IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 30TH DAY OF JUNE 2022/9TH ASHADHA, 1944

W.A.NO.736 OF 2022

AGAINST THE JUDGMENT DATED 9.5.2022 IN W.P(C).NO.12838/2021 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 2 & 3:

1 **BHARAT PETROLEUM CORPORATION**
BHARAT BHAVAN, 4 & 6 CURRIMBHOY ROAD,
BALLARD ESTATE, MUMBAI-400001, REPRESENTED
BY ITS CHAIRMAN AND MANAGING DIRECTOR.

2 **THE CHIEF GENERAL MANAGER (HR),**
BHARAT PETROLEUM CORPORATION LIMITED,
KOCHI REFINERY, AMBALAMUGAL - 682 302.

BY ADV.SRI.J.CAMA (SR.)
ADV.SRI.P.BENNY THOMAS
BY ADV.SRI.D.PREM KAMATH
BY ADV.SRI.TOM THOMAS (KAKKUZHIYIL)
BY ADV.SRI.ABEL TOM BENNY
BY ADV.SRI.KURIAN OOMMEN THERAKATH

RESPONDENTS/PETITIONERS 1 TO 8 & RESPONDENTS 1, 4 TO 8:

1 **SAJU A.R**
AGED 39 YEARS S/O.RAMAN, WORKING AS OPERATOR B.
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL - 682 302, RESIDING AT ANDALAMURI,
THEKUMBAGOM, THRIPUNITHURA, ERNAKULAM 682 301.

2 **JOMET K.JOY,**
AGED 35 YEARS S/O.JOY, WORKING AS GENERAL CRAFTSMEN
(ELECTRICAL) GRADE-VI, BHARAT PETROLEUM CORPORATION
LIMITED, KOCHI REFINERY, AMBALAMUGAL - 682 302,
PERMANENTLY RESIDING AT KANNANKARA (H), VALARA P.O.,
12TH MILE, IDUKKI - 685 561.

3 SUNILKUMAR S.,
AGED 42 YEARS S/O.SUKUMARAN, WORKING AS OPERATOR-B.
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL 682 302, RESIDING AT CHANGANIKODATH
SAPTHAGIRI, THOTTAKKATUKARA F.O., ALUVA 683 108.

4 ANWAR T.A.,
AGED 40 YEARS S/O.T.K.ABDUL REHMAN, OPERATOR GRADE B.
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL - 682 302, RESIDING AT 302, CONFIDENT
BELLATRIX III, MARKET ROAD, THRIPUNITHURA - 682 031.

5 THE COCHIN REFINERIES WORKERS ASSOCIATION,
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL 682 302. REPRESENTED BY ITS GENERAL
SECRETARY, AJI M.G., S/O.GANGADHARAN, AGED 45 YEARS,
WORKING AS OPERATOR A, MANUFACTURING DEPARTMENT,
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL - 682 302, RESIDING AT MANNAMPILLY HOUSE,
CHENGAL, KALADY P.O., ERNAKULAM - 683 574.

6 THE COCHIN REFINERIES EMPLOYEES ASSOCIATION,
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL 682 302, REPRESENTED BY ITS GENERAL
SECRETARY, PRAVEENKUMAR P., AGED 42 YEARS, S/O.
K.N.PONNAPPAN, SHIFT CHEMIST-A, Q.C.LAB, BHARAT
PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL -682302, RESIDING AT KODUVATHARA HOUSE,
NADAKKAVU P.O., UDAYAMPEROOR, ERNAKULAM 682 307.

7 REFINERY EMPLOYEES UNION,
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL - 682 302, REPRESENTED BY ITS GENERAL
SECRETARY, NAZEEMUDEEN S.K., S/O. KALEELUDEEN,
AGED 54 YEARS, SENIOR FITTER CRAFTSMAN, GRADE VII,
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL - 682 302, RESIDING AT OMPONDIL, MARKET
ROAD, THRIPUNITHURA - 682 301.

8 BPCL MAZDOOR SANGH,
BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY,
AMBALAMUGAL -682302, REPRESENTED BY ITS GENERAL
SECRETARY, BINIL I., S/O.PAVITHRAN I, AGED 43 YEARS,

OPERATOR-A, GRADE VII, BHARAT PETROLEUM CORPORATION LIMITED, KOCHI REFINERY, AMBALAMUGAL -682302, RESIDING AT ILLATH HOUSE, VARIKOLI P.O., PUTHENKURIZ, ERNAKULAM-682308.

