that this had been done to avoid getting into litigation as the levy of such tax was ultimately withdrawn in the year 1988. Not even a single instance has been brought to my notice in which the levy of tax on salt sold in sealed plastic bags may have been held to be illegal.

(12) I, therefore, find no merit in the writ petition which is accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.

R.N.R.

Before S.S. Nijjar, J.

KAMTA PRASAD & ANOTHER—*Petitioners*

versus

PRESIDING OFFICER, LABOUR COURT, GURGAON AND ANOTHER—*Respondents*

C.W.P. No. 14675 of 1999

16th October, 2001

Industrial Disputes Act, 1947-S. 33-C(2)-Industrial Employment (Standing Orders) Act, 1946-Ss. 10-A and 13-A-Certified Standing Orders-Cls.30(d) & (g)-Suspension-Subsistence allowance—Denial of—Petitioners filing application under section 33-C(2)—Certified Standing Orders require a suspended employee to mark the presence in the office on every working day to be entitled for subsistence allowance—S.10-A of the 1946 Act entitles a workman to subsistence allowance on his suspension if the delay in completion of the disciplinary proceedings is not directly attributable to the conduct of the workman—No other condition provided in S. 10-A for receipt of subsistence allowance—Management cannot deny the benefit of subsistence allowance by laying down any condition in the Standing Orders—Standing Orders 30(d) & (g) not in conformity with S. 10-A, thus, provisions of S. 10-A would prevail over the Standing Orders—Dispute of subsistence allowance also referable under section 10-A(2) & 13-A—Merely because the application has been styled as an application under section 33-C(2) would not change the nature of the dispute—Labour Court failing to exercise its jurisdiction and it

had power to interpret the Certified Standing Orders under section 10-A(2) read with S. 13-A—Writ allowed while remanding the matter to the Labour Court for computing the subsistance allowance payable to the petitioners.

Held, that a perusal of Section 10-A of the Industrial Employment (Standing Orders) Act, 1946, clearly shows that on suspension, the workman is entitled to subsistence allowance at the rate of 50% of the wages which the workman was entitled to immediately preceding the date of suspension for the first 90 days of suspension. Thereafter the workman is entitled to subsistence allowance at the rate of 75% such wages for the remaining period of suspension. The increased 75% of the suspension allowance has to be paid to the workman, if the delay in completion of disciplinary proceedings is not directly attributable to the conduct of the workman. Nothing has been brought on record to establish that the petitioners have in any manner been responsible for delay in the completion of disciplinary proceedings. Under the Act, there is no other condition which is to be satisfied by the workman for receipt of the subsistence allowance. This right is, however, sought to be cut down under Standing Orders 30(d) and (g) and the proviso thereto. In the face of Section 10-A the condition laid down in the aforesaid Standing Orders 30(d) with regard to the attendance cannot be relied upon by the Management for denying the benefit of subsistence allowance to the petitioners. A benefit granted to the workman under the Act cannot be permitted to tbe curtailed by the Model Standing Orders or the Certified Standing Orders..

(Para 11)

Further held, that the dispute had been referred to the Labour Court at the instance of the petitioners with regard to the legality and interpretation of the Standing Orders. The Labour Court, however, dismissed the application taking a very narrow view that the jurisdiction of the Labour Court under Section 33-C(2) is very limited. This kind of approach by the Labour Court is not in consonance with the spirit and intendment of the beneficent labour legislation contained in various Acts. Keeping in view the nature of the claim, the payment of subsistence allowance, the Labour Court ought to have examined the dispute to avoid the adverse pecuniary consequences befalling the applicants. Merely because the application has been styled as an

application under section 33-C(2) would not change the nature of the dispute raised by the petitioner. The Labour Court had the power to interpret the Certified Standing Orders under section 10-A(2) read with Section 13-A of the 1946 Act. The Labour Court failed to exercise its jurisdiction. Thus, the impugned order passed by the Labour Court dated 23rd July, 1999 is hereby quashed. The matter is remanded to the Labour Court with a direction to compute the subsistence allowance payable to the petitioners in terms of S. 10-A of the 1946 Act by ignoring the requirement of attendance stipulatd in proviso to Certified Standing Orders 30(d) and (g).

