Before Rajiv Narain Raina,J.

M/S INDIA YAMAHA MOTOR PVT. LTD.—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 7345 of 2013

April 25, 2013

A. Constitution of India, 1950 - Writ Jurisdiction - Art. 226 - Labour Law -Industrial Disputes Act, 1947 - S. 2(p) & 12(3) - Settlement as a result of Conciliation - Ad hoc allowance - Workers claiming ad hoc allowance in parity with transferees to another plant of same industrial concern - Direct and indirect workmen - Ad hoc allowance an evolution from the production incentives earlier payable and being paid under the Settlement under Section 12(3) of the Act - Ad hoc allowance fixed for each existing workman irrespective of redeployment in any new work area/unit in future - Not the same as "benefits and special allowance" - Principle of "equal pay for equal work" not applicable due to operation of different Settlements for different plants - Settlements are sacrosanct and bind parties being in the nature of contract - A Settlement can be superseded only by another Settlement either within or outside Conciliation

Held, that the difference in rates of ad-hoc allowance and consequently pay was justified on the strength of the two separate settlements which had nothing to do with the kind of product being manufactured in the two plants. The ad-hoc allowance was nothing but an evolution from the production incentives earlier payable and being paid under the settlement entered earlier in 1994. The formula of production incentive was changed according to profits which were different in different plants. Therefore, the principle for equal pay for equal work could not be blindly followed in each and every case. It was also argued that few of the claimants had initially filed an application under Section 33-C(2) of the Act seeking the same relief which is the subject matter of the present reference. This fact has not been disclosed by the claimant/union in its claim statement before the Labour

Court. Settlements are sacrosanct and continue to bind parties and are in the nature of contract which parties cannot be permitted to wriggle out off. A settlement can be superseded only by another settlement either within or outside conciliation.

(Para 15)

B. Ad hoc allowance - Benefits and special allowance - Two distinct allowances -Benefits and special allowance refer to allowances available prior to introduction of ad hoc allowance

Held, that ad-hoc allowance mentioned in clause 5 does not appear to this Court to be the same thing as 'benefits and special allowance' referred to while dealing with transfer liability under clause 2.3.10.3. This is where the vital difference lies. The expression 'benefits and special allowance' used exclusively in the context of transfer would refer to allowances available prior to introduction of ad hoc allowance. In the transfer clause in the settlements ad hoc allowance is not employed nor can be imported. There is also no provision in both the settlements which specifically deal with the result of inter-state transfer shifting dramatically the appropriate Government itself from one State to another one governed by the Industrial Disputes Act, 1947 while the other by the Uttar Pradesh Industrial Disputes Act, 1947, one a Central Act while the other a State law.

(Para 18)

Pawan Kumar Mutneja, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J.

(1) A joint demand notice dated 23.4.2009 was served by the Union of Workers at the Faridabad factory of petitioner company-India Yamaha Pvt. Limited which came to be registered as Industrial Reference No.244 of 2009, after conciliation failed. A rather interesting dispute was referred to the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad by the appropriate Government by order dated 22.7.2009 for adjudication which reads:

> *"Whether the workers working at Faridabad plant of M/s India Yamaha Pvt. Ltd. Faridabad are entitled to adhoc allowance in parity with adhoc allowance admissible and being paid to*

transferees from the plant at Surajpur performing similar work of production of same product, in suppression of existing settlement.

If so what relief and with what details"

(2) The genesis of the dispute came about in the following manner: The petitioner-company has two units one at Faridabad (Haryana) and other at Surajpur, Uttar Pradesh under the same corporate management. The unit at Faridabad at one time produced motorcycles sold under the brand name 'Rajdoot' while the unit at Surajpur produced 'Yamaha' motorcycles. Both the establishments had their separate registered trade unions one in Haryana and the other in Uttar Pradesh. These unions were affiliated to the Hind Majdoor Sabha. As disputes and differences kept arising between the management and the union of workers, different settlements were arrived at under Section 12(3) of the Industrial Disputes Act, 1947 (for short "the Act") from time to time during the conciliation process. The earliest settlement at Faridabad was entered into between the parties on 13.4.1994 and at Surajpur on 25.8.1994.

