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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 18th September, 2020**

\+ W.P.(C) 10596/2018 & CM APPL.41299/2018, 48595/2019

PTI EMPLOYEES UNION .... Petitioner

Through : Mr. Colin Gonsalves, Senior Advocate with Ms. Aditi Gupta, Advocate

versus

PRESS TRUST OF INDIA LTD. ....Respondent

Through : Mr. P.S. Patwalia, Senior Advocate with Mr. N. B. Joshi, Mr. Anurag Ranjan, and Ms. Seema Neb, Advocates

\+ W.P.(C) 10605/2018 & CM APPL.41305/2018, 31916/2019

FEDERATION OF PTI EMPLOYEES' UNIONS …Petitioner

Through : Mr. Colin Gonsalves, Senior Advocate with Ms. Aditi Gupta, Advocate

versus

PRESS TRUST OF INDIA & ANR. .... Respondents

Through : Mr. P.S. Patwalia, Senior Advocate with Mr. N. B. Joshi, Mr. Anurag Ranjan, and Ms. Seema Neb, Advocates

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CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner in W.P.(C) 10596/2018 is a Trade Union of PTI employees whereas the petitioner in W.P.(C) 10605/2018 is a Federation of four PTI Employees' Unions.

2. Both the petitioners have challenged the retrenchment of 297 employees by Press Trust of India (hereinafter referred to as 'PTI') on 29th September, 2018. The petitioners, in both these writ petitions, are seeking the same relief, i.e., quashing of the retrenchment notices dated 29th September, 2018 issued to 297 retrenched employees, their reinstatement with back wages and consequential benefits. In W.P.(C) 10605/2018, the petitioner has sought an alternative prayer for constitution of National Tribunal for adjudication of industrial disputes but this alterative prayer was given up during the course of hearing.

3. The petitioners have challenged the retrenchment of 297 employees of PTI on various grounds *inter alia* that PTI is amenable to writ jurisdiction as it satisfies the public function test; all the retrenched employees are '*workmen'* within the meaning of Section 2(s) of Industrial Disputes Act, 1947; PTI is a *'factory'* within the meaning of Section 2(m) of the Factories Act, 1948 as PTI engages in '*manufacturing process'* of news, articles, publications, photographs etc. within the meaning of Section 2(k)(i) & Section 2(k)(iv) of the Factories Act, 1948; all the 37 centers of PTI in the country constitute a single establishment under Section 2(d) read with the Schedule of the Working Journalists and Other Newspaper Employees

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(Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "Working Journalists Act, 1955"); all centers/ establishments of PTI are industrial establishments within the meaning of Section 25-L of Industrial Disputes Act; permanent and regular workmen have been retrenched while contractual workers have been retained; senior permanent workmen have been retrenched while junior workers have been retained; the principle of '*last come first go'* has not been followed; fresh engagement of workmen is in violation of Section 25-H of the Industrial Disputes Act; seniority list has not been displayed as required by Rule 77 of the Industrial Disputes Rules; the retrenchment is violative of Section 25-N of the Industrial Disputes Act as PTI employs more than 100 employees and has not taken the prior permission from the State Government before retrenchment; retrenchment is violative of Section 25-N of Industrial Disputes Act as three months notice/three months wages in lieu of notice has not been given; retrenchment is violative of Sections 25-F and 25-G of the Industrial Disputes Act as one month notice indicating the reasons for retrenchment and the retrenchment compensation has not been given; retrenchment is violative of Section 9A of the Industrial Disputes Act read with Clauses 10 and 11 of the Fourth Schedule as the service conditions of the employees relating to rationalization/technique were altered without notice; the retrenchment is violative of Section 16A of the Working Journalists Act, 1955 as the reason for retrenchment was the liability for payment of wages and mandating promotional grades as per Clause 18(f) of *Majithia* Award; the retrenchment is violative of Section 25-G of Industrial Disputes Act as there is substantial short payment of retrenchment compensation to the employees; closure of *Attendees*, *Transmission* and

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Engineering departments is violative of Section 25-O of the Industrial Disputes Act as the closure was without permission and the retrenchment is illegal and *mala fide* to sabotage the continued disbursement of *Majithia* Award benefits and to discourage the employees to pursue their remedies under the Wage Board; the retrenchment constitutes an unfair trade practice as set out in clauses 5(a), (b) and (d) of the Fifth Schedule of the Industrial Disputes Act; large number of employees have not yet received individual notice of their retrenchment; and the plea of "*No work*" of PTI is false and contrary to PTI work registers.

4. The respondent has raised preliminary objections to the maintainability of the writ petitions on various grounds *inter alia* that PTI is a Company incorporated under the Companies Act; PTI is not a State within the meaning of Article 12 of the Constitution; PTI is not a public authority; PTI does not perform a pubic function and therefore, not amenable to writ jurisdiction; the actions of PTI in respect of employer-employee relationship cannot be tested under the writ jurisdiction; the retrenched employees have statutory remedy under the Industrial Disputes Act; the petitioners have already invoked the remedy under the Industrial Disputes Act and have not approached this Court with clean hands; and the writ petitions raise disputed questions of facts which requires detailed evidence and therefore, cannot be adjudicated in the writ jurisdiction. The respondent has also challenged the maintainability of the writ petitions on the ground that the petitioners have filed the writ petitions without any authorization from the retrenched employees. The respondent has also challenged the maintainability of two writ petitions with identical contentions seeking identical reliefs. According to respondent, these writ petitions are collusive.

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5. The respondent has filed detailed counter-affidavit on merits. According to the respondent, there was no work for the retrenched employees for a long period and they were continued despite there being no work due to which PTI was suffering operational losses. It was further averred that management has the right to decide the strength of its workforce required to carry out its work efficiently. The respondent paid Rs.40.15 crores towards retrenchment compensation and one month notice wage to 297 retrenched employees and Rs.8.63 crores was deposited towards TDS and the said amount was paid after borrowing funds at the interest of 10.5% per annum which has to be repaid by PTI. During the pendency of these writ petitions, 78 retrenched employees have accepted their retrenchment and have applied for withdrawal of statutory benefits including gratuity etc. 46 out of 78 retrenched employees have received amount far in excess of the salary which they would have earned in their remaining service. The respondent has placed on record the list of 78 employees who have accepted the retrenchment and have also withdrawn their gratuity amount. The respondent has also placed on record the list of 219 employees who have not yet accepted their gratuity and other dues. As per the list of 78 employees, they have received the retrenchment compensation including TDS between Rs.10 lakhs to Rs.28 lakhs (Total Rs.13,59,36,397/-) and gratuity amount between Rs.7 lakhs to Rs.21 lakhs (Total Rs. 10,63,02,114/-) depending upon the length of their service. The list of remaining 219 employees reflects that they are entitled to compensation including TDS between the range of Rs.11 lakhs to Rs.27 lakhs depending upon the length of their service (Total Rs.42,93,80,549/-) and are further entitled to gratuity between Rs.2 lakhs to Rs.18 lakhs (Total Rs.25,92,20,959/-).

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6. The respondent's defense on merits is that the retrenchment of 297 employees was carried out under Section 25-F of the Industrial Disputes Act as there was no work for three categories of employees namely *Attender*, *Transmission* and *Engineering*; the respondent issued notices dated 29th September, 2018 notifying retrenchment of 297 employees and the retrenchment letters were sent to the last known addresses of the employees by registered post. The communication addressed to each individual employee gave the reasons for the retrenchment. The retrenchment letters were uploaded on the website and were pasted at the prominent places of each office of the respondent; each retrenchment letter had details of payment of notice pay and retrenchment compensation with the basis of calculation; the notice pay and retrenchment compensation were transferred in the bank account of each of the retrenched employees on 29th September, 2018; the retrenched employees were notified to approach the respondent along with the relevant forms in case of any inadvertent calculation error; the respondent notified the Appropriate Authority in the prescribed form along with necessary formalities in compliance of Section 25-F of the Industrial Disputes Act; the respondent displayed the notice dated 21st September, 2018 giving the Seniority List of three categories of employees in compliance with Section 25-G read with Rule 77 of the Industrial Disputes Act; the respondent strictly followed the principle of '*last come first go*' in the process of retrenchment; respondent, in the retrenchment letters, have categorically mentioned that in case of re-employment they shall comply with Section 25-G read with Rule 78 of the Industrial Disputes Act; the respondent has complied with all applicable provisions of Industrial

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Disputes Act and the retrenchment of 297 employees has been done in accordance with law.