(Paras 17 & 18)

R.S. Mittal Senior Advocate with Sudhir Mittal, Advocate *for the petitioners.*

Arun Jain Advocate *for the Respondent No. 2*

JUDGMENT

S.S.Nijjar. J

(1) In this Writ Petition under Ariticles 226/227 of the Constitution of India, the petitioners seek the issuance of a writ in the nature of Certiorari quashing the award dated 23rd July, 1999 passed by the Presiding Officer, Labour Court, Gurgaon (hereinafter referred to as the Labour Court) holding that the petitioners are not entitled to any relief under Section 33-C(3) of the Industrial Disputes Act and dismissing the application.

(2) The petitioners are both employed with M/s Amtek Auto Limited, Rozka Meo Industrial Area, Sohna, District Gurgaon (hereinafter referred to as the Management). Petitioner No. 1 joined the Management as a permanent workman on 23rd November, 1989. Petitioner No. 2 joined as permanent workman on 16th June, 1990. On 9th October, 1996 petitioner No. 1 was working as a Turner and drawing monthly wages of Rs. 3701. Petitioner No. 2 was working as an Operator and drawing monthly wages of Rs. 3153.00. Both the petitioners were suspended from service on 9th October, 1996.On 10th October 1996, a charge-sheet was served on the petitioners indicating that a regular departmental enquiry would be conducted against

them. The enquiry proceedings commenced on 12th March 1997. the suspension orders were served on the petitioners on 25th October 1996. Departmental enquiry, according to the respondent-management, concluded in March 1999. The report was received by the Management on 9th November 2000. The Enquiry Officer has found the petitioners guilty of the charges. This report has not been served on the petitioners till today. Furthermore, no action has been taken on the enquiry report by the disciplinary authority. During the suspension period, the petitioners were entitled to be paid subsistence allowance at the rate of 50 per cent of the wages for the first three months, and at the rate of 75 per cent of the wages for the rest of the period of the suspension. The Management has not paid any amount to the petitioners. Consequently, petitioners were compelled to file an application in the Labour Court under Section 33-C (2) of the Industrial Disputes Act for computing the amount due on account of subsistence allowance from October, 1996 to December, 1996. The Management filed the written statement before the Labour Court, denying its liability to pay any amount. The Management claimed that the petitioners had failed to mark their presence in the Security Office as required by the Certified Standing Orders and were, therefore, not entitled for any subsistence allowance. On 22nd October, 1997, the Labour Court framed the following two issues :—

> "1. Whether the applicant is entitled to the benefits/money as mentioned in the application ?
>
> 2. Relief."

(3) Petitioner No. 1 appeared in support of the case of the applicant. The management examined two witnesses, MWI-Ranbir Singh and MW-2 Rampal, Security Supervisor.

(4) It is stated by MW-1 on behalf of the petitioners that they used to go to the factory, but they were not allowed to mark their attendance. The Management had asked them to resign and they had been told that their attendance would not be marked. MW-1 Ranbir Singh stated that the applicants had refused to accept the suspension order and the charge-sheets. These were later given to them before the Labour-Cum-Conciliation Officer, Gurgaon. He also stated that

two other employees who were also placed under suspension, namely A.K. Mittal and R.K. Sharma had been regularly coming to the factory for making their attendance in accordance with the Certified Standing Orders. These workers had been paid the subsistance allowance.

(5) Before the Labour Court, it was argued that the petitioners could not be compelled to attend the office during the period of suspension. It was also argued that the subsistance allowance could not be withheld on the failure of the petitioners to mark the attendance. On the other hand, the Management had argued that it was obligatory for the petitioners to comply with the Certified Standing Orders. They had to report for half an hour on every working day at the Security gate at 10.00 a.m. Since the petitioners failed to report in terms of Clause 30(d) of th Certified Standing Orders, the petitioners are not entitled to be paid any subsistance allowance. After taking into consideration the aforesaid stand taken by the parties, the Labour Court has dismissed the application on the ground that under Section 33-C(2) of the Industrial Disputes Act, the Labour Court cannot decide disputed rights of the parties. These can be decided only by way of reference under Section 10 of the Industrial Disputes Act. It has been held that an existing right is a right which is either recognised by the employer or is adjudicated upon by a competent court.