9 UNION OF INDIA, MINISTRY OF PETROLEUM AND NATURAL GAS, SHASTRI BHAVAN, NEW DELHI - 110 001, REPRESENTED BY ITS SECRETARY.

10 SHIBULAL G., STAFF NO. 84268, BPCL KOCHI REFINERY, AMBALAMUGAL, KOCHI-682302.

11 ROCKERY VINOD J., STAFF NO. 84265, BPCL KOCHI REFINERY, AMBALAMUGAL, KOCHI-682302.

12 BIPIN VARGHESE, STAFF NO. 84353, BPCL KOCHI REFINERY, AMBALAMUGAL, KOCHI-682302.

13 ANCILY C.V., STAFF NO. 84562, BPCL KOCHI REFINERY, AMBALAMUGAL, KOCHI-682302.

14 ELDHO PHILIP, STAFF NO. 84485, BPCL KOCHI REFINERY, AMBALAMUGAL, KOCHI-682302.

BY ADV.SRI.ELVIN PETER P.J.
BY ADV.SRI.MANU S., ASST. SOLICITOR OF INDIA
BY ADV.SRI.P.RAMAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27.06.2022 ALONG WITH W.A.NO.737/2022, THE COURT ON 30.06.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 30TH DAY OF JUNE 2022/9TH ASHADHA, 1944

W.A.NO.737 OF 2022
AGAINST THE JUDGMENT DATED 9.5.2022 IN WP(C).NO.12917/2021 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 4 TO 6:

1 THE CHAIRMAN AND MANAGING DIRECTOR,
BHARAT PETROLEUM CORPORATION LIMITED,
BHARAT BHAVAN, BALLARD ESTATE, MUMBAI - 400 001.

2 THE CHIEF GENERAL MANAGER (HR)/IC,
BHARAT PETROLEUM CORPORATION LIMITED,
BPCL-KOCHI REFINERY, KOCHI - 682 302.

3 THE GENERAL MANAGER (COMP AND BEN),
BHARAT PETROLEUM CORPORATION LIMITED,
BHARAT BHAVAN, BALLARD ESTATE, MUMBAI - 400 001.

BY ADV.SRI.J.CAMA (SR.)
BY ADV.SRI.P.BENNY THOMAS
BY ADV.SRI.D.PREM KAMATH
BY ADV.SRI.TOM THOMAS (KAKKUZHIYIL)
BY ADV.SRI.ABEL TOM BENNY
BY ADV.SRI.KURIAN OOMMEN THERAKATH

RESPONDENTS/PETITIONERS 1 & 2 & RESPONDENTS 1 TO 3 & 7:

1 JOSEPH DENNIS T.P.,
AGED 36 YEARS, S/O.PETER T.B., STAFF NO.84365,
OPERATOR B, CDU 2 MANUFACTURING I, BPCL KOCHI
REFINERY, AMBALAMUGAL, PIN- 682 302, RESIDING AT

THATHAMANGALATH HOUSE, PUTHENKURISH P.O.,
MANANTHDAM, ERNAKULAM - 682 308.

2 SUREJ MOHAN RAJ,
AGED 42 YEARS, S/O. K.K. MOHANRAJ, STAFF NO.84546,
SHIFT CHEMIST, QC LAB (GRADE 6), BPCL KOCHI REFINERY,
AMBALAMUGAL, PIN - 682 302, RESIDING AT SAMRUDHI,
CHETRAPPILLY LANE, MUPPATHADAM, PIN 683 110.

3 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF HEAVY
INDUSTRIES AND PUBLIC ENTERPRISES, GOVERNMENT OF
INDIA, UDYOG BHAWAN, RAFI MARG, NEW DELHI - 110 001.

4 UNION OF INDIA,
THROUGH THE SECRETARY, MINISTRY OF PETROLEUM AND
NATURAL GAS, GOVERNMENT OF INDIA, A-WING, SHASTRI
BHAVAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI - 110 001.

5 THE DIRECTOR,
DEPARTMENT OF PUBLIC ENTERPRISES, PUBLIC ENTERPRISES
BHAVAN, BLOCK NO.14, CGO COMPLEX, LODHI ROAD, NEW
DELHI-110 005.