7. The respondent has vehemently disputed all the averments made and the grounds urged by the petitioners. According to the respondent, PTI is a news agency which digitally collects and transmits the news to its subscribers and is not involved in printing of newspapers; PTI is not carrying out any manufacturing activity and is not a '*factory'* within the meaning of Section 2(k) of the Factories Act; all the establishments of PTI cannot be deemed to be one establishment under Section 2(d) read with the Schedule of the Working Journalists Act, 1955; Section 25-N of the Industrial Disputes Act is not applicable as PTI is not a '*factory'* as per Section 2(m) of the Factories Act, 1948; assuming without admitting that PTI is an industrial establishment, PTI has carried out the retrenchment under Section 25-F of the Industrial Disputes Act which does not require any prior permission of the Government; the respondent has duly displayed the seniority list on 21st September, 2018; the respondent strictly followed the "*last come first go*" principle; there is no shortfall in the retrenchment compensation paid by the respondent; Section 9A of the Industrial Disputes Act is not attracted as retrenchment is not a change in conditions of service as envisaged in Section 9A of the Industrial Disputes Act; PTI retrenched the employees as there was no work; Section 25-O of the Industrial Disputes Act is not attracted as there is no closure in the present case; Section 16A of the Working Journalists Act is not attracted as PTI implemented the Wage Board award and paid all the dues to the employees.

8. This Court is of the view that the preliminary issue as to ***whether the writ petitions should be entertained in view of the statutory remedy***

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available to the retrenched employees under the Industrial Disputes Act, goes to the root of the matter and therefore, this issue is first taken up for consideration. Two other preliminary issues namely, *whether the petitioners were authorized/competent to file these petitions on behalf of the retrenched employees*; and *whether two writ petitions seeking same reliefs are maintainable,* are also taken up for consideration.

9. Mr. Colin Gonsalves, learned senior counsel for the petitioner, urged at the time of hearing that there is no merit in the respondent's preliminary objection of a statutory remedy available to the retrenched employees under the Industrial Disputes Act. The writ petitions are maintainable as all the relevant facts involved in these writ petitions are undisputed and no evidence is required to be led by the parties on the issues involved. It is further submitted that these writ petitions are pending for two years and, at interim stage, this Court held in favour of the petitioners and it would not be efficacious at this stage to send the matter back to the Industrial Tribunal. According to the petitioner, no evidence is required on the issues whether PTI is a factory; whether retrenchment was on account of induction of new technology; whether retrenchment is illegal for violation of Section 25-N of the Industrial Disputes Act; whether retrenchment is violative of Section 16A of the Working Journalists Act, 1955; and whether PTI is making losses. It is further submitted that the issue as to whether PTI is a '*factory'* within the meaning of Section 2(m) of the Factories Act, 1948 is a pure question of law. Reliance is placed on ***Indian Petrochemicals Corpn. Ltd. v. Shramik Sena,*** (1999) 6 SCC 439; ***Chennai Port Trust v. Chennai Port Trust Industrial Employees Canteen Workers Welfare Assn.,*** (2018) 6 SCC 202; ***Marwari Balika Vidyalaya v. Asha Srivastava,*** 2019 SCC Online SC

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408; and ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani***, (1989) 2 SCC 691**.**

10. Mr. P.S. Patwalia, learned senior counsel for the respondent, urged at the time of hearing that the writ jurisdiction should not be exercised in view of the statutory remedy available to the retrenched employees under the Industrial Disputes Act. It is submitted that Industrial Disputes Act is a complete Code in itself which provides for the remedies to the employees against retrenchment and the petitioners have based their claims on the alleged violation of the provisions of the Industrial Disputes Act. PTI Employees Union invoked the Industrial Disputes Act by letter dated 04th October, 2018 to the Conciliation Officer/Appropriate Authority against the retrenchment whereupon the Appropriate Authority issued a notice dated 05th October, 2018 to the parties to appear before the Conciliation Officer on 09th October, 2018. When the respondent raised the objection during the course of arguments on 04th October, 2018, PTI Employees Union withdrew the letter dated 08th October, 2018. The non-disclosure of the letter dated 04th October, 2018 amounts to an act of concealment. Having invoked the remedies under the Industrial Disputes Act, the petitioners cannot now maintain these writ petitions. The petitioners have approached this Court with unclean hands and are therefore not entitled to any relief from this Court. Reliance is placed on ***Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay***, (1976) 1 SCC 496 , ***U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh***, (2004) 4 SCC 268, ***A.P. Foods v. S. Samuel***, (2006) 5 SCC 469, ***State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti***, (2008) 12 SCC 675, ***Transport and Dock Workers Union v. Mumbai Port***

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Trust, (2011) 2 SCC 575, ***Avishek Raja v. Sanjay Gupta***, AIR 2017 SC 2955, and ***Satpal Singh v. Delhi Sikh Gurdwara Management Committee***, (2011) 181 DLT 455 .

11. Mr. P.S. Patwalia, learned senior counsel for the respondent, further urged that these petitions raise disputed questions of fact which require evidence and cannot be gone into in the writ jurisdiction. The respondent vehemently disputes the petitioner's submissions that there are no disputed questions of fact in these petitions. Learned senior counsel for the respondent further urged that the respondent has vehemently disputed all the averments of the petitioners *inter alia*, that the respondent is engaged in manufacturing activity and is a factory within the meaning of Section 2(m) of the Factories Act; all the 37 centers of PTI in the country constitute a single establishment; retrenchment is violative of Sections 25-N of the Industrial Disputes Act and prior permission of the State Government was necessary; the respondent altered the service conditions of the workmen relating to rationalization/technique without notice which is violative of Section 9A of the Industrial Disputes Act; the retrenchment is violative of Section 16A of the Working Journalists Act, 1955; the retrenchment is illegal as there was short payment of retrenchment compensation; retrenchment was *mala fide*; the retrenchment constitutes the unfair trade practice under the Industrial Disputes Act; large number of workers have not yet received their individual notice of retrenchment and plea of "*no work*" of PTI is false.

12. Learned senior counsel for the respondent further submitted that both these writ petitions have been filed on behalf of 297 retrenched employees without any authorization. There are no pleadings whatsoever in the writ

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petitions that the retrenched employees have authorized the petitioners to espouse their cause. No document whatsoever has been filed along with the writ petitions to show that the retrenched employees have authorized the petitioners to espouse their cause. The petitioners have not even filed the Rules/Bye-laws governing them along with the writ petitions. The petitioners have also not filed with the writ petitions any requisition to call a meeting, notice of meeting, agenda notes of the meeting, list of attendees of the meeting, resolution passed for espousing the cause of the retrenched employees, minutes of meeting, resolution authorizing the General Secretary of the Union/Federation to raise a dispute and before which forum. It is further submitted that two writ petitions seeking identical reliefs are not maintainable. Reliance is placed on ***Bombay Union of Journalists v. 'Hindu' Bombay,*** AIR 1963 SC 318 and ***Management of Messers Hotel Samrat v. Government of NCT,*** 2007 SCC OnLine Del 17.

13. With respect to the judgments cited by the petitioner, learned senior counsel for the respondent submitted that the judgments cited by the petitioner do not support their case. The response of the respondent to the judgments cited by the petitioner is as under:

(i) In ***Indian Petrochemicals Corpn. Ltd. v. Shramik Sena,*** (supra) the Supreme Court clearly noted the principle that in the ordinary course, the questions of fact should be decided first by the fact finding tribunal. The question of existence of an alternate remedy and its effect on the maintainability of a Writ Petition never arose in this case. Accordingly, there is no finding to that effect. The judgment is based on concessions given by parties and the same cannot be a precedent. Para 14 of the judgment records the concession of the Petitioner. Further, the parties did not object to the

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matter being decided without recording of evidence. This can be seen in para 24 of the judgment. That apart, the Supreme Court was satisfied that the affidavits and documents were sufficient to decide the questions without the need of any oral evidence. This judgment does not support the petitioner as the affidavits and documents in the present case are not sufficient to decide the questions without need of any oral evidence. IPCL answers to the definition of "*State*" within Article 12 of the Constitution of India and therefore, was amenable to writ jurisdiction. The principal finding of this judgment that workers working in a statutory canteen are deemed to be the employees of the owner of the factory for all intents and purposes has been overruled in ***Balwant Rai Saluja v. Air India,*** AIR 2015 SC 375 and no reliance should be placed on IPCL as the underlying proposition in IPCL stands overruled.

(ii) In ***Chennai Port Trust v. Industrial Employees Canteen Workers Welfare Assn.,*** (supra), the Supreme Court declined to entertain the objection to the maintainability of the writ petition on the ground that the facts and documents were undisputed and 17 years had lapsed by that time. The writ petition before the Single Judge was filed in 2001 (Para 5 of the judgment). The Supreme Court was deciding the matter in 2018. Thus, 17 years had passed. This was a strong consideration. The maintainability of the writ petition was not held to be generally so. In fact, a reading of paras 20 and 21 shows that the Supreme Court said *"....it is too late to entertain such submission"*. This judgment does not support the petitioners as the respondent has vehemently disputed the averments made in the petitions and the writ petitions are still at the initial stage. That apart, Chennai Port Trust being a public sector undertaking was amenable to writ jurisdiction while

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PTI is not. Further, in this case, ***Balwant Rai Saluja v. Air India*** (supra) was not considered.

(iii) In ***Marwari Balika Vidyalaya v. Asha Srivastava*** (supra), the Supreme Court ruled on the maintainability of a writ petition against a private school getting grant-in-aid. The Supreme Court held that the writ petition to be maintainable against an educational institution. The Writ Petition was entertained primarily on the basis that there was an admitted non-compliance of a statutory requirement. There is no such admission in the present matter, and it has been submitted by the respondent that there is complete compliance of all provisions of law. In a subsequent judgment ***Trigun Chand Thakur v. State of Bihar,*** (2019) 7 SCC 513, the Supreme Court held that the Management Committee of the private schools are not "*State*" within the meaning of Article 12 of the Constitution of India and hence, the writ petition of the Petitioner was not maintainable.

(iv) In ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanthi Mahotsav Smarak Trust v. V.R. Rudani***, (1989) 2 SCC 691 the Supreme Court rejected the objection of the educational institution that it was not amenable to writ jurisdiction. There is no finding on the maintainability of the writ petition in view of the alternative remedy.

14. Mr. Colin Gonsalves, learned senior counsel for the petitioners, in rejoinder, urged that there are sufficient admissions on record that PTI is engaged in manufacturing activity and no evidence is required on this aspect; with respect to the PTI's averment of making losses, the petitioners rely on the profit and loss accounts of PTI and no further evidence is necessary; PTI admitted reasons for lockout with respect to the requirement of notice under Section 9A of Industrial Disputes Act on account of

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rationalization; the respondent has not disputed that its establishments constitute one establishment in law; with respect to the respondent's plea of no work for retrenched employees, the petitioners rely on work assignment register of PTI; closure of two departments is admitted by respondent; the respondent has admitted the violation of Section 16A of the Working Journalists Act in the reasons for lockout. It is submitted that the petitioners do not press the disputed questions of fact mentioned by the respondents in Serial number 15 to 23, 25 to 38, 42, 44, 45 and 47 of their written submissions dated 22nd August, 2020.

15. Mr. Colin Gonsalves, learned senior counsel for the petitioners, in rejoinder, submitted that all the four judgments cited by the respondent do not support the case of the respondent. It is submitted that in ***Premier Automobiles Ltd.*** (supra)**,** the only issue was maintainability of a civil suit whereas in ***U.P. State Bridge Corporation Ltd.*** (supra), ***Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*** (supra), ***A.P. Foods*** (supra), ***Avishek Raja*** (supra) and ***Satpal Singh*** (supra) there were disputed questions of fact. Reference is made to written submissions dated 13th February, 2020 containing written response of the petitioners to the judgments cited by the respondent.

16. With respect to the respondent's objection to the maintainability of the writ petitions on the ground that the petitioners are not authorized/competent to file the writ petitions, Mr. Colin Gonsalves, learned senior counsel submitted that on 25th August, 2020, the petitioner in W.P.(C) 10596/2018 filed response to the submissions of the respondent in which it is stated that petitioner is a registered Union and all the 297 retrenched employees are its members. On 29th September, 2018, PTI Employees Union called an

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emergency general body meeting in which a unanimous resolution was passed to authorize Mr. M.S. Yadav to file a Court case to challenge the retrenchment. 141 retrenched employees have sent their support letters to the petitioner Union. Along with the written submissions dated 25th August, 2020, the petitioners have filed the copy of the registration as *Annexure I*; copy of the resolution dated 29th September, 2018 as *Annexure II* and copies of 141 letters of the retrenched employees as *Annexure III*.

17. Mr. Colin Gonsalves, learned senior counsel for the petitioners, further submitted that on 25th August, 2020, the petitioner in W.P.(C) 10605/2018 has filed written submissions in which it is stated that the Federation of PTI Employees Unions is a Federation of four regional Unions of PTI employees and all 297 retrenched employees are the members of the Federation. A special general body meeting was held by all the four Trade Unions on 05th October, 2018 in which they ratified the decision of the Federation to file the writ petition. As on date, the petitioner Federation represents 119 retrenched employees who have issued their support letters to the Federation. The petitioner Federation has filed the Federation's bank account statement as *Annexure A*; resolutions dated 05th October, 2018 as *Annexure B (Colly.)* and 119 letters issued by retrenched employees as *Annexure C (Colly.)* with the written submissions dated 25th August, 2020.

18. Mr. P.S. Patwalia, learned senior counsel for the respondent, submitted that the petitioners have made new averments beyond pleadings and have filed new documents along with the written submissions dated 25th August, 2020 without seeking the permission from this Court and therefore, the same should not be taken on record. Without prejudice, it is submitted that the petitioner in W.P.(C) 10596/2018 claims to be representing 141

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employees and the petitioner in W.P.(C) 10605/2018 claims to be representing 199 employees whereas they have filed the writ petitions on behalf of 297 retrenched employees. 35 employees are common in the list of both the petitioners and the signatures on the letters filed by the two writ petitioners are completely different which shows that the letters are forged and fabricated. All the letters filed in W.P.(C) 10596/2018 are undated. The signatures on several individual letters filed by the petitioners do not match with their signatures available in the personal files. It is further submitted that the evidence is necessary to be led by the petitioners to prove these documents before the appropriate forum. It is further submitted that the petitioners completely lack authorization to file the present writ petitions.

Judgments cited by the Petitioner

19. In ***Indian Petrochemicals Corpn. Ltd. v. Shramik Sena,*** (1999) 6 SCC 439, the contractual employees of IPCL filed a writ petition seeking regularization, which was allowed by Bombay High Court. The Supreme Court observed that in the ordinary course, the questions of fact should be first decided by a fact finding Tribunal. However, the Supreme Court exercised the jurisdiction considering that the parties had filed detailed affidavits and documents which were considered sufficient to decide the question of fact without need of any oral evidence. Para 24 of the judgment is reproduced hereunder:-

> *"24. Before answering this question, we would like to observe that, normally, this being a question of fact, this Court would have been reluctant to examine this question which in the ordinary course should be first decided by a fact-finding tribunal. However, as stated above, in this case parties have filed detailed affidavits and documents which, in*

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our opinion, are sufficient for us to decide this question without the need for any oral evidence."

20. In ***Chennai Port Trust v. Industrial Employees Canteen Workers Welfare Assn.,*** (2018) 6 SCC 202, the writ petition was filed for treating the employees working in the canteen to be regular employees of Chennai Port Trust which was allowed by the Single Bench as well as the Division Bench of the Madras High Court. The Supreme Court rejected the objection to the maintainability on the grounds that the writ Court entertained the writ petition and granted relief on merits; the appellate Court also affirmed the order on merits and therefore, it was too late to entertain this objection and the facts/documents were undisputed requiring no trial on facts. Paras 20 and 21 of the judgment are reproduced hereunder:-

20. We are, however, not impressed by the submission of the learned counsel for the appellant (Chennai Port Trust) when he contended that the writ court should not have entertained the writ petition and instead the respondent (writ petitioner Association) should have been granted liberty to approach the Industrial Tribunal/Labour Court for adjudication of the dispute raised by them in the writ petition.

21. In the first place, the writ court having entertained the writ petition and granted relief on merits, this objection has lost its significance now; second, the appellate court also having gone into the merits of the case and affirmed the order of the writ court on merits, it is too late to entertain such submission, which is technical in nature; and third, the findings on merits have been recorded by the two courts on the basis of undisputed facts/documents requiring no trial on facts."

21. In ***Marwari Balika Vidyalaya v. Asha Srivastava,*** 2019 SCC Online SC 408, the writ petition was filed by an assistant teacher against her

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termination by a stigmatic order, without seeking the mandatory approval of the Competent Authority, which was allowed by the Division Bench of Calcutta High Court. The school challenged the maintainability of the writ petition on the ground that the school was not a *State* and therefore, not amenable to writ jurisdiction. The main question for consideration in this appeal was the maintainability of writ petition against a private school receiving grant-in-aid to the extent of dearness allowance. The Supreme Court held the writ petition to be maintainable against the School.

22. In ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanthi Mahotsav Smarak Trust v. V.R. Rudani,*** 1989 2 SCC 691, a writ petition was filed by the retrenched teachers of a private aided college affiliated to University for payment of outstanding salary and allowances and implementation of the pay scales in which an objection to the maintainability of the writ petition was raised on various grounds *inter alia* that the management of the college was not amenable to the writ jurisdiction. The Supreme Court held that the management of college was amenable to writ jurisdiction as it satisfies the public function test.

Judgments cited by the Respondents

23. In ***Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke***, (1976) 1 SCC 496, the trade unions of Premier Automobiles Ltd. filed a civil suit before City Civil Court, Bombay to challenge the settlement between the management and the union. The management challenged the jurisdiction of the Civil Court to entertain an industrial dispute. The suit was decreed which was unsuccessfully challenged before the Single Bench and thereafter, before the Division Bench of the Bombay High Court. The Supreme Court considered the question of law with respect to the

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jurisdiction of the Civil Court to entertain a suit relating to an industrial dispute. The Supreme Court held that the only remedy in respect of an industrial dispute for enforcement of a right or obligation under the Industrial Disputes Act is to get adjudication under the Act. Relevant portion of the Supreme Court judgment is reproduced hereunder:

> *"9. It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the Government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the civil court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2-A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the civil court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone.*
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> *xxx xxx xxx*

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23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be."

(Emphasis supplied)

24. In ***U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam Karamchari Sangh***, (2004) 4 SCC 268, the union filed a writ petition challenging the termination of a workman in which the respondent raised preliminary objection of an alternative remedy under the Industrial Disputes Act which was rejected by the learned Single Judge on the ground that the case did not involve any investigation into or determination of disputed questions of fact and long time had lapsed. The Division Bench upheld the order of the learned Single Judge. The Supreme Court held that the High Court erred in entertaining the writ petition since the disputes related to the enforcement of a right or obligation under Industrial Disputes Act and the specific remedy is provided under the Industrial Disputes Act. The Supreme

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Court noted the ratio of ***Premier Automobiles Ltd.*** (supra) and held that the principles laid down therein would apply to the writ petition under Article 226 of the Constitution. Relevant portion of the judgment is reproduced hereunder:

> *"11. We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well as U.P. IDA, 1947. The rights and obligations sought to be enforced by the respondent Union in the writ petition are those created by the Industrial Disputes Act. In Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke [(1976) 1 SCC 496 : 1976 SCC (L&S) 70] it was held that when the dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the claimant is to get adjudication under the Act. This was because the Industrial Disputes Act was made to provide*
>
> > *"a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill-afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not.*

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Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them".

12. Although these observations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner.

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14. Finally, it is an established practice that the Court exercising extraordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. In the present case, the nature of the employment of the workmen was in dispute. According to the appellant, the workmen had been appointed in connection with a particular project and there was no question of absorbing them or their continuing in service once the project was completed. Admittedly, when the matter was pending before the High Court, there were 29 such projects under execution or awarded. According to the respondent workmen, they were appointed as regular employees and they cited orders by which some of them were transferred to various projects at various places. In answer to this the appellants said that although the appellant Corporation tried to accommodate as many daily-wagers as

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they could in any new project, they were always under compulsion to engage local people of the locality where work was awarded. There was as such no question of transfer of any workman from one project to another. This was an issue which should have been resolved on the basis of evidence led. The Division Bench erred in rejecting the appellant's submission summarily as also in placing the onus on the appellant to produce the appointment letters of the respondent workmen.

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17. The only reason given by the High Court to finally dispose of the issues in its writ jurisdiction which appears to be sustainable, is the factor of delay, on the part of the High Court in disposing of the dispute. Doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that a litigant is not prejudiced by the action of the Court since the objection is one in the nature of a demurrer. Nevertheless even when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even when there is a delay, short-circuit the process for effectively determining the facts. Indeed the factual controversies which have arisen in this case remain unresolved. They must be resolved in a manner which is just and fair to both the parties. The High Court was not the appropriate forum for the enforcement of the right and the learned Single Judge in Anand Prakash case had correctly refused to entertain the writ petition for such relief.

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27. In the circumstances, we have no hesitation in setting aside the decision of the High Court in dismissing the writ petition. This order will, however, not preclude the respondent Union if it is otherwise so entitled to raise an industrial dispute under U.P. IDA."

(Emphasis Supplied)

25. In ***A.P. Foods v. S. Samuel***, (2006) 5 SCC 469, 243 employees filed a writ petition against the stoppage of ex-gratia/bonus by the management which was allowed by the learned Single Judge. The Supreme Court held

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that the High Court should not have entertained the writ petition in view of the alternative remedy available under the Industrial Disputes Act. The Supreme Court referred to and reiterated the principles laid down in ***U.P. State Bridge Corporation Ltd.*** (supra) and catena of other judgments. The Supreme Court, however, referred the questions for adjudication to the Tribunal in view of the passage of time. Relevant portions of the judgment are reproduced hereunder:

> *"6. In a catena of decisions it has been held that a writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.*
> *7. In U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh [(2004) 4 SCC 268 : 2004 SCC (L&S) 637] it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To the same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke [(1976) 1 SCC 496 : 1976 SCC (L&S) 70] , Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] , Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad [(2002) 2 SCC 542 : 2002 SCC (L&S) 317] and Scooters India v. Vijai E.V. Eldred [(1998) 6 SCC 549 : 1998 SCC (L&S) 1611] .*
> *8. In Rajasthan SRTC case [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] it was observed as follows: (SCC pp. 91-92, para 28)*
>
> > *"[A] speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon*

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layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them."

9. In Basant Kumar Sarkar v. Eagle Rolling Mills Ltd. [(1964) 6 SCR 913 : AIR 1964 SC 1260] the Constitution Bench of this Court observed as follows: (SCR p. 920)

"It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion

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> *on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Sections 74 and 75 of the Act."*

10. The inevitable conclusion, therefore, is that both the learned Single Judge and the Division Bench have failed to consider the basic issues. In the normal course we would have left it to the respondent to avail appropriate remedy under the Act.

11. The above aspects were highlighted in Hindustan Steel Works Construction Ltd. v. Employees Union [(2005) 6 SCC 725 : 2005 SCC (L&S) 899] .

12. A bare reading of Section 22 of the Act makes the position clear that where the dispute arises between an employer and employees with respect to the bonus payable under the Act or with respect to the application of the Act in public sector then such dispute shall be deemed to be an industrial dispute within the meaning of the ID Act.

13. As disputed questions of fact were involved, and alternative remedy is available under the ID Act, the High Court should not have entertained the writ petition, and should have directed the writ petitioners to avail the statutory remedy.

14. However, because of the long passage of time (the writ petition was filed in 1996), the attendant circumstances of the case in the background noted above and in view of the agreement that this is a matter which requires to be referred to the Tribunal, we direct that the appropriate Government shall refer the following questions for adjudication by the appropriate Tribunal:

> *(1) Whether there was violation of Section 9-A of the Industrial Disputes Act, 1947 as claimed by the employees?*
>
> *(2) Whether the withdrawal of the construction allowance amounted to the change in the conditions of service?*

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(3) Whether A.P. Foods was liable to pay bonus under the Act to its employees?

15. The parties shall jointly move the appropriate Government with a copy of our judgment.

16. Normally, it is for the State Government to take a decision in the matter of reference when a dispute is raised, the direction as noted above has been given in the circumstances indicated above.

17. In some cases, this Court after noticing that refusal by the appropriate Government to refer the matter for adjudication was prima facie not proper, directed reference instead of directing reconsideration. (See Nirmal Singh v. State of Punjab [1984 Supp SCC 407 : 1985 SCC (L&S) 38 : AIR 1984 SC 1619] , Sankari Cement Alai Thozhilalar Munnetra Sangam v. Govt. of T.N. [(1983) 1 SCC 304 : 1983 SCC (L&S) 139 : (1983) 1 LLJ 460] , V. Veerarajan v. Govt. of T.N. [(1987) 1 SCC 479 : 1987 SCC (L&S) 64 : AIR 1987 SC 695] and Sharad Kumar v. Govt. of NCT of Delhi [(2002) 4 SCC 490 : 2002 SCC (L&S) 533 : AIR 2002 SC 1724] .)

18. The parties shall be permitted to place materials in support of their respective stands. We make it clear that we have not expressed any opinion on the merits of the case. The Tribunal shall make an effort to dispose of the reference within four months of the receipt of the reference from the State Government, which shall be done within three months from today."

(Emphasis supplied)

26. In ***State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti***, (2008) 12 SCC 675, U.P. State Mineral Development Corporation (UPSMDCL) retrenched 460 employees which was challenged by the Union before Lucknow Bench of Allahabad High Court. There was difference of opinion between the members of the Division Bench. *Markandey Katju*, J. (then Judge of the High Court) held that the petitioners should avail the alternative remedy under the Industrial Law

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whereas *U.K. Dhaon*, J. held that various interim orders have been passed from time to time and it was not appropriate to dismiss the writ petition on the ground of alternative remedy, after the writ petition was entertained. In view of the difference of opinion between the two judges of the Division Bench, the matter was placed before the third judge who agreed with the view expressed by *U.K. Dhaon*, J. The Supreme Court held that the High Court should not have entertained the writ petition in view of equally efficacious remedy to the employees under the Industrial Disputes Act. The Supreme Court dismissed the writ petitions with liberty to the employees to approach the Tribunal in accordance with law. The relevant portions of the said judgment are as under:

> *"38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari [AIR 1992 All 331] that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case [AIR 1992 All 331], AIR p. 331)*
>
> > *"2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed."*
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> *(emphasis supplied)*

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Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner.

39. On the facts and in the circumstances of the case, particularly in view of assertions by the Corporation that its work had been substantially reduced; it was running into losses; the question was considered by the Board of Directors and it was resolved to retrench certain employees, it would have been appropriate, had the High Court not entertained the writ petition under Article 226 of the Constitution. (See also Scooters India v. Vijai E.V. Eldred [(1998) 6 SCC 549 : 1998 SCC (L&S) 1611] .)

40. The matter, however, did not rest on averments and counter-averments. The record reveals that the Corporation was convinced that retrenchment of certain employees was absolutely necessary. According to the Corporation, because of globalisation and entry of private sector in the business and also because of various orders passed by this Court from time to time in public interest litigation (PIL), the activities of the Corporation had been considerably curtailed. It was incurring losses and was not able to pay salaries and wages to its employees. It was, therefore, decided to take recourse to retrenchment in accordance with law.

41. Now, whether such action could or could not have been taken or whether the action was or was not in consonance with

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law could be decided on the basis of evidence to be adduced by the parties. Normally, when such disputed questions of fact come up for consideration and are required to be answered, appropriate forum would not be a writ court but a Labour Court or an Industrial Tribunal which has jurisdiction to go into the controversy. On the basis of evidence led by the parties, the court/Tribunal would record a finding of fact and reach an appropriate conclusion. Even on that ground, therefore, the High Court was not justified in allowing the petition and in granting relief.

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50. In our considered view, however, all such actions could be examined by an appropriate court/tribunal under the industrial law and not by a writ court exercising power of judicial review under Article 226 of the Constitution. If the impugned action of the Corporation of retrenchment of several employees is not in consonance with law, the employees are certainly entitled to relief from an appropriate authority.

51. If any action is taken which is arbitrary, unreasonable or otherwise not in consonance with the provisions of law, such authority or court/tribunal is bound to consider it and legal and legitimate relief can always be granted keeping in view the evidence before it and considering statutory provisions in vogue. Unfortunately, the High Court did not consider all these aspects and issued a writ of mandamus which should not have been done. Hence, the order passed and directions issued by the High Court deserve to be set aside.

52. For the foregoing reasons, the appeal deserves to be allowed and the order passed by the High Court is liable to be set aside and is accordingly set aside.

53. Since we are of the view that one of the Judges of the Division Bench of the High Court which decided the matter at the initial stage was right in relegating the petitioners to avail of alternative remedy under the industrial law and as we hold that the High Court should not have entertained the petition and decided the matter on merits, we clarify that though the writ petition filed by the petitioners stands dismissed, it is open to the employees to approach an appropriate court/tribunal in

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accordance with law and to raise all contentions available to them. It is equally open to the Corporation and the State authorities to defend and support the action taken by them. As and when such a course is adopted by the employees, the court/tribunal will decide it strictly in accordance with law without being influenced by the fact that the writ petition filed by the writ petitioners is dismissed by this Court."

(Emphasis supplied)

27. In ***Transport & Dock Workers Union v. Mumbai Port Trust,*** (2011) 2 SCC 575, the workers union filed a writ petition before the Bombay High Court alleging violation of Article 14 of the Constitution on the ground that the Typist-cum-Computer Clerks appointed by Mumbai Port Trust prior to 01st November, 1996 have to work for 6½ hours a day whereas Typist-cum-Computer Clerks appointed after 01st November, 1996 have to work for 7½ hours which is violative of Section 9A of the Industrial Disputes Act. The Supreme Court held that the High Court should have dismissed the writ petition on the ground of existence of alternative remedy under the Industrial Disputes Act. The Supreme Court further observed that an over liberal approach was unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. Para 14 of the judgment is reproduced hereunder:

"14. In our opinion the writ petition filed by the appellants should have been dismissed by the High Court on the ground of existence of an alternative remedy under the Industrial Disputes Act. It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant. In this case there was a clear alternative remedy available to the appellants by raising an industrial dispute and hence we fail to understand why the High Court entertained the writ petition. It seems to us that

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> *some High Courts by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. However, we may also consider the case on merits."*
>
> *(Emphasis supplied)*

28. In ***Avishek Raja v. Sanjay Gupta,*** (2017) 8 SCC 435, the writ petitions under Article 32 of the Constitution challenged the transfer/termination of the employees. The Supreme Court held that the adjudication of the claim should be done by the Appropriate Authority under the Industrial Disputes Act. Para 30 of the Supreme Court judgment is reproduced hereunder:

> *"30. Insofar as the writ petitions seeking interference with transfer/termination, as the case may be, are concerned, it appears that the same are relatable to service conditions of the writ petitioners concerned. Adjudication of such question in the exercise of high prerogative writ jurisdiction of this Court under Article 32 of the Constitution would not only be unjustified but such questions should be left for determination before the appropriate authority either under the Act or under cognate provisions of law (Industrial Disputes Act, 1947, etc.), as the case may be."*
>
> *(Emphasis supplied)*

29. In ***Satpal Singh v. Delhi Sikh Gurdwara Management Committee***, 181 (2011) DLT 455, this Court dismissed the writ petition on the ground that the employees have an equally efficacious remedy.

Summary of principles

30. Industrial Disputes Act is a complete Code in itself which provides the remedies to the employees in respect of all industrial disputes. All industrial disputes, in the first instance, have to be adjudicated by the

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Industrial Tribunal under the Industrial Disputes Act and the awards of the Industrial Tribunal are amenable to the writ jurisdiction of this Court. This is the legislative policy and intendment underlying the Industrial Disputes Act.

31. The law is well settled by the Supreme Court that a writ petition should not be entertained in respect of industrial disputes for which a statutory remedy is available under the Industrial Disputes Act unless ***'Exceptional circumstances'*** are made out. The Supreme Court further held that if the writ involves disputed questions of fact, the writ petition should not be entertained. The writ jurisdiction is a discretionary jurisdiction and the discretion should not ordinarily be exercised, if there is an alternative remedy available to the petitioner.

32. The **Sole Test** laid down by the Supreme Court for entertaining a writ petition relating to an industrial dispute is the existence of ***'Exceptional circumstances'***. If the Court is satisfied on the existence of ***'Exceptional circumstances'***, then and only then, the Court shall proceed to ascertain whether the writ involves disputed questions of fact. If the Court finds ***'Exceptional circumstances'*** but the writ involves disputed questions of fact, then the writ petition shall not be entertained, meaning thereby that the writ petition may be entertained only if the Court is satisfied *firstly*, on the existence of ***'Exceptional circumstances'*** and *secondly*, the writ petition does not involve disputed questions of fact.

33. If there are no ***'Exceptional circumstances'*** for exercise of writ jurisdiction, the writ petition is liable to be dismissed on this ground alone. The **Second Test** as to whether the writ involves disputed questions of fact is to be applied if the **First Test** is satisfied and the writ involves

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'Exceptional circumstances' meaning thereby that if there are no ***'Exceptional circumstances'***, the writ Court is not required to consider whether the writ involves disputed questions of fact or not. To clarify it further, if there are no ***'Exceptional circumstances'***, the writ petition in respect of an industrial dispute cannot be entertained even if the writ involves undisputed questions of fact.

34. The above principles are summarized as under:

I. ***If the writ petition discloses 'Exceptional circumstances' and does not involve disputed questions of fact, the writ petition in respect of an industrial dispute may be entertained.***

II. ***If the writ petition discloses 'Exceptional circumstances' but the facts are disputed, the writ petition should not be entertained and the petitioner has to invoke the statutory remedies available as per law.***

III. ***If the writ petition does not disclose 'Exceptional circumstances', the writ petition should not be entertained irrespective of whether the facts are disputed or not.***

IV. ***Writ jurisdiction is a discretionary jurisdiction and the discretion is ordinarily not exercised, if an alternative remedy is available to the petitioner. The powers conferred under Article 226 of the Court are very wide but these are extraordinary remedies subject to self imposed restrictions.***

Exceptional Circumstances – Some Examples

35. The question arises what could be the ***'Exceptional circumstances'*** in which the writ jurisdiction should be exercised. In ***Hajara v. Govt. of India***, 2017 SCC OnLine Del 7982, three poor persons were sleeping on the

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pavement outside the boundary wall of Old Delhi Railway Station on the night of 26th November, 2013. In the middle of the night at about 12:18 A.M., a goods train broke the dead end of the railway track and thereafter, hit the boundary wall of Old Delhi Railway Station whereupon the boundary wall fell down and all the three persons sleeping on the pavement were crushed under the boundary wall. The police registered FIR under Section 304A IPC against four employees of Railways and thereafter, filed the chargesheet and charge was framed by the Metropolitan Magistrate. The police could identify only one person who died in the aforesaid incident whereas two other dead bodies could not be identified. The widow and children of one of the deceased persons filed an application for compensation before the Railway Claims Tribunal which was contested by Railways on the ground that the accident was not an "*Untoward Incident*" as defined in Section 123(c) of the Railways Act and therefore, the claimants were not entitled to any compensation under Section 124A of the Railways Act. Vide judgment dated 28th October, 2014, the Railway Claims Tribunal allowed the objection of Railways and dismissed the claim petition. The claimants invoked the writ jurisdiction of this Court for compensation. The Railways did not dispute the accident dated 26th November, 2013 which resulted the death of three persons as well as the factum of filing of FIR and chargesheet against four employees of Railways. This Court exercised the writ jurisdiction notwithstanding the alternative remedy of a civil suit and awarded compensation of Rs.18 lakhs along with interest @ 9% per annum which was gracefully paid by Railways. This is a clear case of ***'Exceptional circumstances'*** for exercise of writ jurisdiction in which the facts were undisputed.

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36. In ***Union of India v. Kiran Kanojia***, 2018 SCC OnLine Del 12830, Kiran Kanojia, daughter of a washer man who was residing in a *jhuggi* in Faridabad and she was picked up by NGO who helped her in education and she completed her BCA course and she got an employment in Infosys at Hyderabad. On 24th December, 2011, Kiran was coming back from Hyderabad to meet her parents by train. She was holding a reserved valid ticket and this was her first visit after joining Infosys. She was sitting on the lower berth near the gate of the coach and the train was passing slowly through Palwal Station when a boy snatched her bag containing valuables and she was dragged with the bag towards the gate of the coach. In the meantime, an accomplice of a thief pushed her from behind due to which she fell down from the moving train and her left leg got entangled in the footboard of the coach. Both the thieves ran away with her bag. The passengers stopped the train by pulling the chain and she was pulled out and put on the train which moved towards Old Faridabad Railway Station where the Railway staff/Police took her to Fortis Escort Hospital, Faridabad in the police jeep where her left leg was amputated below knee level on 24th December, 2011. She was discharged from the hospital on 05th January, 2012. She underwent another surgery on 21st January, 2012 and she remained hospitalized up to 27th February, 2012. On 06th July, 2012, she filed an application for compensation before Railways Claims Tribunal which was allowed on 25th April, 2014 and compensation of Rs.3 lakhs was awarded to her. Railways challenged the award of the Railway Claims Tribunal for reduction of the amount. This Court did not find any merit in the Railways appeal. In the meantime, the claimant also filed cross-appeal to seek enhancement. Vide judgment dated 29th November, 2018, this Court

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enhanced the compensation from Rs.3 lakhs to Rs.5 lakhs. In this case, the claimant Kiran Kanojia availed the statutory remedy for claiming compensation before the Railway Claims Tribunal. However, the facts of this case clearly constitute ***'Exceptional circumstances'*** as the claimant suffered a major accident while travelling in train which resulted in the amputation of her left leg and she was hospitalized; she belonged to a very poor family and had no means to bear the hospitalization charges for her treatment/amputation and therefore, she required the compensation immediately and all the relevant facts were matter of record and undisputed. This was a fit case for exercise of writ jurisdiction if the claimant had filed the writ petition instead of invoking the alternative statutory remedy.

37. In ***Writers Safeguard Ltd. v. Commissioner, Employees' Compensation*** FAO 154/2013, Om Prakash was driving an armored van carrying cash on 30th March, 2007 in Rajouri Garden when he noticed that two persons were trapped in a MTNL manhole in Rajouri Garden whereupon he got down from the van and went inside the manhole to rescue the two persons. He was able to rescue one person. When he went inside to rescue the second person, he was affected by the poisonous gases and he became unconscious and collapsed. The police registered FIR under Section 304A IPC. The widow, minor children and parents of Om Prakash filed an application for compensation against the employer in which the Commissioner, Employees' Compensation awarded compensation of Rs.4,42,740/- vide order dated 16th February, 2012. The employer challenged the award of the Commissioner, Employees' Compensation before this Court. During the pendency of the appeal, better sense prevailed on the employer and the Managing Director of the employer conceded

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before this Court on 30th April, 2015 that the compensation amount be released to the legal representative of the deceased. Ordinarily, the appeal would have ended there but this Court noticed that the family of the deceased was entitled to further compensation of Rs.11,34,500/- from MTNL. This Court, therefore, *suo moto* invoked the writ jurisdiction and issued notice to MTNL. This Court determined the compensation amount of Rs.11,34,500/- which was gracefully paid by MTNL. This Court thereafter framed guidelines for payment of compensation to the workmen who lose their lives while doing sewage work which have been adopted by the Central Government. This is a clear case of the existence of ***'Exceptional circumstances'*** as a citizen sacrificed his life while saving two workers stuck in the manhole and all the relevant facts were undisputed.

38. In ***Union of India v. Dhyan Singh***, 2013 ACJ 2644, four laborers hired by the contractor of CPWD were cleaning the septic tank at the CRPF Camp, Bawana. The laborers told the contractor that a foul smell was coming out of the septic tank which could be fatal to their lives but the contractor still ordered them to clean the tank whereupon three laborers entered the septic tank and they fell unconscious upon inhaling the poisonous gases in the tank. The fourth labourer, Deepak raised an alarm whereupon Constable, Ranbir Singh and Head Constable, Dayal Singh reached the spot and went inside the septic tank to save the lives of the laborers. However, both of them were affected by the poisonous gases inside the tank and they fell unconscious. The fire brigade and the police were requisitioned and they pulled out all the men out of the septic tank in a critical condition and they were taken to Babu Jagjivan Memorial Hospital. Head Constable, Dayal Singh survived whereas the remaining four persons

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including Constable, Ranbir Singh were declared dead. The widow, four minor children and parents of Constable, Ranbir Singh filed a suit for recovery of Rs.5 lakh as compensation before the District Court which was decreed. The government challenged the decree before this Court. This Court noticed the family was entitled to Rs.11,59,052/- instead of Rs.5 lakhs claimed by them. However, the poor and illiterate legal representatives of the deceased were not willing to file the cross-objection for seeking enhancement. This Court exercised the *suo moto* power to enhance the decretal amount from Rs.5 lakhs to Rs.11,59,052/- along with interest @ 9% per annum. This Court also recommended compassionate appointment to the widow/children of the deceased. This is a case where the legal representatives of the deceased availed the remedy before the Civil Court. However, the facts of this case clearly constitute ***'Exceptional circumstances'*** and all facts were undisputed if the legal representatives of the deceased had invoked the writ jurisdiction.

Findings

39. The petitioners have challenged the retrenchment of 297 employees by the respondent on 29th September, 2018. However, 78 out of 297 retrenched employees have accepted their retrenchment and have applied for withdrawal of their statutory benefits including gratuity etc. during the pendency of these writ petitions.

40. The retrenched employees have a statutory remedy to raise an industrial dispute under the Industrial Disputes Act. The petitioners have based their claims on the alleged violation of the provisions of the Industrial Disputes Act. There are no exceptional circumstances for exercise of the writ jurisdiction under Article 226 of the Constitution in these writ petitions.

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41. This case is squarely covered by the principles laid down by the Supreme Court in ***U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam Karamchari Sangh*** (supra) in which the High Court allowed a writ petition of the Trade Union to challenge the termination of a workman. The Supreme Court held that the High Court erred in entertaining the writ petition since the disputes related to the enforcement of a right/obligation under the Industrial Disputes Act and the specific remedy was provided under the Industrial Disputes Act. Relevant portion of the judgment is reproduced hereunder:

> *"11. We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well as U.P. IDA, 1947. The rights and obligations sought to be enforced by the respondent Union in the writ petition are those created by the Industrial Disputes Act.*
>
> *(Emphasis Supplied)*

42. This case is also covered by ***A.P. Foods v. S. Samuel*** (supra) in which the High Court allowed the writ petition against stoppage of *ex-gratia*/bonus by the management. The Supreme Court reiterated the principles laid down in ***U.P. State Bridge Corporation Ltd.*** (supra) and catena of other judgments and held that the writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out. Para 6 of the judgment is reproduced hereunder:

> *"6. In a catena of decisions it has been held that a writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available*

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under the Act, unless exceptional circumstances are made out.

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43. This case is also covered by ***State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*** (supra) in which the writ petition to challenge retrenchment of 460 employees was allowed by the Allahabad High Court and various interim orders were passed in favour of the employees. The Supreme Court held that the High Court should not have entertained the writ petition in view of statutory remedy to the employees under the Industrial Disputes Act. The Supreme Court dismissed the writ petition with liberty to the employees to approach the Tribunal in accordance with law. Relevant portion of the said judgment is reproduced as under:

> *"50. In our considered view, however, all such actions could be examined by an appropriate court/tribunal under the industrial law and not by a writ court exercising power of judicial review under Article 226 of the Constitution. If the impugned action of the Corporation of retrenchment of several employees is not in consonance with law, the employees are certainly entitled to relief from an appropriate authority."*
>
> *(Emphasis Supplied)*

44. This case is also covered by ***Transport and Dock Workers Union v. Mumbai Port Trust*** (supra) in which the Bombay High Court allowed the writ petition in respect of an industrial dispute. The Supreme Court held that the High Court should have dismissed the writ petition on the ground of existence of alternative remedy under the Industrial Disputes Act. The Supreme Court further observed that an over liberal approach was unnecessarily adding to their load of arrears instead of observing judicial

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discipline in following settled legal principles. Relevant portion of the judgment is reproduced hereunder:

> *"14. In our opinion the writ petition filed by the appellants should have been dismissed by the High Court on the ground of existence of an alternative remedy under the Industrial Disputes Act. It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant. In this case there was a clear alternative remedy available to the appellants by raising an industrial dispute and hence we fail to understand why the High Court entertained the writ petition. It seems to us that some High Courts by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. However, we may also consider the case on merits."*
>
> *(Emphasis supplied)*

45. According to the learned senior counsel for the petitioner, the writ jurisdiction should be exercised because two years have passed after the filing of this writ petition. There is no merit in this contention as the respondent raised the preliminary objections to the maintainability of the writ petition at the very threshold of the commencement of arguments and these cases were pending due to lengthy arguments of learned counsels for both the parties. The petitioners themselves have filed C.M. Appl. 41299/2018 in W.P.(C.) 10596/2018 and C.M. Appl. 41305/2018 in W.P.(C.) 10605/2018 seeking adjudication on the maintainability of writ petitions. That apart, delay by itself has been held by the Supreme Court not to be a sufficient ground to exercise the writ jurisdiction. In ***U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam Karamchari Sangh*** (supra), the issue of delay on the part of the High Court in disposing of the

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dispute was raised before the Supreme Court. The Supreme Court rejected this plea and held that even when there is a delay, High Court should not have short-circuited the process. The Supreme Court dismissed the writ petition with liberty to the workman to raise an industrial dispute. Relevant portion of the said judgment is reproduced hereunder:

> *"17. The only reason given by the High Court to finally dispose of the issues in its writ jurisdiction which appears to be sustainable, is the factor of delay, on the part of the High Court in disposing of the dispute. Doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that a litigant is not prejudiced by the action of the Court since the objection is one in the nature of a demurrer. Nevertheless even when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even when there is a delay, short-circuit the process for effectively determining the facts."*
>
> *(Emphasis Supplied)*

46. In ***A.P. Foods v. S. Samuel*** (supra), the workmen raised the issue of delay of 20 years which had lapsed after the filing of the writ petition but the Supreme Court was not impressed. The Supreme Court dismissed the writ petition and directed the disputes to be referred to the Industrial Tribunal. Relevant portion of the said judgment is as under:

> *"14. However, because of the long passage of time (the writ petition was filed in 1996), the attendant circumstances of the case in the background noted above and in view of the agreement that this is a matter which requires to be referred to the Tribunal, we direct that the appropriate Government shall refer the following questions for adjudication by the appropriate Tribunal"*
>
> *(Emphasis Supplied)*

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47. According to the petitioners, this Court issued notice in the writ petition after considering the respondent's objection to the maintainability of the writ petition and the detailed interim order was passed in favour of the petitioners. It is submitted that these petitions cannot now be dismissed on the ground of alternative remedy. This very objection was raised before the Supreme Court in ***State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*** (supra) in which the Supreme Court held in clear terms that a writ petition can be dismissed on the ground of alternative remedy even after it has been admitted and interim order has been passed. Relevant portion of para 38 of the judgment is reproduced hereunder:

> *"38. ...it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such held contention is upheld, even this court cannot order dismissal of a writ petition which ought not be have been entertained by the High Court under article 226 of the constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner."*
>
> *(Emphasis Supplied)*

48. The petitioner's next contention is that the writ jurisdiction should be exercised because all facts averred by the petitioner are admitted. However, the respondent has vehemently disputed all the averments made by the petitioners in the writ petitions. Both these writ petitions involve disputed questions of facts which cannot be resolved by this Court in writ jurisdiction. This Court is of the view that the affidavits and documents filed by the parties are not sufficient to decide the questions of fact without evidence. According to the respondent, there was no work for the retrenched

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employees for a long period and therefore, the respondent took a decision to retrench 297 employees to carry out the work efficiently. This averment is disputed by the petitioner. According to the petitioner, there is sufficient work for the retrenched employees. This disputed question of fact, apart from other disputed questions of fact, has to be adjudicated on the basis of the evidence to be led by the parties. This issue arose for consideration in ***State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*** (supra) in which U.P. State Developed Corporation retrenched 460 employees which was challenged before Allahabad High Court. According to the Corporation, its work had substantially reduced and was running into losses and the Board of Directors resolved to retrench 460 employees. The Allahabad High Court passed various interim orders and rejected the respondent's objection to the maintainability of the writ petition on the ground of alternative remedy. The Supreme Court held in clear terms that such disputed questions of fact are required to be adjudicated by the Industrial Tribunal on the basis of the evidence led by the parties. The Supreme Court dismissed the writ petition and vacated the interim orders passed by the High Court. Relevant portion of the said judgment is reproduced hereunder:

> *"39. On the facts and in the circumstances of the case, particularly in view of assertions by the Corporation that its work had been substantially reduced; it was running into losses; the question was considered by the Board of Directors and it was resolved to retrench certain employees, it would have been appropriate, had the High Court not entertained the writ petition under Article 226 of the Constitution.*
> *40. The matter, however, did not rest on averments and counter-averments. The record reveals that the Corporation*

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was convinced that retrenchment of certain employees was absolutely necessary. According to the Corporation, because of globalisation and entry of private sector in the business and also because of various orders passed by this Court from time to time in public interest litigation (PIL), the activities of the Corporation had been considerably curtailed. It was incurring losses and was not able to pay salaries and wages to its employees. It was, therefore, decided to take recourse to retrenchment in accordance with law.

41. Now, whether such action could or could not have been taken or whether the action was or was not in consonance with law could be decided on the basis of evidence to be adduced by the parties. Normally, when such disputed questions of fact come up for consideration and are required to be answered, appropriate forum would not be a writ court but a Labour Court or an Industrial Tribunal which has jurisdiction to go into the controversy. On the basis of evidence led by the parties, the court/Tribunal would record a finding of fact and reach an appropriate conclusion. Even on that ground, therefore, the High Court was not justified in allowing the petition and in granting relief.

xxx xxx xxx

50. In our considered view, however, all such actions could be examined by an appropriate court/tribunal under the industrial law and not by a writ court exercising power of judicial review under Article 226 of the Constitution. If the impugned action of the Corporation of retrenchment of several employees is not in consonance with law, the employees are certainly entitled to relief from an appropriate authority."

