

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 5797 to 5802 of 1988

with

SPECIAL CIVIL APPLICATION Nos 331, 1595 & 6869 of 1989

with

SPECIAL CIVIL APPLICATION Nos 350, 1013, 1015, 1074  
and 2924 of 1990

with

SPECIAL CIVIL APPLICATION No 733 of 1991

with

SPECIAL CIVIL APPLICATION No 7644 of 1992

with

SPECIAL CIVIL APPLICATION Nos 2590, 8144 & 12476 of 1993

with

SPECIAL CIVIL APPLICATION Nos 8508, 9850 & 10661 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

=====

1. Whether Reporters of Local Papers may be allowed :  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
GUJ ELECTRICITY BOARD

Versus

BM SHAH

-----  
Appearance:

MR MD PANDYA for Gujarat Electricity Board

MR DS VASAVADA, (MR HK RATHOD), MR RAMANANDAN SINGH AND

MR KB PANDE for Accounts Officer  
-----

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/05/2000

## CAV JUDGEMENT

The controversy involved in these petitions is whether Accounts Officers under the Gujarat Electricity Board fall within the definition of "workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947, (for brevity "I.D. Act") and whether they are entitled to continue in service till they complete 60 years of age or whether the superannuation age for them is 58 years.

2. The petitions can be divided into three broad categories :-

I The Industrial Tribunal, Ahmedabad had by its judgment and award dated 15.7.1988 decided that the Accounts Officers are workmen within the meaning of the I.D. Act and are, therefore, entitled to get the benefit of the Settlement under Section 2(p) of the I.D. Act under which the workmen employed by the Board are entitled to continue in service till they attain the age of 60 years. The said judgment came to be followed in some more references. The Board has, therefore, filed Special Civil Applications Nos. 5797 to 5802 of 1988, 6869 of 1989, 2924 of 1990, 8144 and 12476 of 1993 for challenging the said judgment and award and the awards following the said judgment.

II In the meantime, the second group of petitions under Article 226 are filed by the Accounts Officers who had not approached the Industrial Tribunal, but who also contended that they were entitled to continue in service till the age of 60 years being Special Civil Application Nos. 331 and 1595 of 1989, 350, 1013, 1015 and 1074 of 1990, 733 of 1991, 7644 of 1992 and 2590 of 1993.

III After the aforesaid judgment dated 15.7.1988 of the Industrial Tribunal, the Gujarat Electricity Board, apart from challenging the said judgment and the awards based thereon, in the aforesaid group of petitions, also amended the statutory regulations laying down that all officers in the Classe-I service including Accounts Officers shall retire at the age of 58 years and hence Accounts Officers who were to retire after coming into force of the said amendment filed the third group of petitions being Special Civil

3. Before enumerating the contentions raised by the learned counsel for the Accounts Officers and the submissions made by the learned Counsel for the Gujarat Electricity Board, it is necessary to set out the duties of the Accounts Officers and the staff pattern of the respondent-Board as set out in the common affidavit in reply dated 5.9.1997 filed on behalf of the Board by Shri B.J. Patel, Industrial Relations Officer.

The Board operates through different offices as the Head Office at Baroda, zonal offices for different zones, each zone is divided into circles and there are circle offices. Since the function of the Board is to generate electricity and to distribute it to power stations at different places within the State of Gujarat the services of the Accounts Officers of the Board at all the above offices are inter-transferrable.

[ The affidavit further states as under:-

"5.1 I state that Gujarat Electricity Board is constituted under Section 5 of the Electricity (Supply) Act, 1948 and the powers, duties and obligations of the Board flows from the said Act. Under the said Act, State Government is empowered to nominate Chairman and other Members which includes one Member (Technical), one Member (Finance), one Member (Administration) and 2 to 3 ex-officio Members from various fields such as business, agriculture etc. The scheme of the Act is such that no member of the Board is exercising any independent power, but all powers are exercised jointly by them. In other words, it can be said that the constitution of the Board is based on joint decision making system. The said joint functioning is also adopted at different levels in the organizational set up of the Board i.e. at Head Office, Power Station, Zonal Office, Circle Office etc.

5.2 The Accounts Officers employed by the Board can be broadly divided into four categories:

- a) Accounts Officer (Revenue)
- b) Accounts Officer (Expenditure)
- c) Accounts Officer (Internal Audit)
- d) Accounts Officer (EDP)

(A) Functions of Accounts Officers (Revenue)

The functions and duties of the Accounts Officer

(Revenue) is to supervise and control the functions of his subordinates and the functioning of Division and Sub-division offices working under him. This aspect can be explained as under:-