6 COCHIN REFINERIES EMPLOYEES ASSOCIATION,
REG. NO. 120/67, BPCL-KOCHI REFINERY, AMBALAMUGHAL,
KOCHI - 682 302, REPRESENTED BY ITS GENERAL SECRETARY
MR. PRAVEENKUMAR P.

BY ADV.SRI.C.S. AJITH PRAKASH
BY ADV.SRI.MANU S., ASST. SOLICITOR OF INDIA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27.06.2022 ALONG WITH W.A.NO.736/2022, THE COURT ON 30.06.2022 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

These writ appeals arise from a common judgment dated 09.05.2022 of a learned single judge in W.P.(C) Nos.12838 and 12917 of 2021, and raise the question as to the maintainability of a writ petition that seeks to enforce the terms of an industrial settlement.

THE FACTS IN BRIEF:

The writ petitions were preferred by some employees and recognised Trade Unions of the BPCL – Kochi Refinery, aggrieved by an Office Memorandum dated 10.06.2021 that, according to them, took away the benefit of a post retirement medical benefit scheme (PRMBS) granted generally to employees of the establishment, from those employees who had less than 15 years of service in the establishment as on 01.06.2021. It was their contention in the writ petitions that insofar as the excluded category of employees was earlier held entitled to the benefit of the PRMB

scheme, and the said fact was even recognised in the Long Term Settlement (LTS) entered into between the management and the employees on 30.05.2013 (to cover the period from 01.08.2008 to 31.07.2018), the impugned Office Memorandum had the effect of depriving the said category of employees from the benefit of the PRMB Scheme as recognised by an industrial settlement. This according to them was plainly illegal and liable to be declared so.

2. In the counter affidavit filed by the management (BPCL- Kochi Refinery), apart from raising a preliminary contention regarding the maintainability of a writ petition that sought the implementation of the terms of an industrial settlement, the management also gave details of the PRMB Scheme and the reasons that led them to issue the impugned Office Memorandum that confined the benefit of the Scheme to only some of the employees in the establishment. They also sought to establish that the terms of the settlement itself, and in particular clauses 42 and 50 thereof, allowed them to modify the Scheme in question based on the felt necessities of the time and in the interests of eventually ensuring that the Scheme would be viable in relation to the intended beneficiaries.

3. Taking note of the issue regarding maintainability urged by the management, the learned single judge who considered the writ petitions

at the admission stage proceeded to pass a detailed order dated 15.07.2021 in the writ petitions holding that the writ petitions were indeed maintainable. The reasons for holding so are discernible from paragraphs 13 and 14 of the said order which read as follows:

> "13. In the instant case, I notice that the contention with regard to the disinvestment by the Union Government in the respondent company is not disputed. The impugned circular categorically states that the contribution of the employer in the case of all employees who have not completed 15 years of service as on 01.06.2021 would be discontinued and the amounts shifted to the NPS forthwith. Apart from contending that what is to be decided is only with regard to interpretation of the clause providing for Post Retirement Medical Benefits, the essential contention raised by the writ petitioners that they are being deprived of the benefits, as promised in the Long Term Settlement, has not been satisfactorily answered in the counter affidavit. The fact that a fresh Long Term Settlement stands put up for consultation is also not disputed. In the circumstances, requiring the workmen to approach the Government and the Labour Court in the event of failure of conciliation would not amount to an efficacious alternate remedy for the redressal of the grievances raised by them, which is with regard to discontinuance of the Post Retirement Medical Benefits and more specifically the transfer of the contributions made on their behalf towards Post Retirement Medical Benefits Scheme from 1.1.2007 or their respective dates of joining, whichever is later to the National Pension Scheme.
>
> 14. Exts.P1 and P3 in W.P.(C).No.12838/2021 which are stated to be the Government guidelines referred to in the Long Term Settlement specifically provide that below Board level executives and non-unionised supervisors in Public Sector undertakings would be eligible for Post Retirement Medical Benefits. It is contended by the learned Senior Counsel appearing for the respondents that Ext.P3 provides that employees who have put in 15 years of service as on the date of their superannuation would be eligible for the benefits. The contention now appears to be that the provision in the impugned circular that the 15 years has to be completed on 1.6.2021 is a matter of interpretation of a Clause in the Long Term Settlement. I fail to see how that is so. The provision in Ext.P3, even if it is admitted that it was one of the Office Memoranda made applicable in terms of the Long Term Settlement, only provides that an employee

> to be eligible should have put in 15 years of service as on the date of his superannuation. By no stretch of imagination can it be contended that the requirement can be arbitrarily altered by the employer to a particular cut off date, that is 1.6.2021, which has apparently no basis or rationale at all. Further, the contention that the question whether the Long Term Settlement stands violated at all is a question of fact which can be decided only after taking evidence also cannot be accepted."