(3) The first important settlement for purposes of decision in this case was arrived at in Surajpur on 26.9.1999. As per clause 4.10 an Ad-hoc Allowance was made admissible for workers at the Faridabad unit to be paid in the following terms settled by the parties:

"All regular workmen as on the rolls of the company on the date of signing of settlement shall be entitled to Ad-hoc allowance of Rs.1620/- pm. However the workmen engaged in indirect areas who have been in the receipt of efficiency payment @ 70% shall be eligible to receive the Ad-hoc allowance in the same proportion viz Rs 1134/- pm."

(4) In 1999 a separate settlement was also arrived at between the petitioner-management and the union of workers in the unit at Surajpur, Uttar Pradesh with respect to the Ad-hoc Allowance in the following terms:

"4.10 AD-HOC ALLOWANCE

All regular workmen as on the rolls of the company on the date of signing of settlement shall be entitled to Ad-hoc allowance of

Rs.3850/- pm. However, the workmen engaged in indirect areas who have been in the receipt of efficiency payment @ 70% shall be eligible to receive the Adhoc allowance in the same proportion viz Rs 2695/- pm."

(5) Clause 2.3.10.3 of the memorandum of settlement of 1999 at Faridabad dealt with transfers etc. and reads as follows:

"The workmen shall be liable to be transferred/shifted/redeployed from one machine/workplace/section/department/division/ company to another as per needs of the company or it's subsidiary/associate/holding companies subject to the condition that the wages, seniority and retirement benefits of the workman are not adversely affected, at that point in time. However, benefits and special allowance specifically given only for working in the previous company/location/dept./work station will not be protected unless also specified for the new location/dept./ workstation."

The corresponding provision in the settlement at Surajpur was also 2.3.10.3 and was identical with the sister concern at Faridabad.

(6) After the settlement of 1999 arrived at and its terms put in operation, still further fresh disputes arose which were settled once again under Section 12(3) of the Act in 2002 with which we are not presently concerned. Thereafter, another set of settlements were hammered in 2007 to resolve further disputes arising meanwhile, on 26.2.2007 at the Surajpur unit and on 28.2.2007 at the Faridabad unit.

(7) These settlements resolved the charter of demands both dated 15.12.2005 served in their respective territories. However, what is of importance is that neither the 2002 nor 2007 settlements talk about ad-hoc allowance which right continued to be governed by the 1999 settlements in the respective units. However, what requires to be noticed is that in the 1999-settlements what was agreed to between the parties was to dismantle all the existing efficiency payment schemes, production incentive schemes or super incentive schemes or any other scheme by whatever name called providing for additional payment connected with the level of production and productivity and to replace those schemes by a consolidated scheme or

what came to be called the ad-hoc allowance. It is ad hoc allowance which became the bone of contention before the labour Court in the above reproduced reference resulting in the award impugned in this petition by the management.

(8) The formula applied for working out the single window ad-hoc allowance was based on monthly average of the highest earning during the past four financial years from April 1994 to March 1998 in the respective units. The amount so calculated was protected at Rs 3820/- per month for the workers at Surajpur, Uttar Pradesh and Rs 1620/- per month for existing workmen at Faridabad on the touchstone of production/productivity of each unit measured separately. Clause 5.4 of the 1999 settlements laid down that the ad-hoc allowance so determined will remain fixed for each existing workman irrespective of redeployment in any new work area/unit in future, subject to the condition, however that if any indirect workman becomes direct workman as defined in Annexure P-5 to the settlement, he will get adhoc allowance as applicable to direct workman of his parent division as on date of agreement. Likewise, a direct workman being redeployed/ transferred to an indirect job will get ad-hoc allowance as admissible to indirect workmen of his parent division as on date of agreement.

(9) It is not disputed that all categories of workmen covered by this case were existing and direct workmen. In this case we are not concerned with indirect workmen.