(Emphasis Supplied)

49. Although the respondent has vehemently disputed all the averments made by the petitioners, even assuming the petitioners' averments to be undisputed, no case for exercise of writ jurisdiction is made out in view of well settled law that a writ petition in respect of an industrial dispute should not be entertained except only in ***'Exceptional circumstances'***. The sole

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test laid down by the Supreme Court for exercise of a writ jurisdiction is existence of ***'Exceptional circumstances'***. The Supreme Court has nowhere laid down the test that the writ jurisdiction should be exercised in all cases where the facts are not disputed by the respondents.

50. The Courts are required to maintain uniformity in applying the law. The principles of uniformity and predictability are very important principles of jurisprudence. If this writ petition with such complicated questions of fact and law is entertained then on what ground a writ petition of simple retrenchment or termination can be declined. Most of the retrenchment cases are simpler than the present case but the writ jurisdiction is not exercised as the law is clear and well settled that the rights under the Industrial Disputes Act have to be agitated before the Industrial Tribunal.

51. Learned senior counsel for the petitioner has not addressed any arguments on the existence of '***Exceptional circumstances'*** in these writ petitions. The only response of the learned senior counsel for the petitioner to the four Supreme Court judgments is that the facts were disputed in those judgments and therefore, they do not apply to present writ petitions. However, this Court is of the view that these cases are squarely covered by the principles laid down by the Supreme Court that writ jurisdiction should not be exercised in respect of an industrial dispute unless '***Exceptional circumstances'*** are made out. There are no ***'Exceptional circumstances'*** to exercise the writ jurisdiction in the present writ petitions. If the writ jurisdiction is exercised in the present cases, it would violate the well settled principles of law laid down by the Supreme Court.

52. The judgments relied upon by the petitioners, namely ***Indian Petrochemicals Corporation Ltd.*** (supra), ***Chennai Port Trust*** (supra),

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Marwari Balika Vidyalaya (supra), ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanthi Mahotsav Smarak Trust*** (supra) do not help the case of the petitioners for the reasons given by the respondents mentioned in para 13 above which are not being repeated herein for the sake of brevity. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases. In ***Padma Sundara Rao v. State of Tamil Nadu*** (2002) 3 SCC 533 the Supreme Court held that the ratio of a judgment has to be read in the context of the facts of the case and even a single fact can make a difference. In para 9 of the said judgment, the Supreme Court held as under:

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

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In ***Bharat Petroleum Corporation Ltd v. N.R. Vairamani,*** (2004) 8 SCC 579**,** the Supreme Court held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)*
>
> > *"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge…"*
>
> *10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said,*
>
> > *"Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances".*
>
> *Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed:*
>
> > *"One must not, of course, construe even a*

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reserved judgment of Russell, L.J. as if it were an Act of Parliament."

And, in Herrington v.British Railways Board [(1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

> *"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> *"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*
>
> *xxx xxx xxx*
>
> *Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.""*

(Emphasis supplied)

53. Following the well settled principles laid down by the Supreme Court in ***U.P. State Bridge Corporation Ltd.*** (supra), ***A.P. Foods*** (supra), ***State of***

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Uttar Pradesh (supra) and ***Transport and Dock Workers Union*** (supra), this Court declines to exercise the writ jurisdiction in view of the statutory remedy available to the retrenched employees under Industrial Disputes Act.

54. W.P.(C) 10605/2018 was filed after W.P.(C) 10596/2018 and the petitioner in W.P.(C) 10605/2018 was required to disclose that W.P.(C) 10596/2018 on behalf of 297 retrenched employees has already been filed and W.P.(C) 10605/2018 would not have been entertained, if this fact would have been disclosed. It is not disputed that the Petitioner in the W.P.(C) 10605/2018 was aware of the filing of W.P.(C) 10596/2018 and the same set of counsels having same office address appeared for both the petitioners. The petitioner in W.P.(C) 10605/2018 made a false declaration that "*No other similar petition has been filed in any Court of law*". No justification or explanation has been given with respect to the necessity to file second writ petition on behalf of 297 employees for the same relief and that too without disclosing the filing of the first writ petition.

55. Both the writ petitions have been filed to challenge the retrenchment of 297 employees. However, there is no averment in both the writ petitions that any of the retrenched employees authorized the petitioners to espouse their cause. There is no averment or document in both the writ petitions to show the authority of the petitioners to file these petitions as on the date of filing of these writ petitions.

56. Learned senior counsel for the petitioner commenced the arguments on 26th April, 2019 which continued on 20th May, 2019, 28th May, 2019, 03rd July, 2019, 18th July, 2019, 23rd July, 2019 and 29th July, 2019. Learned senior counsel for the respondent commenced arguments on 20th August, 2019 which continued on 06th September, 2019, 19th September, 2019,

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20th September, 2019, 26th September, 2019, 18th October, 2019, 08th November, 2019 and concluded on 10th January, 2020. On 19th August, 2020, this Court heard the rejoinder arguments of learned senior counsel for the petitioner. After conclusion of rejoinder arguments on 19th August, 2020, this Court raised some queries and listed the matter for hearing on those queries on 27th August, 2020 and directed the parties to file as additional note with respect to the queries of the Court.

57. On 25th August, 2020, counsel for the petitioner filed written submissions in response to the submissions of the respondents in which new averments were made, which are beyond pleadings, and new documents were filed, without seeking any permission from this Court. It is well settled that the parties have to amend their pleadings to incorporate new facts and documents. This Court depreciates the manner in which the new averments and documents beyond pleadings are sought to be filed without permission of this Court, at such a belated stage, for which no explanation has been given. The new pleadings and documents filed by the petitioners on 25th August, 2020 are not even supported by an affidavit. There is merit in the respondent's submission that the documents now filed do not appear to be genuine on various grounds inter alia that 141 letters of retrenched employees in W.P.(C) 10596/2018 are all undated; the signatures of many retrenched employees do not tally with their signatures in their service record; the signatures of 35 employees in their letters in W.P.(C) 10596/2018 do not match with their letters in W.P.(C) 10605/2018; the petitioners have not filed any requisition for calling the general body meeting, notice of meeting, agenda notes of meeting. In any view of the matter, the petitioners have to lead evidence before the Industrial Tribunal to

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prove these disputed documents in accordance with law. The new averments and documents filed by the petitioners along with the written submissions dated 25th August, 2020 are beyond pleadings and therefore, the same are not taken on record.

58. This Court is of the view that both the petitioners have failed to show the authority to file the writ petition on behalf of 297 retrenched employees either in the writ petition or the documents filed along with the writ petition as on the date of filing of these writ petitions.

59. The respondent has raised number of other preliminary objections including the objection that PTI is not amenable to writ jurisdiction. Since the writ petition is being dismissed on the ground that the retrenched employees have statutory remedy under the Industrial Disputes Act, it is not necessary to adjudicate the remaining preliminary objections of the respondent.

Conclusion

60. Both the writ petitions are dismissed on the ground that the retrenched employees have statutory remedy under the Industrial Disputes Act and no ***'Exceptional circumstances'*** have been made out by the petitioners. The retrenched employees are at liberty to avail appropriate remedies available to them under the Industrial Disputes Act.

61. The interim order dated 29th November, 2018 is vacated. C.M. Appl. Nos.41305/2018, 41299/2018, 31916/2019 and 48595/2019 are dismissed.

62. It is made clear that nothing recorded herein be considered as final expression of this Court on the merits of this case.

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Post Script

63. In view of the well settled law by the Supreme Court that the writ petition relating to an industrial dispute can be entertained only if there are ***'Exceptional circumstances'***, it is mandatory for the writ petitioner to disclose the ***'Exceptional circumstances'*** in the Synopsis as well as in the opening paras of writ petition. However, the petitioners do not disclose the ***'Exceptional circumstances'*** in the writ petitions, as in the present cases.

64. This Court is of the view that the writ petition relating to an industrial dispute should not be listed unless the petitioner discloses the ***'Exceptional circumstances'*** in the Synopsis and in the opening paras of the writ petition.

65. Subject to the approval of Hon'ble the Chief Justice, the Registry may incorporate the following column in the check list of writ petitions:-

> "*Whether the writ petitioner has an alternative remedy? If so, disclose the "**Exceptional circumstances**" which may warrant the exercise of writ jurisdiction in the Synopsis as well as in the opening paras of the writ petition?"*

66. If the writ petitioner does not disclose the "***Exceptional circumstances***" in the writ petition, the Registry shall return the writ petition under objections to enable the writ petitioner to disclose the "***Exceptional circumstances***" in the Synopsis as well as in the opening paras of the writ petition.

67. Copy of this judgment be sent to the Registrar General of this Court.

J.R. MIDHA, J.

SEPTEMBER 18, 2020
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