The Board is functioning through its

various Sub-division offices spread over the entire State of Gujarat. At each Sub-Division the particular staff is provided for meter reading for the purpose of raising bills to the consumers. The bills prepared thereafter are sent to the billing department, where junior clerks and senior clerks will enter the data in the Consumer General Ledger. Over these, Sub-divisions there is a division which is supervising and controlling the functions of Sub-Divisions. Accounts staff provided at division office carry out the accounting of consumer's account, payment position and the arrears. Over the division office there is a circle office which is supervising and controlling as well as monitoring the functioning of Division and Sub-Divisions working under the Circle office. Accounts Officer (Revenue) who is posted at the Circle Office has to supervise, monitor and control the working of the meter reader, billing clerks and ledger clerks working at Sub-Divisions level as well as Division Level. The Accounts Officers have to ensure whether the revenue is realized as per the assessment made by Sub-Division/Divisions Offices. A copy of Circular No. 90 dated 24.6.1968, vide which duties functions of the Accounts Officer (Revenue) are assigned is at Annexure A/1 to the affidavit. The Accounts Officer further has to periodically inspect the working of the Accounts Section at Sub-Divisions and Division Offices of the Board. The Accounts Officers have to give direction to the concerned officers for improvement of the functioning of Sub-Divisions and Division Offices. The said fact is evidence from the inspection report dated 16.12.1996 of the Board which is at Annexure A/2 to the affidavit. The Accounts Officer is also empowered to hold meeting of the Divisional Accountants and Assistant Accountants working

under him and have to guide them for proper working.

It would not be out of place to mention that the life blood of Board for survival is the Revenue earned from the various O&M Circles. These O&M Circles have Division Offices and the Accounts Officer (Revenue) monitor these Divisional Offices from Circle Offices. At the Circle Offices, generally the work bifurcation/allotment for the staff working under the control of Accounts Officer (Revenue) is done as per Annexure A-2-1 to the affidavit. Therefore, the nature of duties and the work performed by the Accounts Officer (Revenue) include managerial and administrative.

B. Function of Accounts Officer  
(Expenditure)

The Accounts Officers (Expenditure) are also delegated powers for purchase, execution of work, payment of bills, payment to the staff etc. vide different circulars and general standing orders.

The powers for purchase of materials and award of contracts for works are delegated jointly to the Accounts Officers and the Superintending Engineer of the Circle. Copies of the general standing orders No. 310 dated 9.6.1987 and GSO No. 311 dated 18.3.1998 delegating such powers are at Annexure A/3.

For the purchase of any material either Division Office or the Circle Office of the Board are required to issue tenders in the newspapers. The estimates for purchase of any items are prepared by the Technical Section in the Division/Circle Office. After the estimates is prepared by the Engineers, the Accounts Officer has to check and verify whether the estimates have been properly made. Once the tenders are issued and the offers are invited, the concerned Technical Section will prepare comparative statements of the various bidders. The Accounts Officer has to verify and scrutinise and ensure whether the tenders are as per the specification laid down. Thereafter, the decision is taken jointly by Accounts Officer and Superintending Engineer and the contract is awarded.

The Accounts Officer has been delegated powers jointly with the Superintending Engineer of the Circle either to accept or reject the tenders. He also has the powers to negotiate with various parties to bring down the rates or to make any changes in the terms and conditions already prescribed jointly with Superintending Engineer.

The bills for payment are also scrutinized and passed for payments by the Accounts Officer jointly with the Superintending Engineer. If the Accounts Officer does not accord his sanction for payment, the bills cannot be passed for payment. The entire clerical work for preparation of statement, register, files and documentation is done by the clerical staff provided under the Accounts Officer. Thus the Accounts Officer has to get the work executed through the subordinate staff provided at the Circle as well as at the Division offices.

#### C. Function of Accounts Officer (Internal Audit)

The Internal Audit system of the Board has been reorganized vide Circular dated 27.2.1980 at Annexure A/4. According to this circular, four Regional Accounts Officer (Internal Audit) are functioning from regional headquarters at (i) Baroda, (ii) Anand, (iii) Sabarmati and (iv) Rajkot for supervision of Internal Audit work. Each Regional Office is headed by Accounts Officers (Internal Audit).

The functions and duties of Divisional Accountants, Senior Clerks at Division and Sub-Division level as also Circle level has been prescribed by circular No. 244 dated 15.5.90 at Annexure A/5.

The Divisional Accountants has to check Consumer General Ledger (CGL) recoveries on account of old meter or irregularities in connection with period of agreement, non issue of notices to avail supply, irregularities in connection with collection, deposit and custody of cash etc.

The Accounts Officer (Internal Audit) has

to supervise, control and monitor the working of Divisional Accountants and Seniors Clerks in the Internal Audit and Inspection Wing. The Accounts Officer has to ensure that (i) transaction conforms to prescribed rules and procedures as well as delegation of powers, (ii) misappropriation and frauds are nibbed in the bud, (iii) Revenue is properly assessed and collected and collections are promptly credited to the Board's fund, (iv) wasteful expenditure is avoided. The Accounts Officer has to detail tour programmes of the parties headed by the Divisional Accountant in each of the Circles. The Accounts Officer (Internal Audit) has also to ensure that internal audit work by different audit parties is done in time. He is also to ensure that the staff working in the various offices come in time and has to ensure punctuality in attendance and their leave record.