(10) That apart, there was another settlement arrived at in 2010 between the parties with which also admittedly we are not presently concerned since it was entered into after the reference was made in the present case for adjudication in 2009, therefore, the earlier settlements and especially the 1999 settlements would remain applicable and operative on both the parties insofar as ad-hoc allowance is concerned.

The present controversy

(11) In the year 2002, the production of 'Rajdoot' motorcycle in the Faridabad plant was stopped. It is alleged that this plant was turned into a manufacturing unit of ancillary parts which would be supplied to the Surajpur plant. Though ancillary parts were being manufactured in both the units, the complete machines known as 'Yamaha' motorcycles were being

assembled at Surajpur. It is, thus, pleaded in paragraph 3 of the writ petition that at no stage were the two units ever doing the same work. Rather the work, the efficiency, the work ethics and productivity at the two units remained at variance and the Surajpur plant always performed better than the Faridabad plant. The result of the settlements was that workers at Surajpur earned better wages than their counterparts at Faridabad. Thus far so good till the next crucial milestone arose in the peaceful onward but separate march of both the units unhindered in the past by disparate ad hoc allowance leading to higher and lower pay.

(12) It was when that tsunami hit Faridabad that the still-waters were suddenly disturbed when 109 workers from the Surajpur unit were transferred to the Faridabad units in 2009. These 109 workers from Surajpur had the protection of their settlements in the transferred unit and continued to earn ad-hoc allowance at the rate of ' 3850/- per month while working shoulder to shoulder with the company's old employees at Faridabad who were in receipt of lower ad-hoc allowance of Rs. 1620 per month under their settlement. This flared up the matter and led to industrial unrest. The workers at Faridabad served a demand notice on 23.4.1999 on the management duly espoused by the Trade Union.

(13) It transpires, and to put it in historical perspective that earlier 14 workers in the Faridabad unit filed applications under Section 33-C(2) of the Act claiming that due to transfers they had suffered monetary loss due to deployment from one factory to another plant of the same company at Faridabad which had been separately registered under the Factories Act. These applications were filed in the year 2000 and were dismissed by the Presiding Officer, Labour Court Circle-I, Faridabad by order dated 13.2.2008 on account of the issue being covered by the settlement which permitted transfer and deployment to another unit. A copy of the order has been placed on record as Annexure P-5. The same has no bearing on the present case which has come through industrial adjudication under Section 2(k) read with Section 10 of the Act, though it is taken as an objection by the management to suggest that transfers were sufficient to non suit the workers in the present case.

(14) In the demand notices and claim statement filed before the Conciliation Officer and before the labour Court in the present reference,

the workmen at Faridabad pleaded *inter alia* that they were in receipt of less pay than the transferred employees due to difference in ad-hoc allowance in the respective states. As a result of transfer of 109 workers from Surajpur to Faridabad, 450 workers at Faridabad were directly effected as the discovered they were drawing less pay for the same work. They claimed that there was financial inequality leading to dissatisfaction and anxiety among the workers and the situation created by the management led to inequality of pay despite the fact that the duties and responsibilities shouldered by both sets of employees at the Faridabad unit were the same. The principles of 'equal pay for equal work' were invoked. The seething discontent formed their genuine grievance agitated in the charter of demand which was referred for industrial adjudication for restoration of industrial peace and harmony.

(15) The claim of the workmen was contested by the management. The claim based on parity and 'equal pay for equal work' had no place in a field occupied by separate settlements, one duly executed by the 109 workers with the management at Surajpur prior to their transfer with a right to protection of pay on redeployment or transfer and thus the Faridabad settlement governed the conditions of service of the Faridabad workers duly arrived and settled in 1999 under Section 12(3) of the Act through the conciliation machinery available at Faridabad, which remained sacrosanct. The difference in rates of ad-hoc allowance and consequently pay was justified on the strength of the two separate settlements which had nothing to do with the kind of product being manufactured in the two plants. The ad-hoc allowance was nothing but an evolution from the production incentives earlier payable and being paid under the settlement entered earlier in 1994. The formula of production incentive was changed according to profits which were different in different plants. Therefore, the principle for equal pay for equal work could not be blindly followed in each and every case. It was also argued that few of the claimants had initially filed an application under Section 33-C(2) of the Act seeking the same relief which is the subject matter of the present reference. This fact has not been disclosed by the claimant/union in its claim statement before the Labour Court. Settlements are sacrosanct and continue to bind parties and are in the nature of contract which parties cannot be permitted to wriggle out off. A settlement can be superseded only by another settlement either within or outside conciliation.

