

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 1312 of 2017****TO****SPECIAL CIVIL APPLICATION NO. 1317 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE PARESH UPADHYAY**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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GUJARAT STATE ROAD TRANSPORT CORPORATIONPetitioner

Versus

PRABHATSINH KALYANSINH SOLANKI & ORS.Respondents

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Appearance:

MR HARDIK C RAWAL, ADVOCATE for the Petitioner

MR G K RATHOD, ADVOCATE for the Respondent Workmen

MR PRAKASH JANI, ADDITIONAL ADVOCATE GENERAL with
MR RASHESH RINDANI, ASSISTANT GOVERNMENT PLEADER for the

Respondents No. 2 – 4 (State Authorities)

Respondent No. 5 (Tribunal) is served

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CORAM: **HONOURABLE MR.JUSTICE PARESH UPADHYAY**

Date : 04/08/2017

ORAL JUDGMENT

1. Challenge in this group of petitions is made by the employer - Gujarat State Road Transport Corporation, to different, but identical awards passed by the Industrial Tribunal at Vadodara - all dated 30.01.2016, in Reference Nos.439, 445, 449, 450, 451 and 452 of 2013. By the impugned awards, the Tribunal has accepted the claim of the respective workman that they were entitled to be taken on the regular pay-scale, years before the employer did it. While allowing the said References, the Tribunal had granted benefit from a particular date, however on the applications being filed by the concerned workmen, necessary change is made by the Tribunal in the effective date of grant of benefit to the concerned workmen. The said orders are dated 16.08.2016. The effective date of granting benefit, in each case is of the year 2001. The effect of each award is that, the Corporation is required to pay lakhs of rupees to the concerned workmen.

2. Mr.Hardik Rawal, learned advocate for the petitioner Corporation has submitted that, the petitioner had already taken the respondent workmen on regular pay-scale, from the date they were entitled to - as per the policy of the

Corporation, and the respondents were not entitled to the said benefit from an earlier date. It is submitted that the issue, as to how the said policy of the Corporation would read and what conditions need to be fulfilled to claim such benefit, was considered by this Court in a group of petition and the same is answered in the judgment of this Court in the case of Gujarat State Road Transport Corporation versus Maheshbhai Navalshankar Pandya and others recorded on Special Civil Application No.11717 of 2014 and cognate matters dated 18.09.2014. It is submitted that as per the said judgment the claim of the respondents was untenable and could not be accepted by the Tribunal. Reliance is also placed on the decision of the Division Bench of this Court in Letters Patent Appeal No.1185 of 2014 dated 04.07.2017, whereby the said judgment (in Special Civil Application No.11717 of 2014 dated 18.09.2014) is confirmed. It is contended that, in view of the said decisions, the impugned awards are unsustainable and the same need to be quashed and set aside. It is additionally submitted that, there was inordinate delay on the part of the workmen in approaching the Tribunal and on that count also, relief could not have been granted by the Tribunal. It is submitted that, on both these counts, the impugned awards need to be quashed and set aside.

3. On the other hand, Mr.Songara, learned advocate for Mr. G.K. Rathod, learned advocate for the respondent workmen has submitted that, the Tribunal has passed the awards, on the basis of the material on record and no interference be made by this Court. It is submitted that, whatever is submitted by the petitioner Corporation before this Court, is being told for the first time and no contest was put before the Tribunal and

therefore, the petitioner need not be heard. It is further submitted that even after the impugned awards are passed, the petitioner authorities are acting arbitrarily. Serious grievance is made that, on and around the period when the impugned awards were passed, many awards (14 awards) were passed by the Tribunal in almost identical facts and on identical line, but out of those 14 cases, in 8 matters, applications are filed by the Corporation under Rule 26A of the Industrial Disputes (Gujarat) Rules, 1966 for re-opening those References, but in these 06 matters, petitions are filed before this Court. It is submitted that, if it is the case of the petitioner Corporation that the awards are unsustainable, similar action should have been taken qua all the workmen. Learned advocate for the respondent, however is not in a position to dispute that there was delay of more than a decade on the part of the concerned workmen in approaching the Tribunal and further that even on merits, the issue is concluded in favour of the Corporation by the above referred decision of this Court in Special Civil Application No.11717 of 2014 and cognate matters dated 18.09.2014. It is however submitted by him that no interference be made by this Court and these petitions be dismissed.

4. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

4.1 The grievance of the workmen before the Tribunal was to the effect that, as per the policy of the Corporation, they were entitled to be taken on the regular pay-scale on completion of their 180 days of service as a daily wager, however the

Corporation granted that benefit to them, years after their entitlement. Circulars of the Corporation were relied by them before the Tribunal. There was no contest by the Corporation before the Tribunal and the claim of the workmen is accepted by the Tribunal.

4.2 This Court has examined the claim of the workmen vis-a-vis the policy of the Corporation, taking into consideration the binding precedent - the judgment of this Court in Special Civil Application No.11717 of 2014 dated 18.09.2014. Having done so, this Court finds that, the claim of the respondent workmen, on merits was untenable and they were not entitled to the relief, as claimed by them. Learned advocate for the respondent workmen is also not in a position to dispute this. The impugned awards are thus unsustainable on merits and the same need to be quashed and set aside.

4.3.1 There is an additional factor against the workmen. Their case before the Tribunal was that, they should have been granted regular pay-scale from the year 2001. This grievance is made by them in the year 2013. The delay of more than a decade could not have been ignored by the Tribunal. In this regard reference needs to be made to the decision of the Supreme Court of India in case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota V/s. Mohan Lal reported in (2013) 14 SCC 543. Para 19 of the said decision is relevant which reads as under :

"19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising

industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

4.3.2 Reference also needs to be made to the decision of the Division Bench of this Court in Letters Patent Appeal Nos.466 of 2016 and 182 of 2017. It was *inter alia* observed in the said decisions that delay of about seven to eight years in raising dispute, without any explanation was fatal.

4.4 In the present cases also there is no explanation on behalf of the workmen, *qua* delay. The above referred decisions would tilt the balance against the respondent workmen in the present case. The respondent workmen had disintitiled themselves to claim any relief, on this additional count also.

4.5 Though learned advocate for the respondent workmen is justified to the extent that, while dealing with the cases of similarly situated workmen, the authorities of the petitioner Corporation have acted arbitrarily even after the impugned awards are passed, that itself would not tilt the balance in

favour of the workmen, so far grant of benefits to them is concerned.

4.6 Considering the totality, this Court finds that, the respondent workmen are not entitled to the benefits, as claimed by them, on merits, nor the fatal delay on their part could have been ignored by the Tribunal. For both these reasons, the impugned awards need to be quashed and set aside.

5. The matters need to be viewed from one more dimension.

5.1 The claim of the workmen before the Tribunal was to the effect that, they were entitled to be taken on the regular pay-scale, years before they were so taken by the petitioner Corporation. According to them, non-grant of the said benefit to them by the petitioner Corporation was against its own policy. In support of their say, some circulars of the Corporation were also relied by them before the Tribunal. There was no contest by the Corporation before the Tribunal and thus the claim of the workmen stood uncontroverted and therefore the same is accepted by the Tribunal. The net effect thereof is that, the Corporation is required to pay lakhs of rupees to each workman.

5.2 It is claimed on behalf of the petitioner Corporation that, the claim of the respondent workmen was untenable on merits, since the said issue, according to the Corporation, is covered in its favour by the judgment of this Court recorded on Special Civil Application No.11717 of 2014 and cognate matters dated

18.09.2014. The said judgment is subsequently confirmed by the decision of the Division Bench of this Court in Letters Patent Appeal No.1185 of 2014. It is so claimed by the Corporation and rightly so that, the judgment of this Court dated 18.09.2014 in Special Civil Application No.11717 of 2014 has been holding the field all throughout. In spite of this, the petitioner Corporation has suffered adverse awards, repeatedly, before the Industrial Tribunals at different places, leading to huge financial burden of crores of rupees.

5.3 A question may crop up, that when the issue is concluded in favour of the Corporation, why the Corporation should suffer adverse awards, and resultantly why public Exchequer should suffer avoidable burden of crores of rupees, at all. The answer given by the Corporation is plain and simple, that the judgment of this Court, which is in favour of the Corporation, is not put to the notice of the Industrial Tribunals. Written Statements are also not filed before the Tribunal, contesting the References. At least in this group of six petitions, that is the situation.