(6) Mr. Mittal learned Sr. counsel submitted that even if it is assumed that the workman has not marked the attendance, the petitioners could not have been denied the payment of suspension allowance. According to the learned Sr. counsel, Section 10A of the Industrial Employment (Standing orders) Act, 1946 (hereinafter referred to as "the Act") would prevail over the Certified Standing Order. Mr Mittal has argud that the Labour Court has failed to exercise its jurisdiction in not applying its mind to this patentaly obvious proposition of law. It was within the jurisdiction of the Labour Court to examine as to whether the Standing orders are in conformity with the provisions of the Act. Mr. Mittal furter submitted that the only motive of the Management is to starve the workmen.

(7) Mr. Jain, on the other hand, submitted that the payment has been denied to the applicants in accordance with the Certified Standing Orders. The Standing Orders have been certified under Section 4(b) of the Act. He her submitted that the provision contained

in Clause 30(d) is only regulatory in nature. Therefore, it is not inconsistent with Section 10A of the Act. The Standing Orders having been duly certified under Section 4(b) of the Act, it cannot , now be argud that Standing Order 30 (d) & (g) are contrary to the provisions of the Act. In any event, the Labour Court will have no jurisdiction to decide these complicated questions of law under Section 33-C (2) of the Act. The remedy of the petitioners lay in seeking a reference by the appropriate government under Section 10 of the Industrial Disputes Act. Therefore, the Labour Court has rightly declined the application on merits.

(8) I have considered the submissions made by the learned counsel.

(9) A perusal of the award shows that the Labour Court has refused to go into the questions of fact and law, by holding that this would be in excess of the jurisdiction conferred on the Labour Court under Section 33(c)(2) of the Industrial Disputes Act. I am of the considered opinion that the Labour Court has failed to exercise its jurisdiction while deciding the application of the petitioners. It is a settled proposition of law that the Labour Court would not become powerless to grant any relief to the workman on the management raising even the slightest dispute to the entitlement of the workman to the benefit claimed under Section 33 (c)(2) of the Industrial Disputes Act. Considering the scope and ambit of the jurisdiction of the Labour Court under Section 33(c)(2) of the Industrial Disputes Act, a Constitution Bench of the Supreme Court in the case of *The Central Bank of India* versus *P.S. Rajagopalan etc (1)* has held as follows :—

> "16....In our opinion, a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money, the Labour Court inevitgably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money ; but if the

(1) AIR 1964 SC 743

said right is disputed, the labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the labour Court by sub-section (2) As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or emloying such means, as are essentially necessary to its execution". We must accordingly hold that S. 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers."

(10) That being the position of law, the Labour Court ought to have decided the question as to whether the applicants could have been denied the subsistence allowance on the ground that they have failed to mark their presence at the Security Gate. This was not such a dispute which needed any complicated adjudication. The Labour Court had to decide as to whether Section 10A of the Act would prevail over the provisions of the Certified Standing Orders. A perusal of the Act shows that the Certified Standing Orders have to be made in conformity with the Model Standing Orders which have been set out in terms of Section 15(2)(b). The Standing Orders made by the employer have to be certified under Section 4 of the Act. While certifying the standing orders, the Certifying Authority has to satisfy itself that the Standing Orders contain provisions for every matter set out in the Schedule which is applicable to the Industrial establishments. The Standing Orders have to be in conformity with the provisions of the Act. It is the mandatory function of the Certifying Officer or the Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders. Upon certification, the Standing Orders bind the Management and the workman. Nevertheless the Model Standing Order or the Certified Standing Orders remain law made under the Act. In the present case, the claim of the petitioners is disputed by the respondent-management on the ground that the petitioners have failed to comply with the proviso to Standing Orders 30(d) and (g). The provisions with regard to the grant of subsistence allowance during the period of suspension is made in Section 10-A of the Act. For facility of reference Section 10-A of the Act and Standing Order 30(d) and (g) are reproduced as under :—

"10-A. Payment of subsistence allowance :—

(1) Where any workman is suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance—

(a) at the rate of fity per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947, within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this Section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this Section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State."