(16) There is no dispute that both the settlements of 1999 continued to operate in their respective fields and territories and continue to do so till date. It is also not disputed that 109 employees from Surajpur were transferred to Faridabad by an Act of the management. It is also not disputed that the transferred employees at Faridabad get higher ad-hoc allowance than their counterparts at Faridabad for performing no extra work. It is also not disputed that the settlements of 2002, 2007 and 2010 do not speak about ad-hoc allowance and therefore the governing contract in the present case are the two settlements of 1999. It is also not disputed in view of clause 5.1 of the incentive scheme laid down in 1999 settlements that in the new dispensation both the parties agreed to discontinue all the existing efficiency payment schemes, production incentive schemes or super incentive schemes or any other scheme providing additional payment connected with the level of production and productivity which would thereafter be consolidated under one head called the ad-hoc allowance drawn on a new formula based on production and productivity and that is how the management agreed to protect earnings of the existing workmen. Clause 5.4 protected ad-hoc allowance determined by the new formula to remain fixed for each existing workman irrespective of redeployment in any new work area/unit in future.

(17) A close reading of clause 2.3.10.3 which deals with transferred/ shifted/ re-deployed from one machine/ work place/ section/ department/ division/ company to another as per needs of the company or it's subsidiary/ associate/ holding companies could be done but would be subject to the condition that the wages, seniority and retirement benefits of the workman are not adversely effected at that point in time. However, benefits and special allowances specifically given only for working in the previous company/location/department/workstation will not be protected unless also specified for the new location/department/workstation.

(18) A close reading of clause 2.3.10.3 and 5.1 to 5.4 leave no manner of doubt in my mind that the expression 'benefits and special allowance' specifically mentioned and given only for working in the previous company etc alone will not be protected. Reference to- as to such benefits- unless so also specified for the new location etc stood dissolved and replaced by the newly created ad-hoc allowance. Ad-hoc allowance mentioned in clause 5 does not appear to this Court to be the same thing

as 'benefits and special allowance' referred to while dealing with transfer liability under clause 2.3.10.3. This is where the vital difference lies. The expression *'benefits and special allowance'* used exclusively in the context of transfer would refer to allowances available prior to introduction of ad hoc allowance. In the transfer clause in the settlements ad hoc allowance is not employed nor can be imported. There is also no provision in both the settlements which specifically deal with the result of inter-state transfer shifting dramatically the appropriate Government itself from one State to another one governed by the Industrial Disputes Act, 1947 while the other by the Uttar Pradesh Industrial Disputes Act, 1947, one a Central Act while the other a State law. These possibilities appear not to have been contemplated, comprehended, thought out or taken care of by use of clear, unambiguous words and with any mathematical clarity. If ad-hoc allowance as per the showing of the management is linked with production/productivity, then it can have reference only to the place of work or situs of the factory/ unit under one roof connected with production of goods and services produced in one establishment.

(19) The only question which appears to this Court presently emerging for determination is whether the principle of 'equal pay for equal work' on the basis of parity, non-arbitrariness and non-discrimination can be applied to the case in hand. There is much authority which keeps the Court away from blindly applying the principle of parity in pay scales or mechanically applying the doctrine of 'equal pay for equal work'. This judicial aversion should normally be the first reaction of the Court before it embarks on further journey. Thereafter, the inquiry would need to be addressed to the facts of each case, of the management and of the workers claiming parity of pay and to either accept or ward it off, the evidence both documentary and the statement of witnesses, if any, to answer positively with a a judicial yes or no.

