefully refer to the deposition of the witness examined by the company as well. In the deposition at paras 2 to 6 this is what is stated:

2. I submit that in December 2001, around 372 erstwhile employees of the First Party Company had voluntarily resigned by submitting individual letters under the VRS Mumbai 2001 voluntary retirement scheme accepting benefits under the said Scheme as supplemented by Memorandum of Settlement dated 10th December 2001 signed between the First Party Company Employees Union and were also relieved from the services w.e.f. 27th December 2001. Illustrative copies of the Resignation letters are collectively at Exh.A to the written statement.

3. I submit that consequent on their resignations the applications made by each of 372 ex-employees were accepted and they were relieved from the services of the first party company w.e.f. 27th December 2001. Illustrative copies of the individual

relieving letters are collectively at Exh.B to the written statement.

4. I submit that upon resignation, all the 372 ex-employees were also paid the statutory benefits available to them, i.e. leave encashment, gratuity amounts etc. as per their eligibility. I submit that the 372 ex-employees, were also paid a one time payment of an amount not exceeding Rs. 5 lakhs as VRS compensation over and above the statutory benefits. Illustrative copies of the receipts signed by each of them are collectively at Exh.C to the Written Statement.

5. I state that the said 372 ex-employees included the then employee office bearers of the Phillips Employees Union who also signed individual resignation letters and also the individual relieving letters.

6. I state that none of these 372 ex-employees were dismissed, discharged, terminated or retrenched by the employer as they had, in fact, voluntarily resigned from the services, pursuant to a VRS, thereby putting an end to jural relationship of employer - employee by his/her own conduct and free will and volition.

Further in paras 9 and 10 the witness states thus:

9. I state that the memorandum of settlement came to be binding one to one with each individual ex-employees only, when it was independently agreed by each of the individual ex-employees by signing individual resignation letters wherein they have agreed in writing and under their own signature to accept the terms and conditions of the Memorandum of Settlement and opt for VRS Mumbai 2001 scheme. Thus, there were 372 individual contracts between the first party company and its ex-employees following the terms and conditions of the Memorandum of Settlement. Copy of the Memorandum of Settlement dated 10th December 2001 showing benefits is at Exh.I to the written statement.

10. I state that as per the Memorandum of Settlement dated 10th December 2001 the First Party Company agreed to pay monthly benefits in the form of annuity (pension) payable by Life Insurance Corporation of an amount not exceeding (a) of Rs. 12898, if the ex-employee opted for 120 months pension term or (b) Rs. 20415 if he opted for 60 months pension term, depending upon the option voluntarily

exercised by each individual ex-employee and also depending upon the age of the ex-employee. A person entitled to receive monthly benefits, was also entitled to an option to commute a part not exceeding 33 1/3% of his monthly benefits. Thus, each individual ex-employee was entitled to opt at his own choice to receive payments under different modes. These benefits are not payable by virtue of any statutory provision under the [Industrial Disputes Act, 1947](#) or Payment of Wages Act or any other law for the time being in force. These amounts were agreed to be paid to each individual ex-employee who offered to resign from the services of the First Party Company, and as a consideration for such resignation and upon cessation of employer-employee relationship. I state that all the 372 ex-employees had individually at their own will opted for either 60 or 120 months benefits with or without commutation under VRS MUMBAI -2001 Scheme. Therefore, these are individual contracts signed by the First Party Company with each of the 372 ex-employees.