"3-(d).—A workman under suspension shall report for half an hour on every working day at the Security Gate at 10.00 a.m. to receive any communication which may be tendered to him on behalf of the Manager, and get his attendance marked.

30(g).—A workman under suspension will be paid subsistence allowance at the rate of half his average pay calculated in accordance with the provisions of Section 2(aaa) of the Industrial Disputes Act, 1947.

Provided that for the days the suspended workman failed to report in terms of sub-clause (d), or leaves the Station without leave or is allowed leave without subsistence allowance in terms of sub-clause (g), he shall not be

> paid any subsistence allowance at all for those days. Provided further that if the enquiry proceedings go beyond a period of 90 days for which the suspended workman has been paid subsistence allowance, at the rate of 50% of the average pay, he shall thereafter be paid subsistence allowance at the rate of 3/4th of his average pay calculated in the like manner."

(11) A perusal of Section 10A of the Act clearly shows that on suspension, the workman is entitled to subsistence allowance at the rate of 50 per cent of the wages which the workman was entitled to immediately preceding the date of suspension for the first 90 days of suspension. Thereafter, the workman is entitled to subsistence allowance at the rate of 75 per cent of such wages for the remaining period of suspension. The increased 75 per cent of the suspension allowance has to be paid to the workman, if the delay in completion of disciplinary proceedings is not directly attributable to the conduct of the workman. Nothing has been brought on record in the present proceedings to establish that the petitioners have in any manner been responsible for delay in the completion of disciplinary proceedings. Under the Act, there is no other condition which is to be satisfied by the workman for receipt of the suspension allowance. This right is, however, sought to oe cut down under Standing Orders 30(d) and (g) and the proviso thereto. In my considered opinion, in the face of Section 10A of the Act, the condition laid down in aforesaid Standing Orders 30(d) with regard to the attendance cannot be relied upon by the Management for denying the benefit of subsistence allowance to the petitioners. A benefit granted to the workman under the Act cannot be permitted to be curtailed by the Model Standing Orders or the Certified Standing Orders. A sumilar view has been taken by a Division Bench of the Patna High Court in the case of *The Secretary, Bihar State Electric Supply Workers Union and another* versus *The Presiding Officer, Industrial Tribunal and others, (2)* has observed as under :—

> "20. Section 10-A of the Act has been newly inserted by Act 18 of 1982. From reading of the provision as a whole, it appears that this provision takes care of the employees who are put under suspension. The rate at which

(2) 1995 Lab. I.C. 2752

> subsistence allowance is to be paid has also been prescribed under this Section itself. In such circumstances, in my opinion, the amendment of Clause 30(d) cannot sustain and as such this should be deleted from the Standing Order."

(12) A bare perusal of Standing Orders 30(d), (g) and the proviso shows that they are not in conformity with Section 10-A of the Act. Therefore, the provisions of Section 10-A would prevail over the Standing Orders 30(d) and (g) and the proviso. In this view of mine, I am fortified by a Division Bench Judgment of the Bombay High Court in the case of *May and Baker Ltd.* versus *Shri Kishore Jaikishandas Icchaporia and others (3).* In this case, the Division Bench was dealing with the situation where a suspended employee had been paid the subsistence allowance in accordance with the Certified Standing Orders. There was no dispute that the Certified Standing Orders are in conformity with Section 10-A of the Act. The employee, however, in his application under Section 13-A before the Labour Court had claimed subsistence allowance under the provisions of the Model Standing Orders. This plea was raised on the basis of sub-section (3) of Section 10-A. It was argued that the provision with regard to subsistence allowance was more beneficial under the Model Standing Orders than the provision under Section 10-A. Model Standing Orders being "other law" as specified in sub-section (3) of Section 10-A of the Act, the suspended employee therein ought to be paid subsistence allowance under the Model Standing Orders. After considering the submissions made, the Division Bench held that the Model Standing Orders are applicable only until such times as amendment thereto has been proposed and certified. Once the amendment has been certified, the Certified Standing Orders operate. thereafter, the Division Bench observed as follows :—