(20) Assuming *arguendo* that there should be no parity or application of the principle of 'equal pay for equal work' in this case in the face of the settlements then the Court would only see the stand of the management before the labour Court in its pleadings and evidence of witnesses, if any, led before the labour Court.

(21) To this end, I asked Mr. Mutneja, if the management had produced any witnesses who have been cross examined on the issue of parity of pay and 'equal pay for equal work'. That is how this Court fell upon the deposition of Mr. Prem Parkash Sharma (Group Head GS-HR) MW-1, a senior officer of the company working since September 1995 and admittedly the transferring authority himself who deposed in his affidavit by way of examination in chief that he was fully conversant with the facts of the case and to depose thereto. In his cross examination he admitted that he was the person authorized by the company to transfer workers. Still further in his cross examination, he candidly admitted to facts of far reaching consequences as under:

> *"It is correct that the way in which the workers are transferred from Faridabad unit to Greater Noida like that the workers came after transfer from Surajpur plant to Faridabad. In Surajpur plant various models of Yamaha motorcycles are being assembled whereas in industrial unit at Faridabad only spare parts of motorcycles are being manufactured. In Surajpur plant the worker get ad-hoc allowances of Rs.3850 per month and in Faridabad plant worker get Rs.1620. It is correct that the workers who are transferred from Surajpur (Greater Noida) are getting same pay and getting adhoc allowance of Rs.3850/- It is correct that from year 2003 the spare parts of Yamaha motorcycles are made in Faridabad unit. It is correct that out of 700 workers working in our plot 150 workers are getting adhoc allowance of Rs.3850 while other 550 workers are getting Rs.1620. It is correct that all workers perform same type of work. There is no any sort of difference in their work. It is correct that the applicant worker has demanded adhoc allowances of Rs.3850 from April 2003, which is Rs.2080 less than adhoc allowance which they are getting. It is correct that I have not filed any appeal against the pending reference. It is incorrect that these worker are entitled for this money. It is correct that Rajinder Sharma who was earlier posted at Surajpur unit, his adhoc allowance is not reduced during his transfer. I cannot tell that Ex W2/6, Ex W2/7 are wage slip of our company or not. Point A of W.S. Bears my signature, it seems to be. It is incorrect that the*

thing which are mentioned in my affidavit have not mentioned in W.S. The facts which are mentioned in para no.9 of my affidavit, the document related to those are available in the file. It is incorrect that intentionally I have not produced any document related to working condition, production and service conditions. It is correct that Yamaha Motorcycle manufacture equipments and spare parts of Yamaha brand motorcycle in Faridabad and all workers perform same type of work. It is correct that one balance sheet is prepared for both Surajpur plant and Faridabad plant."

(22) In the face of the clear and categoric admission that at Faridabad all workers, both transferees from Surajpur, Greater Noida and original existing workers at Faridabad, perform the same type of work and "there is no any sort of difference in their work" that the principle of applicability of the principle of parity and equal pay for equal work would arise in this case.

(23) The labour Court by its impugned award dated 1.2.2013 has broadly applied the principle of parity and equal pay for equal work to answer the reference in favour of the workmen and to reach this conclusion has relied upon ***Avtar Singh v. State bank and others (1)***; and ***Balwant Singh v. State of Haryana and others (2).***

(24) Mr. Mutneja, learned counsel appearing for the petitioner continues to rely on ***National Engineering Industries Ltd. v. State of Rajasthan and others (3)***; as before the labour Court but in addition thereto relies on decisions of the Supreme Court in ***Sirsilk Ltd. v. Government of Andhara Pradesh and another (4)***, Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil ***Corporation Limited (5)***; and ***ITC Ltd. Workers' Welfare Association and another v. Management of ITC Ltd. and another (6).*** It is the contention of the petitioner that a settlement has been defined in Section 2(p) of the Act as being a written agreement between the employer and workmen arrived at in the course of

(1) 2012 (2) SCT 31
(2) 2011 (2) SCT 285
(3) 2000-I-LLJ 247
(4) 1964 (2) SCR 448
(5) (1991) 1 SCC 4
(6) (2002) 3 SCC 411

conciliation proceedings under Section 12(3) of the Act. Such settlements arrived at between the parties should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. He would refer to paragraph 6 of ***Sirsilk Ltd*** to urge that a settlement of a dispute between the parties is to be preferred as it would lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to their being goodwill between them. Learned counsel submits that in view of the settlement, the reference itself deserves to be cancelled as it would be unreasonable to assume that the Industrial Tribunal would insist upon dealing with the dispute on merits even after it is informed that the dispute has been amicably settled between the parties and therefore the Tribunal should immediately agree to make an award in terms of the settlement between the parties. There can be a case where a dispute is settled after award has been submitted to Government and in such a case the Government need not publish the award for it to become enforceable under Section 17 of the Act. This would be a special situation which does not arise in this case.

(25) In ***Barauni Refinery Pragatisheel Shramik Parishad,*** it has been held by the Supreme Court that there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable and can, therefore, specifically be made binding not only on the workmen belonging to the union signing the settlement to be binding also on the others. To that extent a settlement arrived at in the course of conciliation proceedings can be put on par with an award made by the adjudicatory authority (see para 8 of the report).

(26) Learned counsel heavily relies on paragraphs 14, 17, 21 and 25 of ***ITC Ltd. Workers' Welfare Association*** which are reproduced below:

> *"14. In answering the reference the industrial adjudicator has to keep in the forefront of his mind the settlement reached under Section 12(3) of the Industrial Disputes Act. Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not open to the Industrial Tribunal to ignore*

the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be contrary to the mandatory provisions of the Act or unless it is found that there is non-conformance to the norms by which the settlement could be subjected to limited judicial scrutiny. This is in fact the approach of the Tribunal in the instant case. The High Court which examined the issue from a different angle as well was, in our view, justified in affirming the award of the Tribunal.

17. Admittedly, the settlement arrived at in the instant case was in the course of the conciliation proceedings and therefore it carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.

21. Another principle which deserves notice is the one firmly laid down in Herbertsons Ltd. v. Workmen, (1976) 4 SCC 736. It was emphasised that the settlement has to be taken as a package deal and it should not be scanned "in bits and pieces" to hold some parts good and acceptable and others bad. Then it was observed: (SCC p.745, para 27)

> *"Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust."*

25. The High Court proceeded to consider whether even that particular clause in the settlement dealing with the pension is per se arbitrary or discriminatory and reached a conclusion that it is not so for the reason that a new scheme for pension has been introduced by the impugned settlement and that the question

of arbitrariness in fixing the cut-off date does not therefore arise. The High Court further held that the fixation of cut-off date for the purpose of entitlement of life pension cannot be said to be arbitrary or irrational, as such fixation becomes imperative from financial point of view and moreover the date coincided with the platinum jubilee celebrations of the Company. The date was not "picked up from the hat", the High Court observed. The High Court approached the issue more from the angle of Article 14 and referred to the decisions in which the State's action in making the classification for the purpose of extending the pensionary benefits or additional benefits fell for consideration of this Court. Strictly speaking, such approach is not apt and appropriate. The present case is one where Article 14 cannot be applied as the respondent is not "State" or "other authority". On this, there is practically no dispute. If so, the approach should be as we indicated earlier, that is to say, whether the settlement can be said to be unjust, unfair or vitiated by mala fides. No mala fides is imputed to anyone. What remains to be considered is whether it is fair and just, viewed from a broader angle and taking a holistic view of the matter. It is true that certain considerations germane to Article 14 may also be germane while deciding the issue whether the settlement is just and fair. But, it does not follow that the doctrine of classification and the principles associated with it should be projected wholesale into the process of consideration of justness and fairness of the settlement. There may be some overlapping and there may be some facets which apply in common to determine the crucial issue whether the settlement on the whole is just and fair, but that is not to say that the settlement is liable to be tested on the touchstone of Article 14, more so when it has no application in the instant case. Keeping this distinction in mind and considering the grounds of attack on the particular clause of settlement, we are unable to hold that it is vulnerable to challenge on any well-recognised grounds. The facts on record do not establish that the settlement which was reached was palpable unjust or unfair from the point of view of the entire body of workmen. The

preponderance of circumstances and the material on record do not in our view, displace the presumption attached to the settlement arrived at in the course of conciliation."

