

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 4215 of 2004

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE K.M.THAKER

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

GUJARAT STATE ELECTRICITY CORPORATION LIMITED....Petitioner(s)
 Versus
 BIMAL G SHAH & 1....Respondent(s)

Appearance:

MR DIPAK R DAVE, ADVOCATE for the Petitioner(s) No. 1
 MR PARITOSH CALLA, ADVOCATE for the Respondent(s) No. 2
 MR TR MISHRA, ADVOCATE for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE K.M.THAKER

Date : 23/12/2015

ORAL JUDGMENT

1. The petitioner has brought under challenge order dated 15.03.2013 passed by learned Industrial Tribunal in Reference (IT) No.83/96 by which the learned Tribunal declared that the

respondent workman is entitled to get the Grade / Pay Scale of Rs.1180-3050 instead of Grade / Pay Scale of Rs.1050-2320 and learned Tribunal also ordered that present workman be granted notional seniority w.e.f. 16.02.1990 as Plant Attendant Grade-I and the learned Tribunal also ordered that respondent workman is entitled to recover the amount of difference between the aforesaid two grades with effect from 16.02.1990. The petitioner is aggrieved by the said award. Hence, this petition.

2. The factual background involved in the case and leading to present petition is that the respondent herein raised industrial dispute on the allegation that though he was asked to perform duty as Plant Attendant Grade-I and an order placing him the cadre of Plant Attendant - Grade-I on supernumerary post was passed, the petitioner has not paid salary according to the pay-scale attached to the post of Plant Attendant

-Grade-I and instead continued to treat him as Civil Mistri and paid salary in the pay-scale applicable to the post of Civil Mistri. On such allegation, the respondent raised the dispute and claimed that he should be treated as a workman on the post of Plant Attendant -Grade-I and should be paid salary in the pay-scale attached to the said post of Plant Attendant -Grade- i.e. 1180-3050 instead of paying salary in the pay-scale of 980-2280. Since any settlement could not be arrived at in conciliation, the appropriate Government passed order of reference and referred the dispute for adjudication to the Learned Industrial Tribunal, Ahmedabad. The said Reference was registered as Reference (IT) No.83/96. The respondent filed the statement of claim stating the allegations and claims mentioned above and asserted that he should be granted benefit of pay-scale of Rs.1180-3050 with effect from 23.10.1987. He also claimed that he was asked to perform duties of Civil Supervisor

and he worked for 960 days as Civil Supervisor and that therefore, he was placed on regular establishment in the cadre of Civil Supervisor with effect from 22.10.1987. He also claimed that though pay-scale attached to the said post is Rs.1180-3050, he was not paid salary in the said pay-scale and instead the petitioner paid salary in the pay-scale of Rs.980-2280. The respondent further alleged that he was assigned work of the post of Plant Attendant Grade-I and he was performing duties as Plant Attendant Grade-I from 16.02.1990, and therefore, he should be paid salary, and arrears, on the basis of pay-scale of Rs.1180-3050 which is also the pay-scale for the post of Plant Attendant Grade-I.

3. In the written statement filed before the learned Tribunal the Petitioner disputed and denied said claim and allegation by the respondent worker and stated that the respondent was appointed as Work Charge Mistri in 1984 at

Vanakbora Thermal Power Station and his salary was fixed in the pay-scale for the said post i.e. Rs.980-2080. The petitioner also claimed that the respondent was transferred with effect from 13.09.1985 to Gandhinagar Thermal Power Station. The petitioner denied the respondent's claim that the respondent was assigned duty on the post of Supervisor and/or that on completion of 960 days of performing the duties the respondent was taken on regular establishment as Civil Supervisor. The respondent asserted that his case was comparable with Mr.Goswami and/or Mr.Patel who were drawing salary at the pay-scale of Rs.1180-3050.

4. The Petitioner Board asserted that in the order dated 10.07.1987 inadvertent and bonafide mistake had occurred on account of which instead of mentioning Supernumerary Mistri, as the post on which the respondent was absorbed / appointed inadvertently the post was described as Supernumerary Supervisor. According to the board,

it was bonafide mistake which was rectified by subsequent separate order dated 05.10.1987. The board asserted that by order dated 05.10.1987, earlier mistake was corrected. The board also asserted that the respondent had accepted the said order dated 05.10.1987 without any objection and protest and until present dispute came to be raised in 1996, the respondent had never raised any dispute against the order dated 05.10.1987. The petitioner further mentioned that the respondent is not engaged or absorbed as Supernumerary Supervisor or in the post of Plant Attendant Grade-I, but he was appointed and was working as Mistri and he was absorbed on the supernumerary post of work charge mistry, and that therefore, his claim for the salary in the pay-scale of Rs.1080-3050 which is pay-scale applicable to the post of Plant Attendant Grade-I is misconceived and unsustainable. The petitioner Board opposed the said reference.

5. Mr.Dave, learned advocate for the petitioner reiterated about above factual details and submitted that the respondent is appointed and engaged as Work Charge Mistri. At the relevant time also the respondent continuously worked as Civil Mistri and his post was Supernumerary Civil Mistri. He also reiterated that by bonafide mistake in one of the orders his post was described as Supernumerary Supervisor, however, the said mistake was immediately rectified in October,1987 and it was clarified that the post of the respondent is Supernumerary Mistri and that therefore, the claim based on the order which contained bonafied mistake is not justified and such claim ought to have been rejected by the learned Tribunal. Mr.Dave, learned advocate for the petitioner also submitted that by referring to the evidence of the Board's witness that if at all the Superior Officer had ever asked the respondent, on account of exigency to perform duty as Plant Attendant Grade-I, then on such

instance special allowance for the said work was paid to the respondent in accordance with applicable rule and merely because on some day on account of exigency, he was asked to work as Plant Attendant Grade-I, it does not make him entitle for the said post on regular and permanent basis and that therefore, also claim of the respondent should have been rejected by the learned Tribunal. Mr.Dave, learned advocate for the petitioner reiterated the fact that the respondent had accepted the order dated 05.10.1987, whereby the mistake was corrected and that the said order has never been challenged by the respondent. Mr.Dave, learned advocate for the petitioner also submitted that the respondent does not possess prescribed qualification for the post of Plant Attendant Grade-I, and that therefore, question of taking up the respondent on the post of Plant Attendant Grade-I does not arise. According to the learned advocate for the petitioner, the respondent's claim is

misconceived and based on erroneous premise and incorrect facts.

6. Mr. Mishra, learned advocate for the respondent submitted that the learned Tribunal has not committed any error and the award is based on material on record. Mr. Mishra, learned advocate for the respondent submitted that respondent has been discharging duties and performing functions of Plant Attendant Grade-I since the time he came to be transferred to Gandhinagar Thermal Power Station. Mr. Mishra, learned advocate also submitted that since it was the petitioner Board who required the respondent to perform the duties and functions of Plant Attendant Grade-I, then the respondent should be paid salary in the pay-scale applicable to the said post of Plant Attendant Grade-I, however, since 1987, he is entitled for the salary in pay-scale of Rs.1180-3050 revised from time to time, the respondent has not been paid salary as per

pay-scale and instead the petitioner has paid the salary to the respondent in the pay-scale of Rs.980-2280 and that therefore, it was necessary that the action of the petitioner may be set aside and he should be treated as workman on the post of Plant Attendant Grade-I and that he should be paid salary in the pay-scale applicable to the post of Plant Attendant Grade-I with effect from 1987 and in the pay-scale of 1180-3050. So as to support his submission, learned advocate for the respondent relied on the order placing him on the post of Plant Attendant Grade-I. Mr.Mishra, learned advocate for the respondent also referred to the discussion by the learned Tribunal where the documents at Exh.61, 66, 62-B 67 are taken into account. He submitted that the award does not suffer from any error.

7. I have heard learned advocates for the petitioner and respondent and considered the award impugned in present petition as well as the

material placed on record.

8. At the outset, it is relevant and necessary to mention that according to the General Standing Order No.315 dated 10.07.1990, qualification for the post of Plant Attendant Grade-I (Elect) is 1st Class Electrical Supervisor Certificate (which can be relaxed by the competent authority) and for the post of P.A. Gr.I (CR) is DEE or ITI (Ele) with 5 years experience.

8.1 It is not the case of the respondent that he possess the said qualification prescribed for the post of P.S. Grade-I.

8.2 It is not in dispute that:- (a) the respondent came to be appointed as Work Charge Mistri in September, 1984 at Vanakbori in pay-scale of Rs.290/- (b) in September-1985, the respondent was transferred from Vanakbori to Gandhinagar; (c) the petitioner board had issued order dated 10.07.1997, wherein the petitioner's designation / post was described as Supernumerary

Supervisor, (d) pay-scale applicable to the Supernumerary Supervisor and Plant Attendant Grade-I is Rs.1080-3050; (e) the respondent herein is paid salary in pay-scale of Rs.950-2250. The dispute against the award impugned in present petition is required to be decided by keeping in focus the above mentioned undisputed fact.

8.3 It has emerged from the record and from the submission by learned advocate for the petitioner that the dispute between the parties arose after the respondent was transferred from Vanakbori Thermal Power Station to Gandhinagar Thermal Power Station.

8.4 The order of reference required the learned Tribunal to decide as to whether the petitioner should be directed to consider the respondent in the Cadre of Plant Attendant Grade-I with effect from 16.02.1990 and whether the petitioner should be directed to pay salary to the respondent in

the pay-scale of Rs.1180-3050 instead of 1050-2720.

8.5 It also appears that the respondent based his claim for the salary in the pay-scale of Rs.1180-3050 and designation of Plant Attendant Grade-I, on the basis of two assertion / allegation viz.

(a) That by order dated 10.07.1987, his post was described as Supernumerary Supervisor;(b) he was assigned duties and functions and work of the post of Plant Attendant Grade-I and Civil Supervisor and he had been performing duties on the said posts.

8.6 From the award, it appears that the learned Tribunal believed the workman's claim that he was performing duties and functions on the post of Plant Attendant - Grade I and therefore the learned Tribunal passed the award with earlier mentioned directions.

9. Now the question which arises is as to

whether there is cogent material and evidence available on record which can convince the Court to hold that the respondent was appointed and designated as supernumerary Plant Attendant - Grade I and/or he was performing the duties of Plant Attendant -Grade I.

9.1 To consider the said issue and related aspects, it is appropriate to take into account the appointment orders issued to the respondent by the petitioner.

9.2 During the hearing, copies of the orders passed by the petitioner qua the respondent are placed on record so as to enable the Court to examine and consider the said orders. They are taken on record with consent of Mr.Mishra, learned advocate.

9.3 From the order dated 6.9.1984, it appears that the respondent came to be appointed for the first time with the petitioner in 1984 and that

the said order specifically mentions that the respondent was appointed on the basis of Work Charge Mistry on work charge establishment at Vanakbori and his appointment was on temporary basis for a period of six months.

9.4. Subsequently, the order dated 13.9.1985 was passed whereby the respondent was transferred to Gandhinagar Thermal Power Station (from Vanakbori, where he was originally appointed). The said order dated 13.9.1985 also gives out that the respondent was transferred to Gandhinagar as, and on the post of, Work Charge Mistry. Thereafter, the petitioner passed an order dated 10.7.1987 whereby the petitioner was absorbed against supernumerary establishment. The said order reads thus:

As provided in Estd.Circular No.446 dated 14.02.1985 and in accordance with Head Office letter no.EP/ACEC/GNT/406/902 DATED 30.07.1981, the following work charged supervisors who were transferred alongwith the post from Wanakbori TPS to this power station are hereby absorbed on the same post and pay scale against supernumerary establishment by virtue of their having completed 960 days on work-charged"

9.5 It is not in dispute that immediately prior to the date on which the said order dated 10.7.1987, the respondent was working as and on the post of Work Charge Mistry. However, in the order dated 10.7.1987, the respondent was shown as Work Charge Supervisor and date of absorption against supernumerary post was shown as 1.5.1987.

9.6 Thus, even if the said order is to be taken into account, then also it would come out that the respondent's post was described as Work Charge Supervisor and not Plant Attendant -Grade I.

9.7 It is claimed that description of the respondent workman's post in the said order dated 10.07.1987 was a mistake and that therefore, when the petitioner realized the mistake, it passed the order dated 05.10.1987 and corrected the said mistake.

9.8 The petitioner has shown and relied on above mentioned documents, which do not reflect in any manner whatsoever the respondent's designation as Plant-Attendant Grade-I.

9.9 While the petitioner has shown the respondent's appointment order on the post of Work Charge Mistri and Supernumerary Mistri, the respondent has failed to show any document either before Learned Labour Court or before this Court also, which would reflect his designation as Plant-Attendant Grade-I.

10. Thus, it is undisputed fact that the workman had not placed any document or any material on record to demonstrate that he was ever appointed either Work Charge Attendant or Supernumerary Plant-Attendant Grade-I.

10.1 It is not in dispute that the said post of Plant-Attendant Grade-I is higher than the post of Mistri.

10.2 In this background, it is relevant to turn to statement of claim filed by the respondent. The respondent Union has claimed that the concerned person was transferred to Gandhinagar in September-1985, then it is alleged that at Gandhinagar, the concerned workman was assigned work of Supervisor instead of assigning the work of Mistri and the concerned workman had performed duties and functions of the post of Supervisor. It is also claimed that when the concerned workman completed work of 960 days, he was absorbed in Supernumerary cadre as Work Charge Supervisor.

10.3 Now, at this stage, it is appropriate to recall that concerned workman was transferred from Vanakbori to Gandhinagar Thermal Power Station in September, 1985.

10.4 It is not in dispute that before concerned workman came to be transferred to

Gandhinagar Thermal Power Station, at Vanakbori, he was worked and performing his duties as Work Charge Mistri, meaning thereby, from September-1984 to September-1985, the concerned workman had undisputedly worked only as Work Charge Mistri.

10.5 Now, it is relevant to recall that the order wherein the concerned workman's designation was described as Supervisor was issued in July, 1987. The petitioner claims that the respondent's designation was described by mistake and actually it was to be mentioned as Mistri and the said mistake was immediately corrected in July, 1987. The petitioner also claims that order dated 05.10.1987 was served to the concerned workman and he had accepted the said order without any protest and objection. The petitioner would also claim that the concerned workman accepted the said order without any objection and never challenged the said order because he was aware about the duties which he was performing.

10.6 What emerges from the said fact that from September, 1985 to July, 1987, while the respondent-concerned workman performed his duty at Gandhinagar, according to the petitioner the respondent worked as Mistri, whereas according to the concerned workman he was assigned duty of Supervisor.

10.7 From the award impugned in present petition, it also appears that the learned Tribunal mechanically accepted the said claim of the respondent without calling for and without examining cogent and satisfactory evidence which would establish as to whether the concerned workman had worked as Supervisor/Civil Supervisor from September, 1985 to July, 1987.

10.8 Beside this, it is also pertinent to note that there is no document or any other material on record of this petition and there was no material or document on record of the

Reference before the Learned Tribunal which would reflect and establish that the concerned workman had ever worked as Plant-Attendant Grade-I.

10.9 Except the bald claim and allegation that he was asked to perform duty of Plant-Attendant Grade-I, there is no material on record to support, justify and establish such allegation. In Paragraph No.3 of the statement of claim, it is mentioned that in Unit Nos.3&4 (Stage-2) the respondent had performed duties of Supervisor, and therefore, he was assigned duties of Plant-Attendant Grade-I. Any witness or any document to support and justify such claim was not placed on record before the learned Tribunal. The said claim remained bald allegation and claim in the statement of claim without support of any oral or documentary evidence or any other material. In Paragraph No.3 of the Statement of Claim, it is alleged that the concerned workman was asked to perform duties and functions of

Plant-Attendant Grade-I and the petitioner continued to get the concerned workman perform the duties and functions of Plant-Attendant Grade-I. Immediately, thereafter, in Paragraph No.4 of the Statement of Claim, it is alleged that the respondent worked as Plant-Attendant Grade-I from 1987 to 16.02.1990. However, any documentary or oral evidence to support and establish the said claim was not placed before the learned Tribunal. In last paragraph of the award (before operative part) the learned Tribunal has recorded, while making reference of Exh.71, 72 and 73, that the concerned workman appear to have worked as Civil Mistri and then, immediately in the following line of the said paragraph, the learned Tribunal has mentioned that concerned workman is entitled for pay-scale of P.A. Grade-1, which is contrary to what is observed in preceding line of the said paragraph. The learned Tribunal has made reference of document at Annexure-61, 66, 62 and 67 and over

time statement for period of 1994, 1995, 1996 and 1997. The said documents are not available on record of present petition.

11. However, from the material which is available on record, it has emerged that several factual aspects have remained unclarified for want of appropriate and sufficient evidence by both the parities.

11.1 Despite want of sufficient and proper evidence and lack of clarity as regards vital factual aspects, the learned Tribunal has recorded its conclusion and passed the award.

11.2 It is pertinent to note that it is not clear as to whether the documents which are shown by the learned advocate for the petitioner-Board during the hearing of present petition i.e. appointment letter dated 06.09.1984 and/or the order dated 13.09.1985 transferring the respondent from Vankabori Thermal Power Station

to Gandhinagar Thermal Power Station and/or the order dated 10.07.2007 absorbing the respondent on supernumerary post and/or the order dated 05.10.1987, whereby the Board corrected the mistake in describing the respondent's designation and clarified that the respondent is absorbed on the Supernumerary post of Mistri and/or the document (office order dated 15.11.1989 reflecting designation and pay-scale of the respondent i.e. Civil Mistri Rs.980-2280) and/or the document dated 05.08.1988 reflecting the designation of the respondent i.e. Civil Mistri were placed on record before the Learned Labour Court, or not.

11.3 On the strength of the said documents, learned advocate for the petitioner tried to emphasize that in all subsequent office orders, the respondent's designation is reflected as Civil Mistri. However, what is relevant is the fact that unless the said documents were placed

on record before the Learned Labour Court and unless the respondent got opportunity to deal with the said documents before the evidence/deposition of respondent-workman was recorded. On examination of the award, it comes out that there is no reference or discussion with reference to the above mentioned documents. Therefore, also on examination of record of present petition, it appears that the documents which are shown to this Court were not before the Learned Labour Court, and therefore, it would neither be permissible nor just and proper for this Court to take into account the said documents.

11.4 Further when the office order dated 05.10.1987 (which is shown to this Court, but does not form part of the record before the Learned Tribunal) is examined, it emerges that though in the tabular part of the office order, the designation against the name of the

respondent is mentioned as Mistri, in the relevant part of the office order dated 05.10.1987 (which is purportedly issued to correct the mistake/crept in the order dated 10.07.1987), it is mentioned that "... the designation of following employees as shown W/C Supervisor be read as CIVIL SUPERVISOR. However, terms and conditions are remained unchanged". Thus, unless it is explained by appropriate evidence, the said office order would give out that the designation of both the employees including present respondent was to be read as Civil Supervisor, certain discrepancy would survive for want of clarification and/or evidences, inasmuch as one part of the said order requires the designation of the respondent to be read as Civil Supervisor, whereas other part of the order suggests that the respondent's designation has to be read as Mistri.

12. Thus, unless appropriate evidence of

concerned officer is brought on record by the petitioner with opportunity to the respondent to deal with entire evidence , it would not be proper for the Court to record any final conclusion.

12.1. Further, it has also emerged from the record that the documents which are placed on record of present petition and/or the documents reference whereof is found in the award give out that the respondent was designated as Supervisor. There is no reference and/or, not even any indication, which would give out that at any point of time, the respondent was ever designated as Plant Attendant Grade-I. The award makes reference of O.T. Statements. The said statements are not on record of present petition. However, what is relevant is that the learned Tribunal has not clarified as to whether in the said O.T. Statements or other documents the designation of the respondent-workman was mentioned/described as

Plant Attendant Grade-I and/or whether the said document clearly and specifically reflected that the respondent-workman was paid amount/allowance for having worked and/or for performing duties of Plant Attendant Grade-I. There is more than palatable lack of clarity as to whether there was any document or material having probative and evidentiary value to satisfy the Court that the respondent-workman had continuously and regularly, and not intermittently or casually or sporadically, worked as Plant Attendant Grade-I.

12.2 In absence of such material of probative and evidentiary value, the conclusion which the learned Tribunal has recorded could not have been recorded.

12.3 After the description with regard to above mentioned defect or shortfall in the matter of appropriate evidence, another relevant aspect or issue which arises is with regard to the qualification for the post of post of Plant

Attendant Grade-I.

12.4 On this Count, Mr.Dave, learned advocate for the Petitioner Board sought to rely on General Standing Order no.315 dated 10.07.1990. The said Standing order appears to have been recommended / approved in the meeting held on 15.06.1990 and seems to have came into force with effect from 10.07.1990.

12.5 Whereas in present case, the relevant period starts from September-1985 or from July,87, when, according to the respondents claim and allegation was instructed to work as and perform the duties as Plant Attendant Grade-I.

12.6 With regard to said GSO dated 10.07.1990, it is not clarified as to whether it was placed on record with the Learned Tribunal or not. Second aspect which is not clarified with regard to GSO is that why the GSO applicable from

July, 1990 should be taken into account for consideration the respondents' claim for the period prior to July, 1990 i.e. from September, 1985 or October, 1987. Third aspect which is relevant for this aspect is that neither from the award nor from the material on record, it emerges that the respondent-workman was confronted - while evidence was recorded with the said GSO and the requisite qualification for the post of Plant Attendant Grade-I as mentioned in the said GSO.

13 It appears from the record that workman was never confronted with the claim or allegation that the prescribed qualification for the post of Plant Attendant Grade-I was different or higher than the qualification he possess. Neither any material as to the qualification which the respondent workman possessed nor any material as to the qualification applicable for the post of Plant Attendant Grade-I for the period from September, 1985 and/or October, 1987 appears to

have been placed before the learned Tribunal. It also does not appear that such case was pleaded, raised and established before the learned Tribunal, by leading appropriate evidence and by allowing sufficient opportunity to the respondent to deal with said contention and factual aspect.

13.1 It is pertinent that the learned Tribunal has recorded in the award that the Petitioner Board did not examine any witness. The said observation by the learned Tribunal in the impugned award is not disputed by the learned advocate for the petitioner. Actually, Mr.Dave, learned advocate for the petitioner accepted that the Petitioner Board had not examined any witness.

13.2 Thus, it emerges that any evidence from the side of the Petitioner Board which would deal with and clarify the aspects related to any of the above mentioned office orders and/or respondent's qualification and/or qualification

prescribed for the post of Plant Attendant Grade-I and actually applicable at the relevant time i.e. September, 1985 and/or October, 1987 and/or about the nature of duties and functions performed by the respondent, was not placed or record and/or is not considered and dealt with by the learned Tribunal.

14 However, in absence of such necessary and relevant evidence as well as in absence of necessary clarificatory evidence about the relevant aspects the learned Tribunal proceeded in the matter and ventured to record final conclusion without requiring the parties to place proper and sufficient evidence, oral as well as documentary

15. The relevant issues could not have been and ought not have been decided without requiring the parties to place sufficient and relevant evidence on record which would enable the Court to appreciate rival claims and decide the

controversy and dispute in light of proper evidence.

15.1 For foregoing discussion brings out that the impugned award is passed without proper application of mind to the relevant factual aspects and the conclusions as well as observations with regard to factual aspects have been recorded mechanically and in absence of sufficient and relevant evidence.

15.2 The conclusion which are recorded and the observations which are made by the learned Tribunal could not have been recorded in absence of sufficient and relevant evidence or on the strength of evidence which was available on record before the learned Tribunal.

15.3 In light of the discussion and for the foregoing reasons, it is held that the impugned award is defective. The conclusions recorded by the learned Trial Court are not based on and/or

are not supported by cogent, proper and sufficient/satisfactory evidence. The learned Tribunal has committed error in reaching to and recording to final conclusions. The conclusions recorded by the learned Tribunal are not sustainable and they are not based on evidence on record and tantamount to inference or surmises not supported by law and not warranted in light of evidence on record.

16. Therefore, this Court is constrained to note that conclusion recorded by the learned Tribunal are not based on and/or are not supported by sufficient and proper evidence.

16.1 Under the circumstances, this matter deserves to be remitted to the learned Tribunal for reconsideration and fresh decision in accordance with law after affording opportunity to the respondent workman as well as Petitioner Board to place sufficient and proper evidence on record.

17 The Court is conscious of the fact that dispute was raised by the respondent workman in 1996. More than 20 years have passed and therefore, so long as possible, order of remanding the matter to the learned Tribunal ought to be avoided.

17.1 However, it is not possible for this Court to finally decided the controversy and dispute because sufficient and proper evidence required for reaching to clear and definite conclusion and decide the matter finally is not available on record.

17.2 On account of insufficient evidence on record, it would not be proper for this Court to record any conclusion. Thus, it would be erroneous and may be unjust for want of sufficient evidence.

18. Therefore, after due and proper consideration and after having taken into account the material

available on record and the discussion in the impugned award, this Court is satisfied that the matter deserves to be remanded to the learned Tribunal for reconsideration and fresh decision.

19. Under the circumstances, following order is passed:-

The impugned award dated 15.03.2003 passed by the learned Tribunal in Reference (IT) No.83/96 is set aside and the said Reference (IT) No.83/96 is remanded to the learned Tribunal for reconsideration and fresh decision after hearing the Petitioner Board and the respondent-workman.

The learned Tribunal will allow the parties to lead necessary evidence in support of their respective case, and thereafter, pass appropriate fresh award after considering entire evidence on record and the submissions on behalf of the Petitioner-Board and the respondent-workman.

With the above mentioned clarifications and directions, present petition disposed of.

(K.M.THAKER, J.)

Girish