4. Although the management carried the interim order of the learned single judge in intra-court appeals before a Division Bench, the same were dismissed by a judgment dated 02.08.2021 mainly on the ground that the interim order was not an appealable order as understood by the larger bench decision of this Court[1]. The Division Bench however clarified that the observations and findings in the impugned interim orders would not influence the final disposal of the writ petitions. The matters were thereafter relegated to the single judge with a request to consider a final disposal of the writ petitions within a period of three months.

5. The writ petitions were thereafter finally heard by the learned single judge who proceeded to pass the judgment impugned in these appeals, allowing the writ petitions after holding them to be maintainable and quashing the impugned Office Memorandum dated 10.06.2021 to the extent it denied the benefit of clause 42 of the Memorandum of Settlement to the employees who had not completed 15 years as on 01.06.2021.

---

1 K.S.Das v. State of Kerala – 1992 (2) KLT 358 (LB)

THE ISSUE TO BE CONSIDERED:

The main issue to be considered in these appeals is the maintainability of a writ petition in cases where an employee is effectively seeking the enforcement of rights conferred under an industrial settlement. The above issue has to be considered in the backdrop of the fact that a co-ordinate bench of this Court has by a judgment dated 5th May, 2022 in W.A.Nos.718, 750 & 786 of 2021, allowed appeals preferred by the employees and trade unions of BPCL – Kochi Refinery, by setting aside the judgment, impugned in those appeals, that found writ petitions seeking enforcement of the terms of a settlement to be not maintainable under Article 226 of the Constitution.

THE ARGUMENTS OF THE LEARNED COUNSEL:

The arguments of the learned Senior Counsel, Sri. J. Cama, duly instructed by Sri. Benny P. Thomas, appearing for the appellants, briefly stated are as follows:

- The right to the benefit of the PRMB Scheme was one that the writ petitioners obtained through the terms of the Long Term settlement (LTS) that was entered into between the management and their employees. Although the period of validity of the current LTS had expired in 2018, the terms of the LTS continued to bind the parties till such time

as it was superceded by another LTS.

- Furnishing the reasons for issuing the impugned Office Memorandum dated 10.06.2021, it is submitted that the PRMB Scheme was a welfare measure introduced in BPCL in 1982 and extended to workmen in 1984. A trust was also formed in 2003 for administering the scheme. Prior to merger with BPCL, Kochi Refinery had a PRMB scheme for workmen, which continued post merger. Consequent upon signing the current LTS, the PRMB scheme of BPCL was extended to the workmen of KRL also. The total number of current beneficiaries including the dependents of retired employees is approximately 23500 and in the future, this number could go up to 40000. If the benefit of the Scheme is extended to employees with less than 15 years of service as on 01.06.2021, then there is a strong possibility of the fund getting exhausted and the very object of the Scheme being frustrated. It was therefore that the appellants were compelled to issue the impugned Office Memorandum so as to protect the interest of the larger section of employees who have completed more than 15 years of service.

- The LTS, through clauses 33 and 45 therein, enabled the management to issue suitable administrative orders from time to time in supersession of any clauses in all the previous LTS's, all the Welfare & Benefit Schemes and the Rules thereof. It was therefore permissible for the management to have unilaterally issued the impugned Office Memorandum that was aimed at keeping the PRMB Scheme viable for the benefit of a substantial majority of the workmen.

- Clause 50 of the LTS obliged the management as well as the employees to abide by the LTS in its true spirit. Further, in the event of

any dispute regarding implementation of the settlement or interpretation of any of its provisions, the parties were obliged under the settlement to sort out their differences through mutual discussions or failing that by resort to the machinery prescribed under the Industrial Disputes Act, 1947 [hereinafter referred to as the "ID Act"]. Inasmuch as it was the case of the management that clauses 33 and 45 of the LTS enabled them to issue the impugned Office Memorandum, and the right claimed by the employees was one that arose from the LTS, the employees were obliged to resort to the remedies provided under the ID Act for a redressal of their grievance.