5.4 Even in the cases, where some show is made to put forward contest on behalf of the Corporation before the Tribunal, the final result is no different. This needs to be examined vis-a-vis the proceedings of Special Civil Application No.9427 of 2016, which is listed for hearing, along with these petitions today. The Industrial Tribunal at Nadiad passed an award on 30.06.2015 allowing similar Reference (IT) No. 25 of 2007. It is challenged by the Corporation before this Court by filing Special Civil Application No. 9427 of 2016, *inter alia* contending therein that, the issue was covered in favour of the Corporation by the decision of this Court dated 18.09.2014

recorded on Special Civil Application No. 11717 of 2014 and cognate matters and inspite of that the impugned award is passed by the Tribunal on 30.06.2015. Even copy of the said judgment of this Court is annexed as Annexure-B to the said petition before this Court. While considering the said petition, this Court had, on 20.06.2016, passed the following order.

"1. Challenge in this petition is made by the employer to the award passed by the Industrial Tribunal, Nadiad dated 30.06.2015 in Reference (I.T.) No.25 of 2007. By the Impugned award, the Tribunal has granted benefit of time scale to the respondent with retrospective effect, from the date as claimed by him, on completion of 180 days.

2. Mr. Rawal, learned advocate for the petitioner states that the said issue is concluded by this Court in the group of petitions being Special Civil Application No.11717 of 2014 and cognate matters vide judgment dated 18.09.2014. On being asked, when the issue, according to the petitioner is squarely covered in favour of the Corporation by the said decision, then why this was not put to the notice of the Tribunal. To this, it is replied that, the said decision is circulated to each division of the Corporation and learned advocates appearing on behalf of the Corporation, are duly instructed to put it to the notice of the concerned judicial forum.

From the impugned award, the same does not appear to have been put to the notice of the Tribunal. The circumstances in this regard may be explained to this Court.

3. List for further consideration on 04.07.2016."

5.5 From record it transpires that, the details - as asked for by this Court on 20.06.2016, have still not come on record. Since there is no assistance by the Corporation in that regard, this Court had called for the record and proceedings of the Reference (IT) No. 25 of 2007 decided by the Industrial Tribunal, Nadiad on 30.06.2015. It transpires therefrom that, the hearing had taken place before the Tribunal on 29.06.2015. The representative of the Corporation had also appeared before the Tribunal and had made submissions. Some decisions of the High Court were also pointed out, which according to the Tribunal were not helpful to the Corporation. The judgment of this Court in Special Civil Application No.11717 of 2014 dated 18.09.2014 was already there with the Corporation, and according to the Corporation, the issue which the Tribunal was examining, was squarely covered in favour of the Corporation by the said decision of this Court. However from record it transpires that, there was not even any reference by the Corporation to the said decision of this Court before the Tribunal. The consequential effect is that, few lakhs of rupees may be required to be paid to the concerned workman.

5.6 Though, this Court had taken cognizance of the said

mischief against the interest of the Corporation vide above noted order dated 20.06.2016, not only no explanation has still come on record from the petitioner Corporation, there is no improvement in the situation, on the contrary, the authorities of the petitioner Corporation have permitted the situation to further worsen against the Corporation. Number of awards are passed against the petitioner Corporation in the year 2015, 2016 and 2017 leading to huge financial liability. The present group of petitions is challenging few (six) of such awards.

5.7 Reference also needs to be made to the proceedings of few more matters filed by the petitioner Corporation before this Court, being Special Civil Application No. 1761 of 2017, Special Civil Application No. 14557 of 2015, Special Civil Application No. 18129 of 2016 and Special Civil Application No. 18130 of 2016. Those matters are listed for hearing before this Court today itself. Interim orders are passed by this Court in those matters, considering the facts of those cases. This Court has taken into consideration the contents of those orders.