> "9. There is no dispute that the payment that was made by the appellant to the 1st respondent was in accord not only with the provisions of the Certified Standing Orders applicable to their industrial establishment but also with those of Section 10-A. It was urged by Mrs. D'Souza learned counsel for the 1st respondent, that the 1st respondent was entitled to subsistence allowance as

(3) 1991 II CLR 173

provided by the Model Standing Orders by reasons of sub-sections (3) of Section 10-A because the Model Standing Orders were "other law" within the meaning of sub-section (3). We find the argument difficult to accept. The Model Standing Order, as also Certified Standing Orders, are law no doubt, but they are law made under the provisions of the Act. They are not provisions "under any other law". In our view, therefore, the provisions of Section 10-A supervene in relation to the payment of subsistence allowance over the provisions of the Model Standing Orders."

(13) A perusal of the aforesaid ratio clearly shows that Model Standing Orders as also the Certified Standing Orders, are law made under the provisions of the Act. Therefore, the provisions of Section 10-A supervene in relation to the payment of subsistence allowance over the provisions of the Model Standing Orders/Certified Standing Orders. The aforesaid decision has been followed by the Single judge (F.I. Rebello, J.) in the case of *S.M. Puthran* versus *Rallies India Ltd. and another (4).* After referring to the aforesaid ratio of the Division Bench, the Single Judge observed as follows :—

"...........It is inconceivable that the Legislature knowing that they have framed Model Standing Orders and/or have made provisions for Certified Standing Orders would yet provide for Section 10-A and make the provisions of the Certified Standing Orders or Model Standing Orders under the Act override the provisions of Section 10-A itself. Even in the judgments of Bank of India Ltd. the Division Bench therein has followed the judgment of the learned Single Judge mentioned in the said judgment which took the view that when the Standing Orders are in conflict with Section 10-A, then Section 10-A must prevail over the Standing Orders. The same has been reiterated by the Division Bench of the Court in *May and Baker Ltd.* (supra)."

(14) That being so, the petitioners would be entitled to receive the subsistence allowance as calculated in terms of Section 10-A. They

(4) 1998 II CLR 270

cannot be compelled to mark their presence as required under Standing Order 30(d) and the proviso thereto.

(15) The aforesaid claim of the petitioners cannot be permitted to be defeated on technical objections. It is true that a remedy was open to the petitioners to raise a dispute under section 10A (2) of the Act. The aforesaid sub-section is as under :—

> 10A. (2)—If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947, within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties."

(16) A perusal of the aforesaid provision shows that the dispute would have to be referred to the same Labour Court which has decided the application under section 33-C(2) of the Act. The petitioners could also have availed of remedy under section 13A of the Act. The aforesaid Section is as under :—

> 13A. Interpretation etc. of standing orders :—If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman (or a trade union or other representative body of the workmen) may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

(17) Here again, the Labour Court constituted under the Industrial Disputes Act, 1947 would have to decide the dispute. In both the provisions i.e. Section 10(A) (2) and Section 13A the dispute is referable to the Labour Court at the instance of any employer or workman. Therefore, reference under these Sections cannot be equated with the reference made by the appropriate Government under Section 10 of the Industrial Disputes Act. These remedies are in addition to remedies under the Industrial Disputes Act, 1946. Even the procedure for seeking a reference to the Labour Court, is different. Instead of the appropriate Government, as provided under the Industrial Disputes Act, under Section 10A (2) or Section 13-A of the Act, the reference would have to be made by way of application by the workman or the employer. Parliament has deliberately given a dual remedy to the workman both under this Act and the Industrial Disputes Act. A perusal of the application made by the petitioners and the reply filed by the Management before the Labour Court clearly shows that a dispute had been referred to the Labour Court at the instance of the petitioners with regard to the legality and interpretation of the Standing Orders. The Labour Court, however, dismissed the application taking a very narrow view that the jurisdiction of the Labour Court under section 33-C(2) is very limited. This kind of approach by the Labour Court is not in consonance with the spirit and intendment of the beneficent labour legislation contained in various Acts. Keeping in view the nature of the claim, the payment of subsistence allowance, the Labour Court ought to have examined the dispute to avoid the adverse pecuniary consequences befalling the applicants. Merely because the application has been styled as an application under section 33-C(2) would not change the nature of the dispute raised by the petitioners. The Labour Court had the power to interpret the Certified Standing Orders under section 10-A (2) read with Section 13-A of the Act. In the facts and circumstances of the present case, the Labour Court failed to exercise its jurisdiction. The Supreme Court in the case of *Central Bank of India Limited (supra)* has clearly held that in some cases, the question about computing the beneft in terms of money may have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination. This proposition has been examined by Division