- The writ petitions filed by the employees seeking the enforcement of their rights under the LTS were not maintainable since this was a case where both the right and the remedy were prescribed by the LTS, which in turn was entered into in accordance with the provisions of Section 18 of the ID Act. It is also pointed out that in the instant cases, the trade unions representing the employees of BPCL-Kochi Refinery had already initiated the dispute resolution process under the ID Act through a notice dated 15.06.2021 issued to the management (Ext.P7 in W.P(C).No.12838 of 2021), with a copy marked to the Conciliation Officer.

- Distinguishing the judgment of the co-ordinate bench of this Court in W.A.Nos.718, 750 & 786 of 2021, it is submitted that the bench in that judgment had decided the issue of maintainability of a writ petition by placing reliance on the decisions in *Indian Petrochemicals Corporation*[2] and *Chennai Port Trust*[3] that had no application to the facts

2 Indian Petrochemicals Corporation Ltd. & Ors. v. Shramik Sena & Ors. – (1999) 6 SCC 439

3 Chennai Port Trust v. The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors. – (2018) 6 SCC 202

in the instant cases as those cases were decided on undisputed facts and the issue of maintainability of writ petitions did not arise for consideration therein. It is also contended that the fundamental premise on which the judgment in the aforesaid writ appeals proceeded viz. that insofar as BPCL-Kochi Refinery was a "State" as envisaged under Article 12 of the Constitution, the legality of its actions affecting its employees could be examined by a writ court, is flawed since it is settled that even a Public Sector Undertaking (PSU) can enter into industrial settlements that are in the realm of private law, and when it does, the law requiring recourse to the forums under the ID Act for a resolution of disputes applies with equal force even to the employees of the PSU.

2. *Per Contra*, the arguments of Sri.Elvin Peter P.J, Sri. C.S. Ajith Prakash and Sri. P. Ramakrishnan, appearing for the respondents, briefly stated are as follows:

- It is well settled through a line of precedents[4] that once a writ petition has been entertained and determined on the merits of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of an alternate remedy.

- The very same settlement, as is the subject matter in the instant appeals, was the subject matter of challenge in three other writ petitions that were dismissed by a learned single judge as not maintainable. The appeals preferred against the common judgment in those writ petitions

4 L.K.Verma v. HMT Ltd & Anr. – (2006) 2 SCC 269; Ramachandran Master v. Jyothilal – 2010 (2) KLT 103 (DB); Janet Jeyapaul v. SRM University & Ors. – (2015) 16 SCC 530; UP Power Transmission Corporation Ltd. & anr. v. CG Power & Industrial Solutions Ltd. & Anr. – (2021) 6 SCC 15

was, however, allowed by a Division bench of this Court on the finding that the BPCL-Kochi Refinery being an establishment that answered to the description of 'State' under Article 12 of the Constitution, was expected to act fairly even in matters covered by an industrial settlement, and if it did not, then a writ petition would be maintainable at the instance of the employees and the trade unions representing them. A co-ordinate bench having taken the said view on maintainability, it was not open to this Court to take a contrary view.

- It is established by precedents[5] that a settlement is binding on all parties to it and can be modified only by another settlement entered into between the same parties. Inasmuch as the management in the instant cases had unilaterally varied the terms of the settlement, to the detriment of a class of employees under the settlement, there was no occasion for relegating the affected employees to the machinery under the ID Act for a redressal of their grievances. An arbitrary/discriminatory action on the part of the employer in the instant case could be challenged even in writ proceedings under Article 226 of the Constitution.

- As per the scheme of amalgamation drawn up at the time when Kochi Refineries Limited was amalgamated with the BPCL, the employees of Kochi Refineries Limited were deemed to be employees of BPCL. That they would be entitled to the same benefits as enjoyed by the BPCL employees subsequent to the amalgamation, subject to modifications if any by subsequent settlements, was recognised by this Court in its judgment dated 28.03.2012 in W.P(C).No.27774 of 2007 (Ext.R4(b) in

5 Life Insurance Corporation of India v. D.J.Bahadur & Ors. – AIR 1980 SC 2181; M/s Fabril Gasosa & Ors. v. Labur Commissioner & Ors. – 1997 KHC 757; Koshi Project Workers Association & Ors. v. State of Bihar & Ors. – 2001 (1) LLJ 1685; Tamil Nadu Cement Corporation Ltd. & Anr. v. N. Pandurangan & Ors. – 2005 (II) LLJ 620; Chennai Port Trust v. The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association & Ors. – (2018) 6 SCC 202

W.A.No.736 of 2022). It was therefore not open to the management to unilaterally alter the terms of the settlement to take away the benefits of the PRMB Scheme from a section of the employees.