51. From the version of both sides it is apparent that the Union is asserting that the memorandum of settlement and the VRS-Mumbai 2001 are not one and the same. It is alleging that a fraud has been perpetrated by the petitioner. Assuming without admitting that settlement contemplates retirement/resignation, still, the dispute between parties is that various benefits and amounts covered by the same are not paid and/or wrongfully deducted. Therefore, at this stage, it cannot be said that the reference would not be maintainable at all. It is also clear from a perusal of the oral and documentary evidence that the case of the company is that it has acted in furtherance of the settlement and fulfilled all obligations arising out of the same. However, it is clear from the letters copies of which are annexed to the petition, that the company took the stand that it is taking necessary steps to ensure payment of legal dues, if entitled, to the employees. Thus, whether such steps have been taken and all obligations fulfilled by the company is something which will have to be gone into in further and more elaborate details. Therefore, the request to throw out the reference on the ground that it is not maintainable cannot be granted at this stage. Even otherwise, for such a request to be granted, it will have to be decided that the settlement and the VRS are one and the same, it contemplates that employees will opt for voluntary retirement benefits, that all issues pertaining to earlier or pending charter of demand and related matters

stand resolved amicably, that upon signing the declaration as per Annexure A to the settlement and the said declaration having been accepted so also employer relieving the employee with effect from 27th December 2001, the relationship comes to an end, that pursuant to declaration and assurances contained in the settlement and the letters of acceptance addressed by the company, all benefits have been conferred and payment made. Thus, there is full and final settlement of all claims and nothing remains to be paid to the employee nor the relationship subsists any longer, are matters which must be gone into at the hearing of the reference and it is not possible to accede to the submissions of the petitioner that the reference is not maintainable. In my view, the Industrial Tribunal has not committed any error in holding that the employees concerned in the proceedings are covered under the ambit of the term 'workman' as per the I.D. Act, atleast to the extent of the payment and benefits claimed under the settlement. So also, the grievance raised on behalf of the employees is rightly held to be an industrial dispute and in my view, atleast to the extent of benefits and payments under the settlement, the relationship subsists and once the relationship subsists for this limited purpose, the dispute would naturally be an industrial dispute.

52. As far as maintainability of the reference on the point of locus standi of the Union is concerned, in my view, that issue cannot be decided at this preliminary stage as, evidence will have to be led with regard to the claim of individual workman and if it is proved that they are settled, then, the consequences would follow. It is only in such an event that it can be held that the Union no longer possesses the authority to represent such employees. Insofar as pendency of Civil Suit is concerned, nothing has been pointed out to me which would show that mere filing or institution of the suit would make a reference not maintainable. Even otherwise, that is something which needs to be gone into at a later stage and it would be open for parties to urge that assuming such a reference is maintainable, no relief can be granted in favour of the workman/employee in question either because, they have taken further steps to defend the suit or otherwise. It would also be open for the petitioner to urge that the suit being prior in point of time and the civil court being competent to take cognisance of the claim, no relief be granted in the reference in favour of the employees.

53. The learned Member was also right in placing reliance upon the judgement of this Court in ICI Ltd. (Supra). Observations of the learned Member in para 26 after deriving support from this judgement and earlier Division Bench judgement of this Court in the case of P.L. Mayekar v. Agichand Narayan reported in (1995) 57 BLR 1000, are proper. Similarly, the learned Member is also right in placing reliance upon a decision of the Supreme Court in the case of Dimakuchi Tea Estate (supra). Incidentally, in learned Single Judges decision in ICI India Ltd. (supra) has met approval of the Division Bench and the Appellate Judgement has also been referred to by the learned Judge. The latest decisions of the Supreme Court in UCO Bank and Ors. v. Sanwarmal : (2004)IILLJ490SC and R.B.I. and Anr. v. Cecil Dennis Solomon and Anr. : (2004)ILLJ782SC have also been referred to by the learned Member. Therefore, the learned Member was right in the prima facie conclusion drawn in paras 39 and 40 of the impugned judgement. In my view, the prima facie conclusion of the Industrial Tribunal cannot be said to be perverse or vitiated by any errors apparent or wholly irrational and arbitrary so as to call for interference in my equitable and discretionary jurisdiction under Article 226 of the Constitution. The view taken is possible view at a prima facie stage and, therefore, requires no interference. More so, when self-same pleas have been considered by two Division Benches of this Court earlier and even their view sums up, with respect, the correct legal position.