5.8 During the course of hearing, attention of the Court is also invited to many other orders passed by this Court on the point at issue. It is noted that while considering this issue comprehensively, which ultimately culminated into the judgment dated 18.09.2014, number of matters were listed before this Court. Special Civil Application No.11717 of 2014 was treated to be a lead matter and judgment was recorded thereon. However, on the same date or around that period, number of orders / judgments were passed by this Court on the said line. Reference in this regard may be made to the orders passed by this Court in few of such petitions. They being

Special Civil Application No.1314 of 2014 dated 18.09.2014, Special Civil Application No.11964 of 2014 dated 18.09.2014, Special Civil Application No.11963 of 2014 dated 18.09.2014, Special Civil Application No.2794 of 2013 dated 18.09.2014 and Special Civil Application No.13309 of 2014 dated 26.09.2014. This Court has taken into consideration *all the papers connected with those petitions.*

6. On conjoint consideration of above facts, an unmistakable picture has emerged before this Court that, this leakage from the Public Exchequer, which is to the tune of crores of rupees, (which at present is estimated to be 150 crores of rupees) is less for negligence, more with the connivance. This Court can not be a mute spectator to the looting of the Public Exchequer like this. Appropriate steps need to be taken. At this stage, reference needs to be made to one more aspect. In spite of the facts and the circumstances as noted above, the tenor of the pleadings on behalf of the petitioner Corporation before this Court, in all the matters of this nature, uptill now, has been that, there was negligence on the part of the concerned employees and / or learned advocates appearing on behalf of the Corporation before the Tribunals. For this reason, it was inquired by this Court, as to how the higher authorities of the Corporation look at the issue. Is this a case of negligence, or connivance.

7. In response to the above, now the stand of the Corporation has come on record through an affidavit of Shri Vipul Vijoy, IPS, Executive Director (Vigilance), Gujarat State Road Transport Corporation, dated 27.07.2017. The relevant part of the said affidavit reads as under.

" I, Mr.Vipul Vijoy, IPS, serving as the Executive Director (Vigilance), Gujarat State Road Transport Corporation, do hereby solemnly affirm on oath and file this additional affidavit,

1. At the outset I say and submit that in pursuance to oral orders dated 19.07.2017 as well as 21.07.2017, passed by the Hon'ble Court in Special Civil Application Number 1312 of 2017 to 1317 of 2017, I have been apprised of complete history of the series of judicial orders passed by the Hon'ble Gujarat High Court (involving awards regarding grant of 180 days benefits), the huge number of references pending before various industrial tribunals and huge financial stakes involved in such matters (150 crores approx.). I have also gone through the ex-parte awards impugned in the above captioned group of petitions as well as such other awards where the Judicial Pronouncements rendered in favour of the Petitioner Corporation were not brought to the notice of the concerned Industrial Tribunals, in spite of series of communications from the central office which would result into huge financial loss to the Petitioner Corporation (Public Exchequer). The aforesaid gross negligent conduct on the part of erring officer can only be

justified / termed as connivance / dishonesty to achieve direct or indirect material gains.”

8. From the above, it transpires that the higher authorities of the Corporation are now seized of the matter and the mischief is being looked into with due seriousness, at least that message is attempted to be given to this Court.

9. Coming to the next question of taking / suggesting some preventive and corrective measures, the following factors need to be considered by this Court.

9.1 Certain measures are indicated by the Corporation itself in the affidavit of the Executive Director (Vigilance) referred above. Relevant part of the said affidavit, for this purpose, reads as under.

“ 1. At the outset I say and submit that The aforesaid gross negligent conduct on the part of erring officer can only be justified / termed as connivance / dishonesty to achieve direct or indirect material gains. Taking the most serious view of the aforesaid lapses, I assure this Hon’ble Court (as I am duty bound) that, stringent, prompt and definite administrative as well as disciplinary measures / actions are being ordered by me so that such lapses / misconduct may not occur at all and the same are narrated in detail in the later

paragraphs of the present affidavit.

I say and submit that as per the record of the petitioner corporation prima facie about 2714 (approx.) references (involving dispute regarding grant of 180 days benefits) are pending adjudication before the various Industrial Tribunals throughout the State of Gujarat. Out of the same, the written submissions / replies are filed on behalf of the Petitioner Corporation in about 2304 (Approx.) references. Out of the aforesaid 2304 references in 1349 references, the details about the Judicial Pronouncements by the Hon'ble High Court are mentioned, out of which in 954 references the copies of the Judicial Pronouncements are produced on record. However, in all pending references the same shall be produced on record on or before 20.08.2017 or on the very next date of hearing whichever is earlier. The aforesaid figures are being cross verified with the concerned advocates representing the petitioner corporation in various Industrial Tribunals. After prolonged deliberations with the senior officers, I have ordered following immediate as well as long term administrative / disciplinary, measures / directions to curb permanently the menace of dishonest and mala fide negligence / connivance by the employees of the petitioner corporation. I have also ordered strict and prompt compliance of the

same with a rider that any breach of the same shall be dealt with strictly and seriously.