- The appellants have not placed any material on record to establish that the changes proposed in the PRMB Scheme were necessitated on account of a possible exhaustion of the fund, consequent to inclusion of even those having less than 15 years service in the establishment as on 01.06.2021. In the absence of any material on record, the *bona fides* of the appellants action had not been established.

3. In reply to the said submissions on behalf of the respondents, the learned senior counsel for the appellants would further submit as follows:

- The respondents are wrong in assuming that the management was knowingly breaching the terms of the settlement. In fact, it is the definite case of the appellants that clause 45 of the settlement empowers them to modify the terms of the schemes covered by the settlement and hence they were acting in terms of the settlement and not in breach of it.

- While alteration of the terms of a Scheme covered by the settlement would attract the provisions of Section 9-A of the ID Act, inasmuch as the change is in respect of an allowance which is a condition of service expressly mentioned in the Fourth Schedule to the ID Act, no notice is required if the change is effected pursuant to the terms of the settlement. It is the case of the appellant that the change is effected pursuant to the power reserved in clause 45 of the settlement. Reference

is also made to the judgment[6] that states that only such changes as adversely affects the workmen require a notice. In the instant case, it is argued, the changes contemplated do not adversely affect the employees; rather it safeguards the majority of the employees from a denial of benefits in future.

- As regards the contention regarding non-production of material by the appellants, it is pointed out that the material to be produced by the management would be in the form of evidence before the adjudicatory forum that would go into the issue on merits. It was because the High Court is not a forum that would enter into disputed questions of fact that the material, based on which the impugned office memorandum was issued, was not brought before this court.

4. We have considered the submissions of the learned counsel on either side and perused the pleadings on record. We have also gone through the judgments cited by the learned counsel in support of their propositions. As a prelude to analysing the same and rendering our findings on the issues urged, we deem it apposite to examine the law on the subject.

WHAT THE LAW SAYS:

It is well settled that the power to issue writs under Article 226 of the Constitution can be exercised not only for the enforcement of fundamental rights but also for any other purpose. Although the exercise of the power is

6 Harmohinder Singh v. Kharga Canteen, Ambala Cantt. - (2001) 5 SCC 540

purely at the discretion of the High Court, the discretion is one that has to be informed by certain principles that have been recognised in our jurisprudence. Accordingly, the power would ordinarily be exercised when a litigant approaches the court alleging violation of fundamental rights or a breach of the principles of natural justice or that the proceedings impugned are wholly without jurisdiction or when the vires of legislation are challenged. In other cases, the High Court would relegate the litigant to the alternate remedy available under the statute in question or to the civil court, if the right infringed is a civil right under the common law. Where a statute that creates a right itself prescribes the remedy or procedure for enforcing the right or liability, the court generally insists that resort be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion[7].

2. It would be profitable at this juncture to take note of the statement of the law by Wilies J[8], which classified cases into three categories for the purpose of determining the forum that the litigant seeking enforcement of a liability must approach for the remedy. The categories were enumerated as follows:

---

7 Radha Krishan Industries v. State of Himachal Pradesh & Ors – (2021) 6 SCC 771

8 Wolverhampton New Waterworks Co. v. Hawkesford – (1859) 6 CB 336

> "There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy; there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it; with respect to that class it has always been held that the party must adopt the form of remedy given by the statute." (*Emphasis supplied*)

3. The above statement of the law found approval in our country through the decision of the Supreme Court in *Premier Automobiles*[9] where, while dealing with the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute, the law was summarised as follows:

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

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

3. If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to

---

9 The Premier Automobiles Limited v. Kamlekar Shantaram Wadke of Bombay & Ors. – (1976) 1 SCC 496

the suitor is to get an adjudication under the Act;

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

4. In the context of a right created under an Industrial settlement, it was held in that case that the right in favour of the members of the Union arose only under Section 18 of the Industrial Dispute Act and not under the general law of contract, and hence the remedy provided under the Act was the exclusive remedy. The aforesaid principles have been consistently followed in subsequent cases as well[10].