(27) On a reading of the ***ITC Ltd*** or for that the matter the other two judgments, I find that settlements in those cases were considered under the cover of a single unit or single establishment. None of these cases has dealt with an exceptional situation arising out of transfer of employees from one unit to another located in another State of the union, therefore, the text and context of both the settlements of 1999 have to be examined through a different judicial lens specially adapted for the purpose for examining relief in this case which may be granted or denied.

(28) I have already expressed the view of this Court above on the two settlements of 1999 in the text and context of clauses 2.3.10.3 being the provision for transfer and clauses 5.1 to 5.4 in the Chapter of Incentive Schemes and do not find in those provisions; or in either of the settlements contemporaneously arrived at, one signed at Surajpur while the other at Faridabad by the same management but with different trade unions, containing any mechanism which could block or be capable of denying the workers at Faridabad the right to equal pay for equal work when the work performed by the two sets of employees doing qualitatively and quantitatively the same work under one roof as has been testified in the oral evidence of MW 1 to be the same and that too coming from an officer of the company with the power to transfer employees either way candidly deposing that both set of workers perform the same work. In his deposition, Mr. Prem Parkash Sharma makes no distinction between the degrees of duties and responsibilities. He does not qualify his broad statement. His deposition is to the contrary when in cross examination he confesses that all workers performed the same type of work and there is no sort of difference in their work. If the ad-hoc allowance is production and productivity based then obviously it has to be linked with production/productivity of the unit at Faridabad equally for both otherwise one would have to import two productivity principles which conclusion the settlements do not support. Moreover, the balance sheets are consolidated.

(29) The two sets of employees forming two different groups in their parent locations when thrown in one melting pot working shoulder to

shoulder on the same machines and producing the same goods and services would indeed be a serious infraction of the equality clause of Article 14 of the Constitution which penetrates and permeates in private employment as well with the added protection of Article 39(d) which guarantees in its hope that there would be equal pay for equal work for both men and women. Though Article 39(d) is a direction to the State in formulating its policy but I find no inhibiting factors therein as to why the broad principle should not be applied to the private sector to achieve the constitutional goal, though Article 39(d) is not a fundamental right. However, in a case involving a settlement in one unit/factory/establishment then objecting workmen cannot get rid of a settlement and Article 14 cannot be invoked or pressed in aid to wriggle out of the contract or settlement arrived at in conciliation under Section 12 (3) of the Act. There would then be a bar on this Court to invoke Article 14 of the Constitution as explained in ***ITC Ltd*** in paragraph 25 of the report reproduced supra and to set about undoing the settlement.

(30) WW-1/S.D. Tyagi appearing for the workers-union has deposed in cross examination that the final shape to the motorcycle is given in Faridabad after the Yamaha company had separated from the Escorts Group the year 2003. No other oral evidence was led before the labour Court on the basis of which I can hold to the contrary or disagree with the findings of the labour Court recorded in the award arrived at after appreciating the evidence on record.

(31) For the foregoing reasons, I find that there is no discernible infirmity in the impugned award nor any error of jurisdiction committed by it or perversity in its findings based on mis-appreciation of evidence warranting interference and would, therefore, in the result dismiss this petition in limini as not warranting admission. But for the transfers of workers from Surajpur to Faridabad the dispute would not have arisen as in both States the body of workers would have remained bound by their settlements. This Court also does not find as a consequence of the above any cogent or valid reason justifying quashing of the order of reference (P-7) itself.

S. Gupta