2. (a) All the Divisional Controllers as well as the advocates are directed that written submissions / replies along with copies of all judicial pronouncements (starting from decision dated 18.09.2014 in Special Civil Application No. 11717 of 2014 upto decision dated 04.07.2017 in Letters Patent Appeal no. 1185) are filed in all the references (involving 180 days dispute in which statement of claims are filed and written submissions / replies are not filed) on or before 20.08.2017 and to report the details of each reference in which the above mentioned procedure is not followed on or before 27-08-2017. It is further ordered that any breach of aforesaid direction will be viewed seriously and prompt and stringent disciplinary action will be taken.

(b) Every Divisional Controller will personally supervise the strict compliance of aforesaid direction without delegating the same to subordinate staff.

(c) Every Divisional Controller will depute a responsible officer who will prepare daily report of court proceedings in such references and will assist the concerned advocate appearing before the Industrial

Tribunal by supplying the requisite documents of each concerned employee / workman. Any lapse on behalf of the concerned advocate in defending the Petitioner Corporation shall be brought to the notice of the Divisional Controller on the same day and the concerned Divisional Controller shall intimate the same to the Central Office within next three working days.

(d) Every final award / interim order passed by the concerned Industrial Tribunal along with the detailed legal opinion of the concerned advocate shall be communicated to the central office with complete file within a period of ten working days from its publication by the Divisional Controller.

(e) The concerned Divisional Controller will finish all the disciplinary proceedings / inquiries for which the decision has been taken by the Central office for misconduct relating to non-production of documents / non filing of reply / delay in intimating the awards, within a period of three months with due promptness and seriousness. The decisions shall be communicated immediately to the Central Office.

(f) It is observed that in Vadodara

and Rajkot Industrial Tribunal there is consistent lack of effective, efficient, able and prompt representation on behalf of the petitioner. The necessary remedial arrangements are ordered to see that the petitioner corporation is effectively represented. In Ahmedabad and Kalol atleast 9 references have been dismissed on merits. The Chief Labour Officer is directed to take necessary steps immediately to see that the petitioner corporation is represented effectively in all Industrial Tribunals more particularly Vadodara and Rajkot Industrial Tribunals. The appropriate decision shall be taken promptly and intimated for approval within a period of seven days.

(g) As already decided earlier by the then General Manager of the Petitioner Corporation, every award (if any) passed against the petitioner Corporation in 180 days policy matter shall be challenged irrespective of the date on which it is passed.

(h) The aforesaid directions will apply forthwith in all pending references involving 180 days pending matters. The aforesaid directions will also apply to all the references pending before all the Tribunals and Labour Courts after a period of two

months.

(i) In all pending conciliation proceedings as well as future conciliation proceedings involving 180 days policy matter, the copies of all the Judicial Pronouncements mentioned herein above shall be produced on the first returnable date.

(j) The Chief Labour Officer shall communicate all above directions in writing to all the Divisional Controllers as well as all the departments in Central office as well as Central Work Shop within a period of two working days and also communicate telephonically.

3. I say and submit that, I assure this Hon'ble Court that strict, prompt and effective compliance of the aforesaid directions in letter and spirit shall be supervised."

9.2 There is no reason to assume, at least at this stage that, the above referred course of action, as indicated by the Corporation would not be adhered to, by it. This can be taken into consideration by this Court, while moulding the final directions in this judgment. However few more aspects need to be considered by this Court. They are as under.