Bench of this Court in the case of *Amar Kaur* versus *State of Punjab and others (5)*. Therein it was argued that aforesaid ratio of the Supreme Court in the Central Bank's case is in conflict with the subsequent judgment of the Supreme Court in the case of *Central Inland Water Transport Corporation Ltd.*v. *The workmen & another (6)*. The Division Bench observed as under :—

> "5..............However, a close analysis of the latter judgment would show that in essence, there is no conflict of opinion whatsoever betwixt the two. Indeed, the latter judgment expressly noticed the *Central Bank of India Limited's case (supra)* in paras 14, 15 and 21 of the report. Far from expressing even a hint of dissent therefrom the learned Judges applied the earlier views after quoting therefrom. I am, therefore, wholly unable to accept the stand of the learned counsel for the respondent that there is any divergence of opinion betwixt the *Central Bank of India Limited's case (supra)* and the *Central Inland Water Transport Corporation Ltd.'s case (supra)*."

> "(6) As a matter of abundant caution, however, it has to be pointed out that even placing the case of the respondent employers at the highest and assuming entirely for argument sake that there is any conflict on this point, then this High Court is bound by the larger Constitution Bench of five Judges in the *Central Bank of India Limited's case (1974 Lab I.C. 1018) (supra)* in preference to the later view."

(18) Keeping the aforesaid ratio of the Division Bench in view, I am of the considered opinion that the Labour Court committed an error of jurisdiction in not deciding the claim of the applicants on merits. The Labour Court ought to have adjudicated upon the claim on the ground that question of applicability of Standing Order 33(d)(g) and the proviso thereto is incidental to the claim of the applicants under section 10A of the Act. In view of the above, the writ petition is allowed. The impugned order passed by the Labour Court dated

(5) 1982 Lab. I.C. 1275
(6) 1974 Lab. I.C. 1018

23rd July, 1999 is hereby quashed. The matter is remanded to the Labour Court with a direction to compute the subsistence allowance payable to the petitioners for the period October, 1996 to December, 1996 in terms of Section 10-A of the Act by ignoring the requirement of attendance stipulated in proviso to Certified Standing Orders 30(d) and (g). No costs. The Labour Court is directed to pass the necessary orders within a period of four weeks of the receipt of a copy of this order.

(19) Copy of this order be given *dasti* on payment of necessary charges.

R.N.R.

Before Amar Bir Singh Gill, Swatanter Kumar and J.S. Narang, JJ

VIJAY SHARMA AND OTHERS,—*Ptitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. 14050 of 1999

13th December, 2001

Constitution of India, 1950—Arts. 14, 16, 39-D and 226—Daily wagers having experience varying from 5 to 15 years performing the same work which their counterparts/regular employees perform in the same department—They also possessing the requisite qualifications and experience alike the regular employees and their work performance also satisfactory—Claim for 'equal pay for equal work'—Hon'ble Apex Court taking divergent views on the principle of 'equal pay for equal work'—High Court should normally follow the law laid down by a larger bench of the Hon'ble Apex Court subject to applicability of the principle of ratio decidendi—Petitioners satisfy all the essential ingredients for claiming the benefit of equal pay for equal work—State cannot derive any help from the aspects like lack of funds, different sources of recruitment., nature of employment, qualifications and age limit for denying the relief to the petitioners accuring as a consequence of principles enunciated under Article 14 read with Art. 39(d)—Petitioners held to be entitled to the minimum of the pay scale (basic