54. By terming the employees as ex-employees and referring to their resignation letters, in my view, it cannot be said that the Reference is not maintainable. It is not a reference between two parties who have lost their character as employer and employee completely. Atleast for limited purpose, the same continues. Prima facie, the deposition of the companys witness would show that the parties are not ad idem. A reference to the earlier proceedings and scheme is of no assistance at this stage. I will have to proceed on the basis that the issue on pleas raised by the Union about short payment of amounts payable upon resignation under the settlement and denial thereof by the petitioners, arises in this case. This is clear from para 31 and 32 of the deposition of the companys witness as well. It is in this backdrop that the arguments on maintainability of the reference raised in the context of the membership of the Union, filing of the civil suit would have to be tried. Merely because a civil suit is filed in this case and a declaration is sought

therein and all workmen are parties thereto individually, it does not mean that a dispute arising out of the memorandum of settlement dated 10th December 2001 cannot be said to be an Industrial Dispute.

55. In the above circumstances, it is not possible to agree with Mr.Bharucha that the preliminary issue has been erroneously answered by the industrial court in favour of the Union. The tentative and prima facie findings of the Industrial court based upon the materials, including the depositions and contentions of rival parties, cannot be said to be vitiated in the present facts and circumstances by any errors apparent nor can be termed as perverse.

56. Mr.Bharucha has invited my attention to several decisions of the Supreme Court on the ambit and the scope of voluntary retirement and the distinction between voluntary retirement and resignation. He relied upon the following paragraphs in the judgement of Supreme Court reported in (2000) 5 SCC 163 (A.K. Bindal and Anr. v. Union of India and Ors.)

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

57. He has, then, invited my attention to another judgement of Division Bench of Kerala High Court in W.A. No. 1194 of 1999, delivered on 10th June, 1999. The Division Bench of Kerala High Court observed that in the facts before it, the case of the employees does not fall within the definition of the term 'Workman' as appearing in Section 2(S) of I.D. Act. The Division Bench has observed thus :

We are, therefore, of the opinion that the claim of the appellant is misconceived and beyond the scope of Section 2(s) of the Industrial Disputes Act. A perusal of the petition submitted by the appellant before the Labour Officer and also the Original Petition filed before this Court reveals that the appellant had accepted the benefits offered to him in pursuance of the Voluntary Retirement Package announced by the management and on being satisfied about the calculation and the quantum thereof, chose to tender his resignation and thereafter, on diverse dates, received benefits confirming each time that the management had fully and finally settled the accounts, thereby severing the employer-employee relationship once and for all. Counsel for the appellant, however, submitted that the benefits due to the appellant was not properly quantified and paid, and therefore, he would be entitled to maintain a petition before the Labour Officer.

58. In the peculiar facts of that case and when specific case was made out that the concerned workman had accepted benefits offered to him in pursuance of V.R.S. so also he was satisfied about the calculation and quantum of the same and tendered his resignation, that the Division Bench observed that employer-employee relationship has come to an end once and for all. Therefore, the Labour Officer has no jurisdiction to decide the matter.

59. The Judgement of learned Single Judge in the case of Premier Automobiles Limited v. PAL-VRS Employees Welfare Association in O.O.C.J. Petition No. 990 of 1998 decided on 10th March, 2001 is also of no assistance because of the factual position brought before this Court. The benefits of the settlement arrived at between petitioner and the workman were specifically accepted and considering the clause in the settlement, this Court reached the conclusion which was arrived by the Division Bench of Kerala High Court in the judgement (supra). Similar is the position with regard to the judgement of the Supreme Court reported in :

(2006)IILLJ245SC . There, the Supreme Court reiterated its earlier view about V.R.S. but at the same time in paras 18 & 19 of this decision, it is observed thus:

18: The Voluntary Retirement Scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.

19: It is not in dispute that the effect of such Voluntary Retirement Scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

60. It is in this factual context, that the Supreme Court refers to its earlier judgements and follows the same. It is not necessary to refer to all authorities. The principle appears to be well settled.

61. In W.P. 1703 of 2000, decided on 31st August, 2006, (Iliyas Yusuf Naikwadi v. The State of Maharashtra, Primary Education Department, Zilla Parishad and Education Officer (Primary), Zilla Parishad) a Division Bench of this Court summed the law thus :

6: The Apex Court in the matter of UCO Bank and Ors. v. Sanwar Mal, while dealing with the meaning and scope of an the differentiation between the terms 'resignation' and 'retirement', held thus:

We find merit in these appeals. The words 'resignation' and 'retirement' carry different meanings in common parlance. An employee can resign at any point of time even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations the expressions 'resignation' and 'retirement' 106 have been

employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation, it is a self financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the bank, Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. The Apex Court has, therefore, clearly distinguished between act of 'resignation' from the act of 'retirement' and has held that resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains such relationship for the purpose of availing retiral benefits.

7: Taking into consideration the provisions of law relating to the pensionary benefits as were prevalent at the time of petitioners resignation and the law laid down by the Apex Court on the meaning of terminology of like 'resignation' and 'retirement', an inevitable conclusion which has to be drawn is that a person who had resigned in the year 1978, in the absence of pensionary benefit being made available under the statutory provision to such person, could not claim such pensionary benefits. In view of complete cessation of relationship of master and servant on account of tendering of resignation, there leaves no scope for claiming pensionary benefits from the master. In case of retirement, however, such relationship continues for the purpose of claim of retiral benefit. Since the petitioner, in the case in hand, had not retired, but had resigned from the service, his case squarely falls under the 1st part of the ruling of Apex Court which would mean that the relationship of servant and master between the petitioner and the respondents had come to a complete cessation on 4.1.1978 and there was no scope for the petitioner to claim retiral benefit thereafter.

62. In : (2002)IILLJ430SC (Shambhu Murari Sinha v. Project and Development India and Anr.), a two Judge Bench of Supreme Court observed that the jural relationship does not come to an end unless the employee is relieved after duty hours after acceptance of the offer for V.R.S. or resignation. Similar are the observations in a three Judge Bench decision of the Supreme Court reported in : (2004)IILLJ573SC (Punjab and Sind Bank and Anr. v. S. Ranveer Singh Bawa and Ors.). The Supreme Court in paras 3 & 5 has observed thus:

3. In the case of Bank of India v. O.P. Swarnakar reported in : (2003)ILLJ819SC , two questions arose for determination, namely, whether the scheme is an offer, as contended on behalf of the bank or an invitation inviting offers from employees; and secondly, whether the optees having accepted the payments/benefits under the scheme could be permitted to resile therefrom. On the first question, it was held that the said scheme was contractual in nature; that it constituted invitation and not an offer; and that no consideration passed in terms of the scheme so as to constitute an agreement. Under the circumstances, it was held that revocation was possible and effective at any time before acceptance as upto such acceptance no legal obligation existed. On the second question, it was held that those employees who have accepted the payments/benefits under the scheme cannot approbate and reprobate nor can they be permitted to withdraw.

4. When the appeal came up for hearing it was submitted on behalf of the appellant on facts that the respondent No. 1 herein had received and accepted 111 payments/benefits under the scheme and consequently, he was not entitled to withdraw therefrom. In this connection, reliance was placed on the averments in the counter-affidavit filed by the appellant on 28-2-2004 in I.A. No. 1 of 2003 filed in the present civil appeal. It was urged that the said respondent had two savings bank accounts No. 4775 and 4777, in which the bank credited salaries, notice period salary as well as leave encashment benefits under the scheme, which was never objected to by the respondent. Further, the credits in the savings bank accounts were used by the the respondent to repay his car loan to the bank amounting to Rs. 65220/-, which was one of the conditions prescribed in the scheme. Further, the said respondent had utilised the credits in the said accounts for investment in 112 fixed deposits. Accordingly, it was submitted that the

respondent had received the payments under the scheme, he had utilized those payments to discharge his obligations under the scheme by repayment of car loan and he had invested the amounts in fixed deposits. Therefore, he was not entitled to withdraw from the scheme. Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the respondent, on the other hand, contended that on 6-12-2000, respondent herein opted for VRS. He urged that the scheme was open upto 31-12-2000. On 22-12-2000, the said respondent withdrew his offer. He repeatedly reminded the management thereafter to accept his request for withdrawal. Despite reminders, on 29-1-2001, the management relieved the respondent from service, which was challenged by him by filing writ petition in Delhi High Court on 26-3-2001. It was urged that although the respondent succeeded in the writ petition, till date the appellant has failed to reinstate the respondent. It was submitted that the appellant had unilaterally credited the salaries, the notice pay and the leave encashment benefits in the account of the respondent with the appellant-bank and consequently, the receipts of payments cannot constitute waiver or acquiescence on the part of the respondent. At the highest, it was receipt of payment under protest. In this connection, reliance was placed on the fact of pendency of the writ petition in the High Court.

63. Therefore, the position in law appears to be that the applicability of the principle of Approbate and Reprobate, waiver, acquiescence or estoppel, would depend upon facts and circumstances of each case. Depending upon complete satisfaction of the claims under the settlement, a decision could be reached that the Jural relationship has come to an end. Thus, no general rule can be laid down. Ultimately, everything depends upon facts and circumstances of each case. It is not as if the Supreme Court holds that upon a settlement or a claim for V.R. coming into operation and parties acting in furtherance thereof, that the relationship comes to an end automatically or that no claims under the same could be made. So also, there is no compartmentalisation of the matter. Merely because the V.R. scheme has been accepted by an employee or he tenders his resignation in pursuance thereof that does not mean that he cannot make any claim before the forums provided under the labour laws and his only remedy is to invoke jurisdiction of an ordinary civil court by applying principles of Law of Contract. If the Relationship of Employer and Employee continues, though even for a limited

purpose, then, the forums for adjudication under the I.D. Act are, prima facie, available. The Industrial Disputes Act is enacted and the forums for adjudication set up thereunder made available to cover cases of parties who are not equal in bargaining power.

64. I need not go into these aspects in further details because in the present case, the union has raised a serious dispute with regard to the introduction of V.R.S. as they allege that memorandum of settlement dated 10th December, 2001 contemplated V.R.S., but such a scheme was never introduced. The scheme, which has been relied upon (V.R.S. Mumbai - 2001) is not what is contemplated by Memorandum of settlement and in any event, it is backdated. The management has played a fraud upon employees by misrepresenting the entire matter and has purported to put an end to the relationship. Thus, their claim is on the basis that V.R.S. is a fraud. Alternatively, they are basing their case on the Memorandum of settlement and contending that assuming it is a scheme for V.R.S. until and unless all benefits and payments thereunder are made and there is a complete accord and satisfaction, the Jural relationship continues. Hence, they can approach the forum under the I.D. Act. Such a case needs to be tried and in my view, it would not be proper at this prima-facie stage to hold that reference is not maintainable. For the issues to be answered, further material would have to be produced by both sides and only when it is proved to the satisfaction of the tribunal that all payments have been duly made and accepted by the Union, that it can reach a conclusion that the reference is not maintainable. As at present, on the basis of the materials produced, the reference must proceed.

65. In the result, there is no substance in the petition, the same fails. Rule is discharged. Industrial Court now to proceed with the reference in accordance with law. 66. It is clarified that all observations made by the learned Member are prima facie and tentative and shall not influence the Industrial Tribunal while recording its final decision. Similarly, all observations made by me in this judgement are made only for the purpose of scrutiny of the tentative and prima facie conclusion of the Industrial Tribunal and shall not influence the court below while rendering its final decision on merits.