10.1 Whether there was inaction on the part of the

concerned employee, or there was less motivation on the part of the learned advocate(s) appearing for the petitioner Corporation before the Tribunal, or both, or there was some indication by the authorities from the Head Office of the Corporation to go slow in the matters - all these issues may be required to be appropriately gone into. The Executive Director (Vigilance), who has filed the affidavit before this Court on behalf of the Corporation, is a very senior police officer of IPS cadre, and therefore the scope of inquiry, at this stage may be left to him, however since the issues involved may touch administrative and financial matters of the Corporation, it would be proper, if he is assisted by the senior officers from the Accounts and the Administration Departments of the Corporation. It is informed to this Court by the learned advocate for the Corporation that the Accounts Department is headed by 'the Chief Accounts Officer and the Financial Adviser to the Corporation' who comes from the Gujarat Accounts Service Class-I (Senior Duty) and the Administration is headed by 'the General Manager (Administration)' who comes from the Gujarat Administrative Service Class-I. In the view of this Court, it would be proper, if the issues arising from this mischief / fraud, at least at this initial stage of inquiry, are looked into by the Joint Inquiry Committee of the three officers of the petitioner Corporation viz. (i) The Executive Director (Vigilance), (ii) The Chief Accounts Officer and the Financial Adviser, and (iii) The General Manager (Administration).

10.2 Though the scope of the inquiry, at this stage is left to the committee of the three officers of the Corporation as noted above, the said committee shall keep in view one very important aspect that, the stakes involved in the matter are

such (approximately 150 crores as per the say of the Corporation at this stage) that, *prima facie*, without tacit consent of some higher ups, any lower level employee / officer would not venture into this. If at all someone does, it can not continue for such a long period and in these many matters. It may therefore be first inquired, as to the link / trail reaches where. If during the course of inquiry it turns out that, the link / trail reaches the person(s) beyond the administrative control of the petitioner Corporation, that aspect may be put to the notice of this Court, and an option may be explored by this Court to assign the inquiry to some other agency / authority. If this Court finds that the inquiry is not properly done, then also other options may be explored by this Court.

10.3 At this stage, reference also needs to be made to the proceedings of Special Civil Application No.10959 of 2017. When this Court took cognizance of such instances, a show is attempted by the Corporation that needful is being done. Some lower level employees at one district (Vadodara) are charge-sheeted. Without expressing anything *qua* the merits of those Disciplinary Proceedings, it is observed that, the said exercise should not result in an exercise for shielding the real culprits, may be the higher ups. For this reason, it is noted above that, it may first be inquired, as to the link / trail reaches where. If it goes to higher ups, holding joint inquiry by the higher authorities of the Corporation (as the Disciplinary Authority) may also be explored by the Corporation. Further, if during the course of inquiry it turns out that, the link / trail reaches the person(s) beyond the administrative control of the petitioner Corporation, and / or that remedial / punitive measures should be other than some disciplinary proceedings, that aspect may

also be put to the notice of this Court. In that eventuality, an option may be explored by this Court to assign the inquiry, to some other agency / authority.

10.4 It would be required for the Corporation to submit an Action Taken Report to this Court. In the said report, it may be indicated, as to whether the actions, as contemplated by the Corporation, are actually taken by it or not, and what other actions are taken / contemplated by the Corporation. Since, the Executive Director (Vigilance) has indicated in his affidavit that needful will be done by the respective Divisions before 20.08.2017 and the same shall be reported by the Division Offices to the Central Office of the Corporation by 27.08.2017, the Action Taken Report may be submitted to this Court within two weeks thereafter. The said report should also contain, the outcome / progress of the inquiry, indicated above.

11. Apart from the actions that may be taken by the Corporation, some preventive measures may be taken by the State Authorities also. The References are made to the Industrial Tribunals / Labour Courts for adjudication by the Appropriate Government under the Industrial Disputes Act, 1947. The Assistant Commissioners of Labour are delegated with the powers by the State Government, as Appropriate Authority for making such References to the Industrial Tribunal. The said authority is also the Conciliation Officer under the provisions of the Industrial Disputes Act. Whenever demand / dispute is raised on behalf of the workmen, conciliation proceedings are undertaken by the Assistant Commissioner of Labour. For this purpose, notice would be issued by him to the employer – in the present case to the

Corporation. At that stage itself, it should be put to his notice that, what is agitated on behalf of the workmen can not be said to be 'an industrial dispute' at all, in view of the issue having been settled by the High Court. Further, in many cases, such disputes are raised after 10 / 15 / 20 years by the Union, which can not be said to be a live dispute (vide judgment of the Supreme Court of India in the case of Prabhakar versus Joint Director Sericulture Department reported in JT 2015 (9) SC 83). The stage of making Reference by the Assistant Commissioner of Labour (as the Appropriate Government) comes only after, the failure in the conciliation proceedings of 'an Industrial Dispute', which would be undertaken by the Assistant Commissioner of Labour only. If it is found by the said authority that no Reference needs to be made in that regard, the attempted mischief would stand terminated at that stage itself. Though it is stated on behalf of the Corporation that, proper defence would be put at that stage itself, additionally it can be provided that, even the Commissioner of Labour, Gujarat State may put the ill-design of the vested interest in this regard, to the notice of all the Assistant Commissioners of Labour in the State of Gujarat, dealing with this subject, with further instructions to take into consideration the binding judgments holding the field in that regard, while taking final decision in the matter.

12. During the course of hearing, few other aspects have also come to the notice / are put to the notice of this Court.

12.1 Many awards were passed by the Industrial Tribunals at different places in the State of Gujarat, against the Corporation in such type of References, with no assistance,

or half hearted assistance, on behalf of the Corporation, and thus those awards were in favour of the concerned workmen, leading to huge financial gain to the respective workmen. When those awards were challenged by the Corporation before this Court at the relevant time, those awards were being defended by the concerned workmen / Union before this Court, in some cases by even appearing on caveat. There can not be any dispute that, any citizen / litigant is well within his right to do so. However, coincidentally, those workmen were being represented before this Court, in many cases through either a very close family member of the author of the said award(s) or his colleague, from the same office. Since this is a matter of record, and it is noticed by this Court, it is noted here. With due restrain, further details are not elaborated in this judgment.

12.2 There is one more aspect, which needs a mention. With due restrain and maintaining dignity, it is indicated on behalf of the learned advocates for the Corporation appearing before this Court and before the Tribunals that, in many References of this nature, written statements are already filed, even the judgments of this Court are also placed on record of the Tribunal, however thereafter, the Tribunal finds less time, to take up those matters for final adjudication.

12.3 The Industrial Tribunals of the State of Gujarat need to be cautious that, keeping References of this nature pending, is exploited by the vested interests, by abusing the process of law, which has huge financial burden on the public exchequer. Due care also needs to be taken that, this ill-design by vested interests may not get facilitated, even unknowingly, by any

judicial forum.

12.4 With due restrain, it is noted that, for any judicial officer, above observations should be sufficient indication from this Court. If need be, these aspects may be further gone into, by appropriate authority, on administrative side also.

13. Considering the totality and for the reasons recorded above, the following order is passed.

13.1 These petitions are allowed.

13.2 The impugned awards passed by the Industrial Tribunal, Vadodara, the details of which are noted in Para-1 above, are quashed and set aside.

13.3 The Managing Director of the Gujarat State Road Transport Corporation and the Executive Director (Vigilance) of the said Corporation are directed that, the course of action indicated in the affidavit of the Executive Director (Vigilance) of the petitioner Corporation, as quoted in Para- 9.1 above shall be strictly adhered to.

13.4 The Commissioner of Labour, Gujarat State is directed to issue circular to all the Assistant Commissioners of Labour, in the State of Gujarat, comprehensively giving appropriate information / instructions to them to carefully deal with the issue (which is the subject matter of these petitions), keeping in view the binding precedents on the subject, so that the process of law is not abused by the vested interests any further. Since the Assistant Commissioners of Labour are the

statutory authorities under the provisions of the Industrial Disputes Act, 1947, it is clarified that the direction of this Court to the Commissioner of Labour, or in turn the Circular to be issued by the Commissioner of Labour to the Assistant Commissioners of Labour, is in no way intended to curtail the power and / or to interfere in the duty assigned to the said authority by the statute, in any manner and the said authority shall decide the issue before it, in accordance with law.

13.5 The President of the Industrial Tribunal is directed to circulate this judgment to all the Industrial Tribunals / Labour Courts of the Gujarat State, with further appropriate administrative and procedural instructions to see that, the process of law is not further abused by the parties and the looting of public money does not continue any further.

13.6 The Managing Director of the Gujarat State Road Transport Corporation and the Executive Director (Vigilance) of the said Corporation are directed that, the Action Taken Report shall be submitted to this Court not later than 11.09.2017. It is further directed that, while submitting the said report, the observations of this Court in this judgment, more particularly in Para-10.1 to 10.4, shall also be kept in view.

(PARESH UPADHYAY, J.)

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