5. Thus, in labour matters, when a question arises as to whether this court should exercise its discretionary remedy under Article 226 of the Constitution, to entertain a writ petition filed by an employee alleging infringement of his rights by the employer, the preliminary enquiry by this court must be as regards the origin of the right that is alleged to be infringed. If that right is one that accrues to the employee under the civil law or common law, then it might be open to the High Court to entertain the writ petition notwithstanding that there is an alternate remedy available to

10 U.P. State Bridge Corporation Ltd & Ors v. U.P. Rajya Setu Nigam S Karamchari Sangh – (2004) 4 SCC 268; Hindustan Steel Works Construction Ltd & Ors. v. Hindustan Steel Works Construction Ltd . Employees Union – (2005) 6 SCC 725;

the employee concerned. If, however, the right alleged to be infringed is one that is created by the labour statute concerned, and the said statute also provides for a forum for its enforcement, then the rule of exclusivity mandates that the employee should be relegated to the forum prescribed by the legislature in its wisdom. To entertain a writ petition in such cases would tantamount to ignoring the statutory scheme.

6. Cases may and do arise when there is an overlap or intersection of rights such as when a right is conferred by the Constitution or the common law, and restated in the labour statute concerned. In such cases it might be possible for the High Court to intervene in cases where the right is alleged to have been infringed. The intervention in that event would be on the premise that the rule of exclusivity noticed above would not apply, and that it would be in the discretion of the employee to choose the forum that, according to him, would provide the most expedient and efficacious remedy. Such instances are common even when writ petitions are preferred by employees seeking the enforcement of the provisions of an industrial settlement and where the right alleged to be infringed traces its origin both to the Constitution/common law and to the memorandum of settlement itself. In such cases, a writ petition could be entertained subject to the court finding that circumstances exist for exercising its discretionary jurisdiction in favour of the employee. If, however, the right can be traced only to the

Settlement and not to the common law or the Constitution, the rule of exclusivity mandates that the writ court adopt a hands-off approach and relegate the employee to the remedy of raising an industrial dispute, and approaching the forums under the ID Act that are better equipped to adjudicate such matters. This is more so because, as noticed in *Premier Automobiles (supra)*, the right conferred solely by the settlement has to be seen as one conferred under Section 18 of the ID Act and not under the general law of contract.

OUR ANALYSIS AND FINDINGS:

On a consideration of the facts and circumstances of the case and the submissions made across the bar, we are of the view that, in the light of the legal position as enumerated above, these appeals must succeed. It cannot be in dispute that the right alleged to have been infringed or taken away in these cases is a right to a particular retirement benefit that was conferred on the employees under a Scheme that was recognised in the settlement. The right in question cannot trace its origin to either the general law of the land or to the Constitution. That being the case, the settled legal position in this regard ie. The rule of exclusivity, leads us to hold that the forum appropriate to adjudicate upon the issue is solely the one provided under the ID Act. In this regard, we find that by issuing the letter dated 15.06.2021 to the management, with a copy marked to the Conciliation Officer, the trade

unions representing the employees of BPCL-Kochi Refinery had already initiated the machinery under the ID Act for redressing their grievance.

2. The question then arises as to whether in such cases it is the employees or the management that must be relegated to the remedy before the said forum. It must be noted that ordinarily it is the employee who resorts to the machinery provided under the ID Act when faced with an action of the management that breaches his right under a settlement. We cannot however discount the possibility of managements acting arbitrarily or unconscionably while taking away rights granted to their employees under a settlement and forcing the employees to resort to their remedies under the Act. We feel that in such cases, the effect of the management's action on the employees, and the extent of prejudice caused to their interests, must inform the decision of the court. Where, for instance, the action of the management results in rendering ineffective any contributions made by the employees till then, towards a beneficial scheme, by removing them from the coverage of the scheme, then it would be in the interests of fairness to insist that the management resorts to the machinery under the ID Act before implementing their proposal to withdraw the benefits of the scheme from a class of employees. This would be more so when the management is an establishment that answers to the description of 'State' under Article 12 of the Constitution. Fairness in State action being an

integral aspect of the rule of law, and therefore a basic feature of our Constitution, the State cannot act unfairly even when operating in the realm of private law.