(D) Functions of Account Officer (EDP)

The post of Account Officer (EDP) is available only at Zonal Offices. This Account Officer has to supervise the working of the overall computer system right from the Sub-Division level to the Circle and Zonal Office. The Account Officer has six subordinates directly working under him. He has to visit all the Sub-Divisions where L.T. billing is computerised to study the difficulties of billing and suggest remedial measures. He has to check tenders/supply orders and also monthly bills submitted by various computer agencies for payment. He has to train the staff about the system of computerization. He has to also supervise and monitor billing system and report lacune/lapses in the system to the higher authorities.

5.4 Therefore, the nature of the duties and the work performed by the Accounts Officers of the Board, include managerial and administrative functions. The nature of work and duties performed by the Accounts Officer which are of managerial and administrative in nature can be briefly summarized as under:

(a) The Accounts Officers are on the panel of selection committee for recruitment and also for promotion of staff, which goes to show that the

function performed by them are not clerical, but are managerial and supervisory in nature.

(b) The Accounts Officer are authorized to sign and make payment upto Rs.50,000/- singly and upto 5 lacs jointly with Additional Chief Engineer. The said powers are delegated to the Accounts Officer by GSO 272 dated 17.12.1977, which is annexed hereto and marked as Annexure A/6. It is submitted that even before signing the cheques and making payment, the Accounts Officers are required to supervise the work performed by the staff below them, who are submitting the bills, and only after their satisfaction, payment can be released. Thus, the function of the Accounts Officer cannot be termed as clerical in nature.

(c) The Accounts Officer are also delegated with powers for purchase execution of work, payment of bills, payments to the staff etc., vide different circulars and General Standing Orders issued by the Board. It will be appreciated by this Hon'ble Court that the Accounts Officers are also authorized to open and finalise the tender jointly with Chief Engineer and Additional Chief Engineers at the Power Stations, while in the case of Circle office, with Suptd. Engineer of the Circle, as per the system of joint functioning of the Board. It may be noted that the engineer may be more conversant with the nature of the articles required to be purchased but, so far as the marketability and the price is concerned, the experience of Accounts Officer has to play an important role. Therefore it cannot be said that the nature of duties of Accounts Officers are merely clerical in nature, but are of managerial and administrative over above supervisory in nature.

(d) The Accounts Officers are working in transferable category of Class-I officers with the Board and therefore they could be posted and transferred in Circle office, Zonal office or Power Station. In Circle Office and Power Station, also the Accounts Officers are having managerial functions. At Circle Office, the Accounts Officers are working independently and there is no check or control over their work, as far as the financial matters are concerned and are directly responsible for the working of the entire circle.



5.5 It is further submitted that the Accounts Officers are also having supervisory functions, over and above managerial and administrative powers. The Accounts Officers are mainly discharging their duties in supervisory capacity at different levels and are drawing monthly wages of more than Rs.1600/-. Normally below the rank of Accounts Officers, there is a staff on one Supdt. (A/c)., two Dy.Supdt. (A/4), 4 to 5 Sr.Clerks and 4 to 5 Jr.Clerks at the Circle and Power Station level. A chart showing the staff set up of accounts with the Board is annexed as Annexure A/7. The Accounts Officers job is to assist the Supdt. Engineer in joint decision making and has to supervise and extract the work from the subordinate staff provide for financial matters and which is working under him. He has to further fill the confidential reports of the staff working below him and can also issue warning and recommend disciplinary actions against his subordinate staff. A copy of Establishment Circular No.454 dated 23.08.85 empowering Account Officer to fill Confidential Report of his subordinate is at A-8-1. He has also powers to depute the subordinate staff to other offices and recommend their payments for Transport Allowance Bills. As a head of the finance wing, at the circle level, he has to co-ordinate functioning of finance wing of the entire circle and has to supervise functioning of finance wings of divisions and sub-divisions functioning under the respective circles of which he is the head of Financial wing.]

4.0 A reference is now required to be made to the judgement of the Industrial Tribunal in Reference (IT) No.315 of 1998.

4.1 The Tribunal held that an employee doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work would be a workman unless he is doing supervisory work and his functions are mainly of managerial nature.

4.2 The Tribunal referred to following functions of the Accounts Officers:-

"Scrutinising the journal vouchers prepared by the staff, to scrutinise the local purchase orders / tenders, to scrutinise the T.A. Bills

and final bills, to scrutinise the claims of C.P.F. Advance, etc., to scrutinise the settlement of C.P.F. Claims (final), to submit monthly returns to Head Office and to check reconciliation of transactions and to check quarterly/annual trial balances prepared by the staff, etc."

4.3 For coming to the conclusion that the Accounts Officer has no managerial or administrative power, the Tribunal noted that the Accounts Officer has no authority to discharge a person from service, to take any disciplinary action against the employee, has no authority to grant casual leave or other leave. The Accounts Officer has power to write the confidential reports but the Chief Accounts Officer and the Controller of Accounts have the right to make amendments in the said report. Although the Accounts Officer sits as a member in the Selection Panel in the circle so far as non-technical staff is concerned, the other members are Superintending Engineer and Non-Technical officer Class-I. After noting that the Accounts Officer is no doubt a highly paid officer, the Tribunal came to the conclusion that the Accounts Officer is required to discharge duties mainly relating to accounts section which are merely in the nature of scrutiny or checking of the returns with the help of his staff but, he is not clothed with managerial or administrative powers as he has no power to grant leave or power to appoint any member of the staff or to take any disciplinary action against any employee; therefore, since he does not have any managerial or administrative functions, the Accounts Officer is a workman. After noting that the Accounts Officer has power to sign cheques singly up to Rs.50,000 and jointly along with Superintending Engineer up to Rs.2 lakhs, the Tribunal observed that these powers could not be exercised by the Accounts Officer singly but such powers could be exercised only with the permission of the higher authorities. The Tribunal arrived at the conclusion that no doubt the Accounts Officer holds a high position but almost all the powers are vested with Superintending Engineer.

4.4 The Tribunal allowed the Reference and held that the concerned Accounts Officers were workmen and, therefore, entitled to be superannuated at the age of 60 years and were entitled to get such benefit as if they had not been superannuated earlier.

5. Against such awards of the Tribunal in case of individual Accounts Officers, the Board filed the above

numbered petitions in the first group. While admitting the said group of petitions which were filed till 1990, this Court passed the following order on 4.4.1990:-

"Interim relief in terms of para 13(b) on the condition that the petitioner Board gives an undertaking to the effect that in case the petitioner (the Board) fails in this petition, the petitioner will pay to the concerned workman all the wages and all other benefits as if the respondent had not retired from service till he completed age of 60 years and such payment shall be made within two months from the date this petition is finally disposed of."

Accordingly the undertaking was filed by the Gujarat Electricity Board on 18.4.1990. However, in case of Accounts Officers who had got the benefit of interim orders of the Tribunal during the pendency of the Reference, they continued till the age of 60 years.

6. After the award of the Industrial Tribunal holding that the Accounts Officers are workmen within the definition of 'workman' under I.D. Act, and further that the Accounts Officers are, therefore, entitled to take benefit of the award fixing the retirement age at 60 years, the Board issued General Standing Order (GSO) No.320 dated 10.1.1994 (Annexure-A9) amending Service Regulations, 1972, of the Board relating to retirement age of the employees and the amended regulation no.72 now reads as under:-

"(1) An employee serving under Class-II, III and IV categories is liable to compulsory retirement on the date of completion of 60 years of age unless specifically reemployed by the Board for a specific period.

(2) An employee serving under Class-I category is liable to compulsory retirement on the date of his completion of 58 years of age unless specifically reemployed by the Board for a specific period."

The aforesaid regulation no.72 before its amendment read as under:-

"72. The employees of the Board are liable to compulsorily retirement on the date of their completion of 55 years of age unless specifically reemployed by the Board for the specific period.

Such of the staff in whose cases retirement age is above 55 years provisionally to be continued till that date as personal to them."

#### CONTENTIONS ON BEHALF OF ACCOUNTS OFFICERS

7. At the hearing of these petitions, the learned counsel for the Accounts Officers have made the following submissions :-

7.1 The question whether an employee is a workman within the meaning of I.D. Act is a question of fact to be decided on the facts and in the circumstances of each case - considering the nature of duties, powers, etc. The Industrial Tribunal having already decided this question in a number of cases, the Board was not entitled to challenge such a finding on a question of fact in petitions under Article 226/227 of the Constitution.

7.2 The recruitment to the post of Accounts Officer is made by promotion from the lower cadre. The incumbents of the post of Accounts Officer were initially appointed as Clerks and were performing the duties as Accounts Clerks and they were given promotion as Senior Clerks - Asst. Accountants, Divisional Accountants (now called Superintending Accountants) and thereafter finally they were promoted to the posts of Accounts Officer. A number of Accounts Officers had started their career with the qualification of Secondary School Certificate (SSC). The immediate lower post of Superintending Accountant (Divisional Accountant) is admittedly in the category of "workmen" and it is from the said post that promotions are made to the cadre of Accounts Officers. Hence, the Accounts Officers must also be considered to be workmen.

7.3 The Accounts Officers are doing only accounts work without any supervisory or managerial powers or duties. The very nature of the duties of the Accounts Officers is to check the working of the subordinates in the Accounts Branch such as checking of accounts, bills, etc. Hence such work is purely a technical-cum-clerical work. Therefore, as per the decision of the Honourable Supreme Court in National Engineering Industries Limited v/s Sri Krishna Bhageerath AIR 1988 SC 329, an internal auditor employed for doing checking and reporting is a workman as the work of checking up and reporting cannot be said to be supervisory work.

7.4 The incumbent of the post of Assistant Secretary is held to be workman as per the award of the Industrial

Tribunal which award came to be confirmed by a Division Bench of this Court and also by the Honourable Supreme Court. The Accounts Officers are in the same pay scale and therefore also the Accounts Officers are required to be treated as workmen.

7.5 The amendment to Service Regulation 72 has also been challenged. The details of the said challenge will be referred to at the appropriate stage.

7.6 All the concerned accounts officers were previously working as Superintending Accountants. Had they been informed earlier that Accounts Officers would have to retire at the age of 58 years and that they would not be entitled to continue in service till the age of 60 years, they would not have opted for promotional post as most of them came to be promoted to the post of Accounts Officers when they had already attained the age of 50-55 years.

The learned counsel for the Accounts Officers more particularly, Mr D.S. Vasavada and Mr RN Singh as well as petitioner Mr VS Deshpande have also tendered written submissions.

#### SUBMISSIONS ON BEHALF OF THE BOARD

8.0 On the other hand Mr M.D. Pandya, learned counsel for the Gujarat Electricity Board who has also tendered written submissions has made the following submissions at the hearing of the petitions :-

8.1 The jurisdiction to decide the controversy in question would be available to the Tribunal only if the concerned employee is first held to be a "workman" as defined by Section 2(s) of the I.D. Act. The question whether an employee is a "workman" or not would always be a mixed question of law and fact as while giving the finding about the nature of duties, the Tribunal would have to apply the correct legal test for deciding whether the employee falls within the definition of workman or not. Apart from the submission that such a finding would, therefore, be on a mixed question of law and fact, since the Tribunal would get the jurisdiction to decide the controversy only in case of workmen, the Tribunal's finding on the question whether an Accounts Officer is a "workman" or not would be a finding on a jurisdictional issue and, therefore, this Court can always examine the correctness or otherwise of such a finding in a petition under Article 226/227 of the Constitution. Reliance has been placed on decisions of the Apex Court.

8.2 The Tribunal has applied an erroneous and illegal test while considering the question whether the Accounts Officer is a "workman" or not within the meaning of the I.D. Act. The Tribunal erred in holding that a Supervisor will be excluded from the definition of workman if he is not vested with the managerial and administrative power. Strong reliance is placed on a series of judgements of the Apex Court and on the decisions of the Calcutta, Rajasthan, Madras, Delhi, Guwahati and Bombay High Courts.

8.3 From the nature of the duties specified in various Board Circulars which are set out as Annexures to the affidavit-in-reply filed on behalf of the Board, it is clear that the Accounts Officer has to discharge various supervisory duties as he is Head of the concerned office and has power to write confidential reports. He is also a member of the Selection Committee for recruitment and promotion and has power to sign cheques and has the power of making purchases, paying bills, making payments to staff and to open and finalise tenders. Such an officer can never be considered to be a workman.

8.4 The Accounts Officer has always been categorised as Class-I Officer right from inception as per General Standing Order No.45 dated 1.12.1961 and General Standing Order No.92 dated 29.12.1962 (Annexure-A-10). The Accounts Officer draws salary in the pay scale of Rs.8500-14250 and the gross salary at the minimum stage of the payscale is Rs.14,050.

#### DISCUSSION

#### 9. ON PRELIMINARY CONTENTION

As regards the contention urged on behalf of Accounts Officers that the finding given by the Industrial Tribunal that the Accounts Officer is a workman, is a finding of fact and therefore this Court would not be justified in entertaining this petition under Article 226/227 of the Constitution of India, It appears to the Court that there is considerable force in the submission of Mr M.D.Pandya for the Board that the finding given by the Tribunal is not on a pure question of fact but is a finding on a mixed question of law and facts which goes to the root of the matter, that is, it is a finding on a jurisdictional issue. If the finding of the Tribunal on this jurisdictional question whether the accounts officer is a workman is erroneous, the

Tribunal would not have jurisdiction to entertain or to allow the reference. In the case of S. Rama Iyer vs. Sundaresa Ponnappoondar, AIR 1966 SC 1431, the Hon'ble Supreme Court was concerned with a similar question under Section 115 of the Civil Procedure Code and held as under :-

"The decision of the subordinate Court on all questions of law and fact not touching its jurisdiction is final and, however, erroneous such a decision may be, it is not revisable under sub-ss. (a) and (b) of S.115, C.P.C. On the other hand, if by an erroneous decision on a question of fact or law touching its jurisdiction, e.g., on a preliminary fact upon the existence of which its jurisdiction depends, the subordinate Court assumes a jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final, and is subject to review by the High Court in its revisional jurisdiction under the sub-sections.

The existence of the relation of landlord and cultivating tenant between the contending parties is the essential condition for the assumption of jurisdiction by the Revenue Divisional Officer in all proceedings under the Madras Cultivating Tenants Protection Act. The Tribunal can exercise its jurisdiction under the Act only if such relationship exists. If the jurisdiction of the Tribunal is challenged, it must enquire into the existence of the preliminary fact and decide if it has jurisdiction. But its decision on the existence of this preliminary fact is not final; such a decision is subject to review by the High Court in its revisional jurisdiction under S.6-B, read with S.115, C.P.C."

Similarly, in AIR 1973 SC 1362 the Apex Court held that no Court or authority can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether a jurisdictional fact is rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. Moreover, in Lloyds Bank Limited v. Pannalal Gupta, AIR 1967 SC 428, the Apex Court held that the status of a workman has to be inferred from the facts found and if the question involved is one of drawing a legal inference as to the status of a party from the facts found, it is not a pure question of fact. If the inference with

regard to the status of the applicant involves application of legal tests, that necessarily becomes a mixed question of law and fact on a jurisdictional issue. Hence, it is open to this Court to examine the correctness or otherwise of the finding given by the Tribunal on this mixed question of law and fact whether the Accounts Officers are workmen within the meaning of Section 2(s) of the I.D. Act.

#### ON MERITS

10. Section 2(s) of the I.D. Act, in so far as is relevant for the purposes of the petition, reads as under:-

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed .... but does not include any such person ---

(i) xxx xxxx xxx xxx

(ii) xxx xxx xxx xxx

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

(emphasis supplied)

The definition may be analysed as under :-

Definition of a workman under Section 2(s) is in three parts:-

(1) The first part gives statutory meaning of workman introducing the aspect of contract of employment with the employer and further refers



to types of work for which he must be employed.

(2) The second part includes more persons than those primarily denoted by the first part and it thus gives an extended connotation to the expression.

(3) The third part specifies (exceptions) as to who out of the categories enumerated in part one and two of the definition are specifically excluded, though they satisfy the requirements of part one or two.

A person in order to be a workman must be employed to do work of any of the enumerated type, it is not enough that he is not covered by any of the enumerated exceptions contained in the sub-clauses of the third part of the Definition.

The third part has four sub-clauses.

(i) & (ii) The first two sub-clauses exclude the personnel in the Armed Forces and in police force.

(iii) The third sub-clause excludes one who is employed mainly in a managerial or administrative capacity.

(iv) The fourth sub-clause excludes one who being employed in a supervisory capacity :

(a) draws wages exceeding Rs.1600  
per mensem

or

(b) exercises, either by nature of duties attached to the office or by reason of powers vested in him, functions mainly of managerial nature."

11. In view of the above analysis, there is considerable force in the submission of Mr Pandya for the Board that an employee who is employed in a supervisory capacity goes out of the definition of a workman once he is found to be drawing wages exceeding Rs.1600 per month OR he exercises functions mainly of a managerial nature. Consequently an employee employed in a supervisory capacity and drawing wages exceeding Rs.1600 p.m. goes

out of the definition of "workman" even if he does not exercise functions of a managerial nature. This submission of Mr Pandya is borne out by a catena of decisions of the Apex Court. All those decisions are set out and discussed in the judgement of the Bombay High Court in Union Carbide (India) Ltd. vs. D. Samuel, in 1998 (80) FLR 684 as under:-

"Section 2 (s) of the Industrial Disputes Act as interpreted till now contemplates three categories of managerial employees who would be excluded from the definition of workman. The first category is a person who is employed mainly in a managerial capacity. The second category is a person employed mainly in an administrative capacity. The third category is a person employed in a supervisory capacity and drawing wages exceeding Rs.1600 per mensem as it now stands or a person employed in a supervisory capacity doing work of a managerial nature on account of nature of duties attached to the office or by reason of powers vested. On behalf of the respondent workman a fourth category is now sought to be added, namely, that a person working in a supervisory category must not only work as a supervisor and draw salary of Rs.500/or more as it then stood (now Rs.1600), but such person must also exercise by nature of duties attached to the office or by reason of powers vested in him, functions of a managerial nature. No doubt in the first flush the argument looks attractive as to who can be a supervisor. The question, therefore, arose as to how such an interpretation was missed by the courts over years. The answer lies in the disjunctive "or". A person working in a supervisory capacity must either draw wages exceeding Rs.1500 per mensem or as a supervisor he must exercise by reason of duties attached to his office or by reason of powers vested in him functions mainly of managerial nature, in which event the salary that he is drawing is immaterial. In other words, a look at the said definition would show that a person working in a supervisory capacity, to be excluded from the definition of workman, must be either doing work of a supervisory capacity and drawing wages exceeding Rs.1600 now (and then Rs.500) or such a supervisor without the question of salary being considered, must by nature of duties attached to his office or powers vested in him perform duties mainly of a managerial nature.

In other words, if a supervisor is entrusted with mainly managerial functions then irrespective of the fact as to what are the wages, will be excluded from the definition of a workman. The language is clear. It is not capable of the interpretation which is sought to be bestowed on it on behalf of the workman. In *Vinayak Baburao Shinde v. S. Shinde & Ors.* this argument was advanced and it was contended that the word "or" must be read as "and" that is conjunctive instead of disjunctive. The said argument was rejected. For the reasons aforesaid, I find no merit in the said contention raised on behalf of the workman that to fall in the definition of supervisor the supervisor ought not only to have been doing work of a supervisory nature and drawing salary of Rs.1500/- but also exercise by virtue of the nature of the duties attached to his office or by reason of powers vested in him functions mainly of managerial nature."

(emphasis supplied)

12. Unlike the judgments of the Apex Court and this Court, although the judgments of the other High Courts have only persuasive value, one need not lose sight of the purpose for which even judgments with persuasive value are being reported, read and followed. The time and energy invested by one Court need not again be invested by another Court when the latter is in agreement with the former. In view of the clear language of the provisions of Section 2(s) of the I.D. Act, I am in respectful agreement with the aforesaid view of the Bombay High Court and accordingly hold that Industrial Tribunal committed jurisdictional error in applying the incorrect test that to be excluded from the definition of workman, the person doing supervisory work must not only earn Rs.1600 per month but must also exercise functions mainly of managerial nature. Once the person employed in a supervisory capacity is found to be drawing wages exceeding Rs.1600 per month, he goes out of the definition of workman and it is not necessary to examine the question whether he exercises functions of managerial nature. The Tribunal all along insisted that to be excluded from the definition of "workman" Accounts Officers exercising the supervisory powers were required to be shown to be exercising managerial powers as well and kept harping on the said aspect of the managerial functions and applied an absolutely illegal and erroneous test. Hence, it is necessary for this Court to apply the correct test, that is to say, whether the Accounts

Officers were employed in supervisory capacity and were drawing more than Rs.1,600 p.m.

13 It is not disputed on behalf of the Accounts Officers that the salary of the Accounts Officers was in the pre-revised scale of Rs.2700-5150 and in the revised scale it is Rs.8500-14250 and, therefore, their salary always exceeded Rs.1600 per month from day one.

Coming to the nature of their duties it is not disputed that below each Accounts Officer there is subordinate staff of the strength of 15-16 consisting of Superintending Accountants, Dy. Supdt. Accounts, Senior Clerks and Junior Clerks. The Accounts Officer supervises their work and fills in the confidential reports of all the employees working under him. It is true that he does not have final power to grant or reject leave or the power to take disciplinary action against his subordinates but those are the powers of managerial nature and as indicated above, it is not necessary for a supervisor to exercise managerial powers in order to be excluded from the definition of workmen. The Accounts Officer is undisputedly supervising the work of his subordinates and those carrying out the functioning of the financial wing and supervises the functioning of the financial wing at the divisional and sub-divisional level and is an officer in Class-I service.

14 The learned counsel for the Accounts Officers has strongly relied on the decision in the case reported in All India Reserve bank Employees' Association vs. Reserve Bank of India, AIR 1966 SC 305. However, that was a case where the Court was examining the nature of functions of Internal Auditors in a bank and the Court found that the work in a bank involves layer upon layer of checkers and checking is hardly supervision. Where however, there is a power of assigning duties and distribution of work there is supervision. Mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision. The work done in the audit department of a bank is not supervision. The same view was taken by the Apex Court while examining the nature of the internal auditors in National Engineering Industries Ltd. vs. Shri Shri Kishan Bhagera & Ors. AIR 1998 SC 329.

It is however important to note that in both the aforesaid decisions, the Apex Court also observed that the Court is required to examine the nature of the main work which the concerned employee is required to do even though he may be incidentally doing other types of work.

The Apex Court also observed that where there is power of assigning and distribution of work there is supervision. Therefore, it is clear that where an officer assigns and distributes the work amongst the subordinates, he supervises their work; where the officer writes confidential reports of his subordinates and has power to recommend leave or recommend taking of disciplinary action even if he is not taking final decisions on those aspects and, therefore, not exercising managerial functions, he is certainly acting in a supervisory capacity.

15 The major contention raised on behalf of the Accounts Officers is that Accounts Officer has to work with a Superintending Engineer who is a Technical Officer and has, therefore, greater say in all the matters and for all practical purposes the Superintending Engineer is exercising the managerial powers. A perusal of the circulars by the respondent-board clearly shows that the Superintending Engineer as well as the Accounts Officers have to jointly exercise the power. Merely because the Accounts Officer is not having technical knowledge which a Superintending Engineer would possess or merely because the Accounts Officer may be a mere matriculate or a graduate as against the engineering qualifications of Superintending Engineer and merely because the function of the Board being generation and distribution of electricity, the Superintending Engineer on account of his technical knowledge may carry greater influence in decision making process, it cannot be said that the Accounts Officer has no role to play in the decision making process especially in matters such as making selection for recruitment and promotion to non technical posts where the techno-phobia of the Accounts Officer would have no room, so also in the matter of making purchases, opening and finalisation of tenders, the Accounts Officer has to insist on observance of norms for financial prudence and fiscal discipline. The functions and duties assigned to the Accounts Officer may even partake of the nature of managerial and administrative functions but as stated above even without going that far, it can certainly be held that the Accounts Officer is employed in a supervisory capacity assigning and distributing work to his subordinates in the Accounts Branch and supervises their performance, and draws salary at a stage much higher than Rs.1600 per month as even in the past the pay scale of the Accounts Officer was Rs.2700-5150 and the present scale is Rs.8500-14250.

16 As regards the argument urged on behalf of the Accounts Officer that Asst. Secretary has been held to

be a workman by this Court and even by the Hon'ble Supreme Court and the Accounts Officers are in the same pay scale, the argument is misconceived. The nature of the duties of the Accounts Officer is quite different from the nature of the duties of the Assistant Secretary. Moreover, Asst. Secretaries employed by the Gujarat Electricity Board have always been categorised as Class-II right from inception of the Board whereas Accounts Officers have been placed in Class-I service. This is clear from the general standing orders No.45 dated 1.12.1961 and No.92 dated 29.12.1962 which are produced at Annexure-A.10 to the reply affidavit.

17. In view of the aforesaid findings, it is not necessary to examine the challenge to the validity of the amendment to service regulation no.72 made by the Board's General Standing Order No.320 dated 10.1.1994 (Annex. A-9). Even otherwise, Regulation No.72 is a part of Statutory Regulations framed by the Board under the Electricity Supply Act, 1948 under which the Gujarat Electricity Board is constituted. Whether an Officer in Class-I service is to be superannuated at the age of 58 years or 60 years is a policy decision and the Statutory Body like Gujarat Electricity Board is well within its rights to take such a policy decision. When the respondent Board has made an amendment to service regulation no.72 which is more in the nature of a clarificatory amendment (since the Board had always treated the Accounts Officers as in Class-I service retiring at the age of 58 years), the Court finds no substance in the challenge to the said amendment. In so far as the retirement age of the Accounts Officers is concerned, it is fixed at 58 years. The Accounts Officers in the employment of GEB were never treated as workmen within the meaning of Section 2(s) of the Industrial Disputes Act and, therefore, were not entitled to continue in service till the age of 60 years and their age of superannuation is 58 years. There was no representation or assurance held out by or on behalf of the Gujarat Electricity Board that Accounts Officers will be superannuated at the age of 60 years and not at 58 years. Hence, there is no substance in the last contention urged on behalf of the Accounts Officers that they would have preferred to continue in the lower cadre of Superintendent Accounts and would not have opted for the promotional post of Accounts Officers. In any case, there was no promissory estoppel whatsoever. Following interim orders or final awards of the Tribunal, until appropriate orders were passed by this Court in petitions challenging such orders/awards, can never be held out as a representation so as to estop the Board from pursuing

their case before this Court. It is, however, clarified that the observations made in this paragraph are not intended to apply to the Accounts Officers who were initially recruited by the Saurashtra Electricity Board and who were absorbed in service of the Gujarat Electricity Board and the petitions filed by such employees are to be decided separately.

18 However, the Accounts Officers who were continued in service till the age of 60 years on the basis of the interim orders of the Industrial Tribunal or on the basis of the final award of the Industrial Tribunal shall not be required to refund any monetary benefits drawn by them on the basis of their service till the age of 60 years.

#### O R D E R

19 In view of the above discussion, the awards of the Industrial Tribunal in the concerned references, which awards are challenged herein holding that the Accounts Officers are workmen and that the retirement age of Accounts Officers under the Gujarat Electricity Board is 60 years are hereby quashed and set aside. Accordingly, the first group of petitions filed by Gujarat Electricity Board being Special Civil Applications Nos. 5797 of 1988 to 5802 of 1988, 6869 of 1989, 2924 of 1990 and 8144 and 12476 of 1993 are allowed. Rule is made absolute in each of these petitions with no order as to costs.

The second and third group of petitions being Special Civil Applications Nos. 331 and 1595 of 1989, 350, 1013, 1015, 1074 of 1990, 733 of 1991, 7644 of 1992, 2590 of 1993 and 8505, 9850 and 10661 of 1996 filed by the Accounts Officers are hereby dismissed. Rule is discharged in each of these petitions with no order as to costs.

It is clarified that as directed by this Court earlier, the Accounts Officers who continued in service till the age of 60 years on the strength of interim orders / final awards of the Industrial Tribunal shall not be required to refund any monetary benefits which were drawn by them by rendering services till the age of 60 years.

\*\*\*

(mohd)