3. That being said, in the instant case we find that the modification proposed by the management does not entail any immediate prejudice to the interests of the employees as the right claimed by the employees are obtainable only on their retirement. The PRMB scheme does not envisage any contribution from the employees, and the contributions made in relation to each employee is solely by the management. Under such circumstances, and more so since we find that the employees have already resorted to the machinery under the Act through their communication dated 15.06.2021 issued to the management, with a copy marked to the conciliation officer, we feel that the interests of justice could be met by relegating the writ petitioners to pursue the said remedy, while simultaneously issuing directions to the authorities concerned to expedite the proceedings under the ID Act. We are also of the view that considering the nature of the dispute between the parties viz. the propriety of limiting the coverage of the PRMB Scheme, the Industrial Tribunal would be the better forum for adjudication of the same. This is because, as noted by a Constitution bench of the Supreme Court in *Bharat Bank* [11]

11 Bharat Bank Ltd v. Employees – AIR 1950 SC 188 @ pp.190-91 & 209, paras 9 & 61

> "In settling disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party, which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace." (*emphasis supplied*)

The said observations in *Bharat Bank (supra*) have since been noticed by the Supreme Court in a case involving the LIC and its employees[12].

4. Before parting with these appeals, we must also deal with the arguments of the learned counsel for the writ petitioners that the issue of maintainability of the writ petitions has already been decided by a co-ordinate bench of this Court in relation to the very same settlement entered into between the employees and management of BPCL-Kochi Refinery. While it is no doubt true that the issues urged by the employees in those writ petitions pertained to the same LTS as the one we are concerned with in these appeals, the rights affected were not the same. In the appeals dealt with by the co-ordinate bench, the rights breached were those that flowed from clause 12 of the LTS dealing with dearness allowance and the breach alleged was in the context of an Office Memorandum that envisaged a withholding of additional instalments of dearness allowance payable to the

12 Tamil Nadu Terminated Full Time Temporary LIC Employees Association v. Life Insurance Corporation of India & Ors – (2015) 9 SCC 62

employees. Arguably, the said right to dearness allowance could trace its origin not only to the terms of the LTS but also, perhaps, to the provisions of the Constitution since the dearness allowance is recognised as an integral component of the real wages payable to the employee. In the appeals before us, however, we are concerned with a right that flowed from the PRMB scheme that was recognised under the LTS, and the said right being one traceable solely to the LTS, the exclusivity rule with regard to remedies warrants a different approach. That apart, there was nothing in the appeals before the co-ordinate bench that showed that the employees had already resorted to the machinery under the ID Act while simultaneously approaching this court under Article 226 of the Constitution. The co-ordinate bench also found that on the facts of the appeals before it, the matter was covered by judgments of the Supreme Court. The above facts, we believe are sufficient for us to distinguish the appeals dealt with by the co-ordinate bench from the instant appeals, and justification enough for us to take a different view on the issue of maintainability of the writ petitions.

5. We are also of the view that merely because the learned single judge held the writ petitions to be maintainable, and went into the merits of the proposed exclusion of a section of employees from the benefit of the PRMB Scheme, we are not precluded from examining the correctness of the finding of the learned single judge on the issue of maintainability of the writ

petitions. The decisions relied upon by the learned counsel for the respondents themselves clearly reveal that in rare cases we can. In our view, the instant are cases where the learned single judge wholly overlooked the exclusivity rule in the matter of available remedies, and found the writ petitions maintainable on an erroneous appreciation of the law.

6. The upshot of the above discussions is that we set aside the impugned judgment of the learned single judge, vacate the findings therein on merits and allow these writ appeals by dismissing the writ petitions as not maintainable. Taking note of the urgency projected by the writ petitioners, and in view of the imminent change of character of the corporation, as admitted by the appellants in their counter affidavits to the writ petitions, we direct that conciliation proceedings shall be initiated forthwith by the authorities under the ID Act, based on the notice dated 15.06.2021 issued by the trade unions representing the employees to the management (Ext.P7 in W.P(C).No.12838 of 2021), with a copy marked to the conciliation officer. In the event of a failure of the conciliation efforts, the matter shall be referred to the appropriate government without any delay so that an adjudication of the industrial dispute can commence before the Industrial Tribunal concerned within an outer time limit of four months from the date of receipt of a copy of this judgment. We make it clear that we have not expressed our views on the merits of the dispute and all

contentions in this regard are left open.

7. To allay the fear and apprehension of the respondents regarding an unilateral diversion of funds by the appellants pending an adjudication of the industrial dispute, we record the undertaking given on behalf of the appellants, by the learned senior counsel, that if the appellants do not ultimately succeed in the adjudication of the industrial dispute, they will promptly replenish the fund with the required contribution in respect of the affected employees.

The writ appeals are allowed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp/