IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4696 of 2010
With
R/SPECIAL CIVIL APPLICATION NO. 4697 of 2010

FOR APPROVAL AND SIGNATURE: Sd/-

HONOURABLE DR. JUSTICE A. P. THAKER

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

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CHIEF MANAGER & 1 other(s)
Versus
PURNIMA A ANDHARIA WD/O DECEASED ASHOKBHAI D ANDHARIA

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Appearance:
MS DHARMISHTA RAVAL(707) for the Petitioner(s) No. 1,2
MR RAJESH P MANKAD(2637) for the Respondent(s) No. 1

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CORAM:**HONOURABLE DR. JUSTICE A. P. THAKER**
Date : 16/07/2021

CAV JUDGMENT

1. Special Civil Application No.4696 of 2010 is filed under Articles 16, 226 and 227 of the Constitution of India against the order dated 16.10.2009 passed by the Presiding Officer, Industrial Tribunal – Cum - Labour Court, Ahmedabad (hereinafter be referred to as the “Labour Court”) in Recovery

Application No.3 of 2006 whereby the Labour Court has ordered to pay medical bill, subsistence allowance and leave encashment of 184 days to the respondent. Whereas, Special Civil Application No.4697 of 2010 is filed against the order dated 16.10.2009 passed by the Labour Court in Recovery Application No.472 of 2006 whereby the Labour Court has granted relief of payment of provident fund amount lying at the time of death of the deceased employee of the Bank to the respondent.

2. Since the question of law involved in both these petitions is similar, they both have been tagged together. Hence, both these petitions are disposed of by this common judgment.

3. Special Civil Application No.4696 of 2010 pertains to the order passed by the Labour Court in Recovery Application No.3 of 2006, whereas, the Special Civil Application No.4697 of 2010 pertains to the order passed by the Labour Court in Recovery Application No.472 of 2006.

4. The main contentions raised by the petitioner are that the husband of the respondent namely Ashokbhai D. Andharia was employee of the petitioner – Bank and was working as Cashier and during his tenure, he has misappropriated the amounts to

the tune of Rs.15,40,000/- and has caused loss to the Bank. It is the case of the petitioners that the deceased workman was suspended from the service w.e.f. 23.11.2001. It is also contended that during the pendency of the inquiry, he died on 19.06.2002 and the preliminary report submitted by the Inquiry Officer clearly indicates that the deceased has operated Savings Bank Accounts in the names of other relatives wherein he was one of the beneficiary and by creating such accounts, he has misappropriated the huge amounts of the Bank. It is further contended that as per the Rules and Regulations of the petitioner – Bank, he was paid medical bill, subsistence allowance and leave encashment. It is also contended that as per Bipartite Settlement dated 01.08.1979, the outstanding loan amounts of the deceased could be adjusted against the provident fund balance which is permissible to the petitioners under the law and in view of that, the amounts standing at the credit of the deceased was adjusted against various loans obtained by him.

4.1 According to the petitioners, the respondent herein, who is wife of the deceased employee, has straightway filed recovery application as referred to hereinabove for recovery of the amount of medical bills, subsistence allowance and leave

encashment of 184 days during the period from 23.11.2001 to 19.06.2002 and the amount of provident fund of Rs.1,41,659.38. It is also contended that the Tribunal has no authority to pass such order under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter be referred to as the "***I. D. Act***") as there was no right created in favour of the respondent. It is also contended that the respondent ought to have filed necessary reference for establishing her right to claim the amount and ought to have got necessary order from the concerned Court or the Tribunal fixing the amount which may be liable to the paid by the petitioners to the respondent herein. It is further contended that without having filled such reference, the respondent has filed the alleged recovery application straightway before the Labour Court and the same has been entertained by the concerned Labour Court. It is also contended that considering the provisions contained in Section 33C(2) of the I.D. Act, the Labour Court ought not to have granted the prayer made by the respondent herein.

5. Heard Ms. Dharmishtha Raval, learned advocate for the petitioners and Mr. Rajesh Mankad, learned advocate for the respondent, at length, through video conferencing.

6. Ms.Dharmishtha Raval, learned advocate for the petitioners

has submitted the same facts which are narrated in the memo of pettions. She has submitted that the respondent's husband was employee of the Bank and he has committed fraud and criminal action was initiated against him. She has submitted that without any adjudication of the rights of the respondent to claim medical bill, subsistence allowance, leave encashment and provident fund amount, she had straightway filed the recovery applications which are not legally maintainable. She has submitted that when there was dispute raised by the employer regarding entitlement of the workman for the aforesaid amounts, no recovery application could be filed. While referring to the materials placed on record, which includes written submissions filed before the Labour Court, she has submitted that as per the Rules and Regulations of the Bank, there is ceiling of payment of medical expenses and due to that the Bank has followed that regulations. She has submitted that in that view of the matter, the claim of the respondent for remaining medical bill is not tenable.

6.1 Ms.Raval, learned advocate for the petitioners has submitted that in view of the fraud committed by the deceased employee i.e. husband of the respondent herein, the Bank has sustained huge loss and, therefore, the deceased was suspended

from the service. She has submitted that during the pendency of the inquiry, the deceased has died. She has submitted that the preliminary report of the Inquiry Officer clearly reflects that the deceased has opened various Savings Accounts in the names of the relatives and the deceased was also one of the account holder in all such Savings Account and the deceased has made fictitious entry of credit in the said accounts. She has submitted that by making such fictitious entry of credit, the deceased has, thereafter, withdrawn the amount from such accounts and thereby monetary loss to the Bank. According to her submission, the deceased has accepted this facts in writing and agreed to repay the same. But as he died, no amount could be recovered. While referring to the Provident Fund Rules, she has submitted that the Bank has every authority to recover the dues of the Bank from the said amount of provident fund. According to her submissions, there were outstanding amounts of various in advances / loans against the deceased and, therefore, the same has been adjusted from the amount payable to the deceased from his provident fund. She has submitted that the rights of the deceased have been disputed by the Bank which is bona fide in nature and, therefore, without any adjudication of that rights of

the respondent, the Labour Court has no jurisdiction under Section 33C(2) of the I.D. Act. She has vehemently submitted that the jurisdiction exercised by the Labour Court is erroneous and, therefore, the orders passed by the Labour Court in both the recovery applications may be quashed and set aside.

6.2 For her submissions, Ms. Raval, learned advocate for the petitioner has relied upon the following decisions:-

1. *State of Gujarat through Secretary Vs. K. A. Prajapati order dated 15.01.2019 rendered in Letters Patent Appeal No.114 of 2019.*

2. *Canara Bank and another Vs. Lalit Popli (Dead) Through Legal, Representatives, (2018) 11 SCC 87;*

3. *State of U.P. and another Vs. Brijpall Singh, (2005) 8 SCC 58;*

4. *Ratadia Sangram Karamsibhai Vs. The Principal, Kendriya Vidyalaya, order dated 24.07.2019 rendered in Letters Patent Appeal No.1441 of 2019;*

5. *Gujarat Water Supply and Sewerage Board Vs. Ketanbhai Dinkarray Pandya, order dated 16.06.2003 rendered in Letters Patent Appeal No.429 of 2000 and allied matters;*

6. *Jamnagar Municipal Corporation Vs. Mukesh A. Vora order dated 07.10.2016 rendered in Special Civil Application No.8195 of 2009;*

7. *Hitendra Laxmichand Soni Vs. Shaikh and Company, 2016 (3) G.L.R. 1892;*

7. Per contra, Mr.Rajesh Mankad, learned advocate for the respondent has submitted that the submissions made on behalf

of the petitioners regarding the provisions of Section 33C(2) of the I. D. Act are not correct. He has submitted that under this provision, the rights are given to the workman for recovery of his/her dues from the employer. He has submitted that merely because the disputes raised by the otherside it cannot affect the rights available under Section 33C(2) of the I.D. Act to the workman and it does not affect jurisdiction and the power of the Labour Court in adjudicating the money payable to the workman. He has submitted that the rights accrued to the workman in the present case is already crystallized due to the provisions contained in Bipartite Settlement produced as well as averments and observations made by the Labour Court. He has submitted that the Labour Court has rightly decided lis between the parties. He has submitted that Bipartite Settlement clearly provides that the workman is entitled to get the amount of entire medical bills, subsistence allowance and leave encashment at the credit of the workman at the time of his retirement as the case may be. He has submitted that in view of the Provident Fund Act, 1925, the Bank cannot deduct any amount from the balance amount of the provident fund available with the workman. According to his submissions, the deduction made from the provident fund

against the so-called outstanding amount of various loans is arbitrary as no opportunity of being heard was given to the respondent. He has submitted that the heirs of the deceased is always ready and willing to pay the dues of the Bank if it is genuine one. According to him, the jurisdiction exercised by the Labour Court in the present case is proper.

7.1 Mr.Mankad, learned advocate for the respondent has submitted that the decisions relied upon by the learned advocate for the petitioners are not applicable to the factual aspects of the present case as in those decisions there was no right accrued in favour of the worman, whereas, in the present case, the rights are already crystallized due to the provisions made in the Provident Fund Act as well as Bipartite Settlement and the regulations of the Bank. While relying upon the following decisions, Mr. Mankad, learned advocate has prayed to dismiss both the petitions.

1. *The Central Bank of India Ltd Vs. P. S. Rajagopalan Etc., AIR 1964 SC 743;*

2. *Sahu Minerals and Properties Limited Vs. Presiding Officer, Labour Court, (1976) 3 SCC 93;*

3. *Union of India Vs. Jyoti Chit Fund and Finance and others, AIR 1976 SC 1163;*

4. *Lalitabehn Bhanabhai daughter of Bhanabhai*

Malabhai Vs.Lalibehn Bhanabhai wife of Bhanabhai Malabhai and others, 1992 I.L.L.N. 792;

5. *Kamlesh Kanaiyalal Jani Vs. Oriental Bank of Commerce, Delhi and another, 2004 LAB.I.C. 2631;*

6. *Ugra Sen Singh and another Vs. State of Uttar Pradesh and others, 1995 II L.L.N. 363*

7.2 Mr. Mankad, learned advocate has submitted that due to the interim order, the amount lying with the registry of this Court be directed to be paid to the respondent herein.

8. In rejoinder, Ms. Raval, learned advocate for the petitioners has submitted that in the present case, the Labour Court has decided the rights and has adjudicated the disputed fact which is not permissible under the law. She has submitted that the exercise undertaken by the Labour Court is not legally tenable and no such power is vested with the Labour Court. She has submitted that the Labour Court cannot "adjudicate" the claim under Section 33C(2) of the I.D. Act. She has submitted that the part of the provident fund amounting to Rs.81,000/- has already been paid to the respondent, however, this fact has not been averred by the respondent neither before the Labour Court nor before this Court. She has submitted that this conduct of the respondent may be taken into consideration. She has submitted that the decisions relied upon by the learned advocate for the

respondent are not applicable and the reliance placed upon by her on various decisions is applicable to the facts of the present case. She has prayed to allow both the petitions.

9. Having considered the submissions made on behalf of both the sides coupled with the decisions cited at Bar and the materials placed on record, it is undisputed facts that the husband of the respondent was serving as Cashier in the Bank and he was suspended from the service w.e.f. 23.11.2001 for the alleged misappropriation. It is undisputed facts that before any inquiry could be concluded, he has died on 19.06.2002. It is also undisputed facts that the respondent is a wife of the deceased and she is entitled to get the amount which includes provident fund and other amounts admissible to the deceased. It is also undisputed facts that the respondent has preferred recovery applications; out of which one for the amount of medical bills, subsistence allowance and leave encashment of 184 days at the balance of the deceased and another for the payment of provident fund amount lying in the Provident Fund Account of the deceased. It is an admitted fact that no prior references have been filed by the respondent for the alleged amount.

10. It is worthwhile to refer to the provisions of Section 33(C)

(2) of the I. D. Act which reads as under:-

> *"**33C. Recovery of money due from an employer**. -*
>
> *(1) xxx xxx xxx*
>
> *(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]:*
>
> [Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

11. It is pertinent to note that the Bipartite Settlement dated 01.08.1979 which is placed on record at page No.40 deals with various service conditions out of which provision regarding encashment of leave is narrated in clause -15 thereof which reads as under :-

> ***15. ENCASHMENT OF PRIVILEGE LEAVE** :*
>
> *i) A workman would be entitled to encash the accumulated leave to his credit at the time of retirement.*
>
> *ii) If a workman dies in service, his heirs will be paid salary for the leave accrued to him at the time of the death.*

12. Thus, it is evident that the right has been created in favour of the workman who would be entitled to encash the accumulated leave to his credit at the time of retirement and in case of the death of the workman, his heirs is entitled to be paid salary for the leave accrued to him at the time of the death. Thus, the entitlement of encashment of privilege leave is already created by Bipartite Settlement. The same is not denied by the Bank.

13. It is pertinent to note that clause - 18 of the Bipartite Settlement deals with the provision regarding medical bill which reads as under:-

> ***18. MEDICAL AID*** *: (The bills under this Scheme will be submitted to Head Officer for sanction)*
>
> *i) The scheme of hospitalisation will cover the following diseases :-*
>
> | | | | |
> |---|---|---|---|
> | *i)* | *Cancer* | *vi)* | *Smallpox* |
> | *ii)* | *Tuberculosis* | *vii)* | *Pleuresy* |
> | *iii)* | *Paralysis* | *viii)* | *Diphteria* |
> | *iv)* | *Cardiac ailment* | *ix)* | *Leprosy* |
> | *v)* | *Tumour* | *x)* | *Major accidents requiring hospitalisation.* |
>
> *xi) All other ailments requiring surgical operation, hospitalisation like contract, surgical jaundice, cirrhosis of the liver.*
>
> *ii) All other terms and conditions of this facility will remain unchanged.*
>
> *iii) It is also agreed that employees on suspension will be*

entitled to the facility of medical aid and hospitalistion.

iv) In case of injuries sustained by a workman in the course of his duty / shall be fully reimbursed the medical cost and treatment and/or hospitalisation over and above his normal entitlement. He shall also be treated on special leave for the period of his absence required for treatment.

14. On perusal of the aforesaid clauses, it is crystal clear that there is no upper limit prescribed for availment of the medical aid. Further, there is also clarification issued by the authority on certain issues of settlement which includes medical aid wherein it is clarified as under:-

***MEDICAL AID** :*

i) The suspended employees would be eligible for full medical reimbursement.

15. Thus, this clarification specifically provides that the suspended employees will be eligible for full medical reimbursement. There is no cap on the monetary reimbursement of the medical bills. This right is already created in favour of the workman.

16. The Bank has relied upon the provisions contained in Section 6 of the Provident Fund Act, 1925 which relates to the power to make deductions from the provident fund account. The

same provides as under:

> ***6. Power to make deductions***. *- When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory Provident Fund becomes payable, there may, if the authority [specified in this behalf in the rules of the fund] so directs, be deducted therefrom and paid to [Government or the Railway administration, as the case may be] -*
>
> *(a) any amount due under a liability incurred by the subscriber or depositor to [Government or the Railway administration], but not exceeding in any case the total amount of any contributions credited to the account of the subscriber or depositor and of any interest or increment which has accrued on such contributions; or*
>
> *(b) where the subscriber or depositor has been dismissed from [his employment] for any reasons specified in this behalf in the rules of the Fund, or where he has resigned such employment within five years of the commencement thereof, the whole or any part of the amount of any such contributions, interest and increment.*

17. According to the learned advocate for the petitioners, the said Act has been made applicable to the State Bank of Saurashtra. On perusal of the aforesaid provisions, it clearly appears that the deduction from the provident fund could be made for any amount due under a liability incurred by the subscriber or depositor to Government subject to the conditions that such amount cannot exceed in any case the total amount of any contributions credited to the account of the subscriber or depositor and of any interest or increment which has accrued on

such contributions. This provision specifically deals with recovery of the amount of Government dues. For payment of Government dues, only portion of the amount credited by the contribution with interest thereof.

18. Learned advocate for the petitioner has also relied upon the regulations of the State Bank of Saurashtra. The extract thereof has been placed on record at page No.54 and 55 in Special Civil Application No.4697 of 2010. Out of the same, Regulations 17 and 21 reads as under:-

> ***REGULATION – 17 PAYMENT OF AMOUNT STANDING TO THE CREDIT OF MEMBER*** *:*
>
> *(1) Subject to Sub-Regulation (2) the sums standing to the credit of a member, after adjusting any withdrawals made under Regulations 14, 15 and 15A shall become payable when he ceases to be a member.*
>
> *Provided that where a member resigns, retires or his service in the bank is terminated otherwise than by death or on account of retrenchment, illness or physical disability or for reasons beyond his control before completion of permanent service of 5 years he shall be entitled to be paid only the amount of his own subscriptions to the Fund together with interest thereon and not to any share of the contributions made by the Bank to his account in the Fund or the interest thereon.*
>
> *Provided further that where a member resigns or retires or his service in the Bank is terminated otherwise than by death, or on account of retrenchment, illness or physical disability or for reasons beyond his control after completion of permanent service of 5 years or more butless than 10 years, he shall be entitled to receive his own contribution to the Fund together with interest in*

respect thereof, and to the Bank's contribution at the rate of 10% of such contribution with interest for each completed year of permanent service.

Provided further that a member on leave preparatory to retirement may at his option withdraws from the sums standing to his credit in the Fund an amount not exceeding his own subscriptions and the interest thereon, but if the member does not eventually retire, the full amount withdrawn must be refunded as a condition of continued employment.

(2) "Where the member has been dismissed from his employment on account of misconduct causing financial loss to the bank, the whole amount of such financial loss, as ascertained by the Bank in its absolute discretion or such part thereof as the Bank may direct (not exceeding in any case the total amount of contribution made by the Bank to his account together with the interest credited in respect thereof) shall be deducted from the amount payable to the member and paid to the Bank by the trustees."

(3) Notwithstanding anything contained in Sub-Regulation (1) when any amount becomes payable under the said Sub-regulation to a member, who is under a liability to the Bank, the amount due under such liability (not exceeding in any case the total amount of contribution made by the Bank to his account together with the interest credited in respect thereof) shall be deducted from the amount payable to the member and paid to the Bank.

***REGULATION – 21** :*

On the death of a member, who is under a liability to the Bank, the amount of such liability (not exceeding in any case the total amount of contribution made by the Bank to his account together with the interest credited in respect thereof) shall be deducted from the amount payable to the member and paid to the Bank.

19. Now, as per the Regulation 17(2) where the member has been dismissed from his employment on account of misconduct causing financial loss to the bank, the whole amount of such

financial loss, as ascertained by the Bank in its absolute discretion or such part thereof as the Bank may direct shall be deducted from the amount payable to the member and paid to the Bank by the trustees. However, there is rider in the same clause that such recovery shall not exceed in any case the total amount of contribution made by the Bank to his account together with interest in respect thereof. Thus, there is no absolute right available with the Bank to deduct the entire amount from the provident fund account of the employee. The Bank can deduct the amount which has been contributed in the provident fund account of the employee with the interest thereof. Further, for application of Regulation 17(2), the employee must have been dismissed from the employment. Now, admittedly, in this case, the employee was suspended only and he was not dismissed from the service as he was died during the pendency of the inquiry. However, as per Regulation 21 referred to above, on the death of a member, who is under a liability to the Bank, the amount of such liability may be deducted from the amount payable to the member and paid to the Bank. However, there is also a rider that the Bank can deduct such amount not exceeding in any case the total amount of

contribution made by the Bank to his account together with interest credited in respect thereof. Thus, even under Regulation 21, the Bank cannot deduct the entire amount of the provident fund amount standing at the credit of the employee at the time of his death. Now, in this case, the Bank has deducted the entire amount from the provident fund standing at the credit of the deceased. This is not in consonance with its own regulations. The Bank could have deducted the amount not exceeding its contribution with interest from outstanding amount of the provident fund at the time of death of the employee. However, it is clear that the right is already accrued in favour of the nominee of the deceased to get whatever amounts lying in the provident fund of the deceased at the time of his death subject to the deduction of outstanding amount due to the Bank. But such amount cannot be exceeded at all the contribution of the Bank with interest thereof.

20. Having considered all these aspects of the case, it clearly transpires that the right to get medical reimbursement, subsistence allowance, leave encashment and the amount of provident fund has been crystalized in favour of the deceased employee as per the Bank's regulation and Bipartite Settlement.

The only fact is regarding the determination of the amount. This can be carried out by the Bank as all such amount is always uncertained in every case. Therefore, when the right is already accrued in favour of the deceased employee due to Regulations of the Bank coupled with the Bipartite Settlement, the same would devolve in favour of the respondent's wife. Therefore, there is no bare of filing recovery application under Section 33C(2) of the I.D. Act and the Labour Court has jurisdiction to entertain the same and adjudicate upon it, especially, in view of the decisions of the Apex Court in the case of **Namor Ali Choudhury and others Vs. The Central Inland Water Transport Corporation Ltd and another, AIR 1978 SC 275** wherein the Apex Court has observed in para-4 as under:-

> *4..... The expression "if any question arises as to the amount of money due" embraces within its ambit any one or more of the following kinds of disputes:-*
>
> *(1) Whether there is any settlement or award as alleged?*
>
> *(2) Whether any workman is entitled to receive from the employer any money at all under any settlement or an award etc. ?*
>
> *(3) If so, what will be the rate or quantum of such amount ?*
>
> *(4) Whether the amount claimed is due or not ?*
>
> *Broadly speaking, these will be the disputes which will be referable to the question as to the amount of money due. If the right to get the money on the basis of the settlement*

> *or the award is not established, no amount of money will be due. If it is established, then it has to be found out, albeit, it may be by mere calculation, as to what is the amount due. For finding it out, it is not necessary that there should be a dispute as to the amount of money due also. The fourth kind of dispute which we have indicated about obviously and literally will be covered by the phrase "amount of money due". A dispute as to all such questions or any of them would attract the provisions of S. 33C(2) of the Act and make the remedy available to the workman concerned."*

21. In the case of ***State of Gujarat through Secretary Vs. K. A. Prajapati*** (supra), the case was absorption in the temporary establishment from the work charged on completion of five years of continuous service. Thus, the factual aspects of the Letters Patent Appeal is clearly different, then, the facts of the present case.

22. The facts in the case of ***Jamnagar Municipal Corporation Vs. Mukesh A. Vora*** (supra) is regarding the claim for salary for non-working Saturday and holidays (weekly off) the days on which the claimant had undisputedly not worked, could not have been entertained and granted , more particularly, when there was no pre-existing right either by way of condition of service or by any other mode. Thus, the factual scenario of the Special Civil Application is different from the present one.

23. The facts in the case of ***Canara Bank and another*** (supra) is to the effect that the deceased was employed as a clerk in the appellant Bank and was dismissed from service, consequent upon a departmental enquiry in which he was found guilty of fraudulently withdrawing an amount of Rs.1,07,000/- from the savings account of a customer. Along with him, Manager of the Bank, an officer as well as Special Assistant was also indicated and they were also found guilty of negligence in relation to the very same incident. They have filed appeal which came to be dismissed and they deposited the amount as ordered against them. The deceased has carried the matter before the Court and the Court dismissed the petition. Thereafter, the Bank decided to recover the amount from the deceased therein. The Bank has adjusted this amount from the maturity value of fixed deposit. Due to these factual aspects, the Apex Court affirmed the decision of the Bank.

23.1 Considering the Rule – 12 of the Canara Bank Employees' Gratuity Fund Rules, Clause 19 of the Canara Bank Staff Provident Fund Regulations, 1994 and Rule 3(4) of Chapter VII of the General Conduct Rules governing the services, the Apex

Court has upheld the decision of the Bank to recover the entire amount from the respondent – employee who has committed forgery which has, ultimately, caused the loss to the Bank.

24. In the case of ***Brijpal Singh*** (supra), the fact was that the service of the workman was terminated on 03.07.1987. Feeling aggrieved by the termination order, the workman filed writ petition whereby by interim order, the High Court stayed the termination of the workman. In that proceedings, the State of Uttar Pradesh and another filed their counter-affidavit stating that the workman never attended the office as per the order of the High Court and that did not care to join the duties, therefore, he was not entitled to get any pay. Thereafter, the workman after a gap of six years, filed petition under Section 33-C(2) of the Industrial Disputes Act for payment of salary from the date of dismissal till July 1993 and bonus for the years 1987 to 1992. He has solely relied on the interim order dated 28.10.1987 passed by the High Court. The State of Uttar Pradesh has also filed counter-affidavit before the Labour Court stating that the writ petition was pending for consideration before the High Court, therefore, in such circumstances, the Labour Court did not have the jurisdiction to hear and decide the dispute. However, the

Labour Court vide its order dated 23.08.1995 directed the appellants therein to make the payment of salary and bonus of Rs.1,55,821/-. Being aggrieved by this order, the State of Uttar Pradesh has moved the High Court by filing petition, which came to be dismissed holding that the workman was entitled to the salary and other allowances. Under these circumstances, the Apex Court in the said decision, has held that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Sectio 10 that the order of discharge or dismissal was not justified.

24.1 The Apex Court, in the aforesaid decision, has observed in para-10 as under:-

> *"10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand, (1978) 2 SCC 144 held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for*

> *and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p.150, para 4)*
>
> *"It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act."*

25. In the case of ***Ratadia Sangram Karamsibhai*** (supra), the fact was that the workman sought relief of overtime wages by filing recovery application under Section 33-C(2) of the I.D. Act. The Division Bench of this Court has clearly observed that *"the overtime wages was neither ascertained nor established and based on some evidence which has surfaced on record of the cross-examination of Principal of School, more particularly, when compensatory leave in lieu of extra time.* The factual matrix of that case is different from the present one.

26. In the case of ***Gujarat Water Supply and Sewerage Board*** (supra), the factual matrix of the Letters Patent Appeals is that 43 workmen working on different posts like Diesel Operator, Electrical Operator, Attendant, Chowkidar working with the Sewerage Board straightway approached the Labour Court, Amreli in 1995 for recovery of overtime wages from the

Sewerage Board by way of separate recovery applications which came to be allowed by the Labour Court and affirmed by the learned Single Judge. Considering the fact that there was no right accrued in favour of the workman, after referring to the various decisions, ultimately, the Division Bench of this Court has allowed the appeals and quashed and set aside the order passed by the learned Single Judge as well as the award passed by the Labour Court.

27. In the case of ***Hitendra Laxmichand Soni*** (supra), the factual matrix is that the workman has directly filed the recovery application under Section 33-C(2) of the I.D. Act for various claims which includes special allowance, salary for overtime, salary for weekly hours, bonus for five years, leave salary, gratuity and retrenchment compensation. Considering the fact that the various claims were made after almost delay of 17 years and there was no right accrued in favour of the workmen, the order passed by the Labour Court came to be quashed and set aside. Further, there was substantive dispute as to the cause on account of which, and the mode by which, the service of the applicant's father came to an end i.e. on account of resignation or by way of retrenchment and also about legality of alleged

termination. Under these circumstances, it was held that the disputed questions cannot be adjudicated and decided by the Court under Section 33-C(2) of the I.D. Act.

28. In the case of ***Sahu Minerals and Properties Limited*** (supra), (three Judges Bench), the factual matrix before the Apex Court has that by two notifications, the Government of Bihar sent to the Labour Court, Chota Nagpur Division, Ranchi applications in respect of 73 workers of the appellant for decision under Section 33-C(2) of the Industrial Disputes Act for retrenchment compensation. The argument on behalf of the appellant was that where there was a dispute before the Labour Court considering an application under Section 33-C(2) as to whether the workmen had been retrenched or the factory had been closed for reasons beyond the control of the employer, it was not a matter which the Labour Court was competent to decide and that it was a matter which only an Industrial Tribunal considering a reference under Section 10 is competent to decide.

28.1 In the aforesaid decision, the Apex Court has observed in para-4 as under:-

> *4. In Central Bank of India Ltd. V/s. P.S. Rajagopalan, (1964) 3 SCR 140 this Court considered the scope of*

Section 33-C(2) elaborately and it would be necessary to quote at some length from that decision. In that case it was urged by the employer that Sec.33-C(2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties and that the only point which the labour Court can determine is one in relation to computation of the benefit ill terms of money. This Court observed:

"*We are not impressed by this argument. In our opinion on a fair and reasonable construction of sub-sec. (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 inevitably 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 said right is disputed the Labour Court must deal with that question and decide whether 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 necessary computation can arise. It seems to us that the opening clause of sub-sec. (2) docs 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 constructional would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, if seems to us that is 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- sec. (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 33-C(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-sec.(2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution; (1)". We must accordingly hold that Section 33-C(2) takes within its purview case 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. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-sec. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-sec. (2). On the other hand, sub-sec.(3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour of Court under sub-sec. (2)".

Further on this Court observed:

"*It is thus clear that claims made under Section 33C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter V-A. These words of limitations are not to be found in s.33C(2) and to that extent, the scope of Section 33C(2) is undoubtedly wider than that of Section 33C(1)... It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under Section 33C(2). There is no doubt that the three categories of claims mentioned in in Section 33C(1) fall under Section 33C(2) and in that sense, Section 33C(2) can itself be deemed to be a kind of execution proceeding, but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent under Section 33C(2) and that may illustrate its wider scope.*"

This Court then went on to discuss some of the claims which would not fall under Section 33C(2), which is not very relevant for the purposes of this case. The present case stand on an even stronger footing. Even the employer does not dispute that the workmen are entitled to compensation. It only says that the compensation should be calculated on a particular basis different from the basis on which the workmen claim. The claim also falls under

Chapter V-A.

28.2 Ultimately, the Apex Court has dismissed the appeal.

29. In the case of ***Central Bank of India*** (supra), which is referred to hereinabove of five Judges Bench, the Apex Court has observed in paras 6, 7 and 8 as under:-

> *6. It is common ground that sec. 33C(1) provides for a kind of execution proceedings and it contemplates that if money is due to a workman under a settlement or an award, or under the provisions of Chapter V.A, the workman is not compelled to take resort to the ordinary course of execution in the Civil Court, but may adopt a summary procedure prescribed by this sub-section.I This sub-section postulates that a specific amount is due to the workman and the same has not been paid to him. If the appropriate Government is satisfied that the money is so due, then it is required to issue a certificate for the said amount to the Collector and that leads to the recovery of the said amount in the same manner as an arrear of land revenue. The scope and effect of sec. 33C(1) are ,not in dispute before us.*
>
> *7. There is also no dispute that the word "benefit" used in s. 33C(2) is not confined merely to monetary benefit which could be converted in terms of money, but that it takes in all kinds of benefits which may be monetary as well as non-monetary if the workman is entitled to them, and in such a case, the workman is given the remedy of moving the appropriate Labour Court with a request that the said benefits be computed or calculated in terms of money. Once such computation or 'calculation is made under Sec.33C(2) the amount so determined has to be recovered as provided for in sub-sec.(1). In other words, having provided for the determination of the amount due to the workman in cases falling under sub-sec. (2), the legislature has clearly prescribed that for-recovering the said amount, the workman has to revert to his remedy under sub-sec. (1).*

> *8. Sub-section (3) empowers the Labour Court to appoint a Commissioner for the purposes of computing the money value of the benefit, and it lays down that if so appointed, the Commissioner shall take such evidence as may be necessary and submit report to the Labour Court. The Labour Court is then required to proceed to determine the amount in the light of the. report, submitted by the Commissioner and other circumstances of the case. This means that proceedings taken under sub-sec. (2) maybe determined by the Labour Court itself or,in a suitable case, may be determined by it after receiving a report submitted by the Commissioner appointed in that behalf. It is clear that if for computing in terms of money the value of the benefit claimed by the workman, an enquiry is required to be held and evidence has to be taken, the Labour Court may do that itself or may delegate that work to a Commissioner appointed by it. This position must be taken to be well settled after the decision of this Court in the Punjab National Bank Ltd. V/s. K. L. Kharbanda.*

29.1 Further, while dealing with the legislative history, the Apex Court has observed in paras 15, 16, 18 and 19 as under:-

> *15. The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted sec. 33-A in the Act in 1950 and added sec.33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to sec.10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing sec.33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of sec.33-C cases which would fall u/s.10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference u/s.10(1). These disputes cannot be brought within the purview of sec.33-C. Similarly, having regard to the fact that the policy of the Legislature in enacting sec.33C is to*

provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of s. 33C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which, fall u/s. 10(1) of the Act for instance cannot be brought within the scope of sec.34C.

16. Let us then revert to the words used in sec.33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-sec. (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub-sec. (2) is similar to that of sub-sec. (1) and it is pointed out that just as under sub-sec. (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-sec. (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of the benefit in terms of money. We arc not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-sec. (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 inevitably 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 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 necessary computation can arise. It seems to us that the opening clause of sub-sec. (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 appellants 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-sec. (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 u/s. 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-s. (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". We must accordingly hold that sec.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 incidentally, it may be relevant to add that it would be somewhat odd that under sub-sec. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-sec. (2). On the other hand, sub-sec. 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub- sec. (2).

17. xxx xxx xxx

18. Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his` existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour

Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under sec.33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under sec. 33C (2),it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.

19. We have already noticed that in enacting sec. 33C the legislature has deliberately omitted some words which occurred in sec. 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in sec.33C(1) because sec. 33C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus .clear that claims made u/s. 33C(1) , by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in sec. 33C(2) and to that extent, the scope of sec.33C(2)) is undoubtedly wider than that of sec. 33C(1). It is true that even in respect of the larger class. of cases which fail u/s. 33C (2), after the determination is made by the Labour Court the execution goes back again to sec.33C(1). That is why sec. 33C(2) expressely provides that the amount so determined may be recovered as provided for in sub-section (1). It is .unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall u/s. 33C(2). There is no doubt that the three categories of claims mentioned in sec. 33C(1) fall u/s. 33C(2) and in that sense, sec.33C(2) can itself be deemed to be a kind of. execution proceeding; .but it is possible that Claims not based on settlements, awards or made under the provisions of Chapter V A, may also be competent u/s.33C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall u/s. 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages u/s. 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and. therefore, the

employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under sec. 33C(2). If a settlement has been, duly reached between the employer and his employees and it fails u/s.18(2) or (3) of the Act and is governed by sec.19(2), it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative no claim can be made u/s. 33C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may be arise thereafter may to be dealt with according. to the, other procedure prescribed by the Act. Thus, our conclusion is that the scope of sec.33C(2) is wider than sec.33C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under s. 33G (2) which may not fall u/s. 33C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd (1), that sec. 33C is a provision in the nature of execution should not be interpreted to mean that the scope of sec.33C(2) is exactly the same as sec. 33C(1).

30. In the case of ***Union of India*** (supra), the Apex Court has observed that under the Provident Fund Act, 1925, the amount due to employee towards the provident fund and pensionary benefits is not liable to attach under Section 60(1) proviso of (g) and (k) of the Civil Procedure Code.

31. In the case of ***Lalitabehn Bhanabhai d/o. Bhanabhai Malabhai*** (supra) the Apex Court has observed that the amount lying in the provident fund and governed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is not

liable to attachment or decree or order of any Court in respect of any debt or liability incurred by member.

32. In the case of ***Ugra Sen Singh and another*** (supra), it has been observed that under the Provident Funds Act, 1925, in case of death of subscriber, the amount lying at the credit of subscriber to be paid to his nominee.

33. At this stage, it is worthwhile to reproduce Sub-Section (3) of Section 33C of the I.D. Act, which reads as under:-

> ***33.C. Recovery of money due from an employer****:-*
>
> *(1) xxx xxx xxx*
>
> *(2) xxx xxx xxx*
>
> *(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.*

33.1 For the purpose of forfeiting, this provision specifically provides that for computing the money value of a benefit accrued to the workman, the Labour Court can appoint the Commissioner for taking necessary evidence. Thus, the scope of Section 33C(2) is wider,

than, the scope of Section 33C(1). This fact has already been considered by the Apex Court in the case of *Central Bank of India Ltd Vs. P. S. Rajagopalan Etc., AIR 1964 SC 743 referred to hereinabove*.

34. Thus, considering the aforesaid legal aspects coupled with the Bipartite Settlement of the Bank, it is crystal clear that the respondent is entitled to get the difference of medical bill amounting to Rs.91,659.38 plus salary of suspension period which is considered to be Rs.52,302/- by the Bank itself and the amount of leave salary of 184 days of Rs.78,696/-. However, it is pertinent to note that the interest rate of 12% as awarded by the Labour Courtis on higher side. Considering the prevailing rate of interest, interest can be awarded at the rate of 6% p.a. Therefore, all these amounts need to be paid with interest at the rate of 6% to the respondent from the date of filing of the recovery application till the entire amount is deposited before this Court. Accordingly, the award passed Recovery Application No.3 of 2006 needs to be modified to the aforesaid extent only. However, the award of cost of Rs.5,000/- is justified.

35. So far as the amount of provident fund is concerned, the Labour Court has granted Rs.3,55,998/- along with the interest at

the rate of 12% from the date of the death of the husband of the respondent till the entire amount is paid. Now, as observed hereinabove, as per the Bank Regulations and the provisions contained in the Provident Fund Act, 1925, the employer can deduct the outstanding amount upto its contribution and interest accrued thereon. Therefore, Rs.1,77,999/- needs to be deducted from Rs.3,55,998/-. Hence, the respondent is entitled to get Rs.1,77,999/-. The Bank can deduct Rs.1,77,999/.- for its various loan amounts outstanding against its decision. Therefore, the respondent is entitled to get Rs.1,77,999/- as a provident fund along with the interest at the rate of 6% from the date of filing of recovery application till deposit of amount in the Court by the Bank. Whereas, the half amount of Rs.1,77,999/- along with the interest @ 3% accrued thereon needs to be refunded to the petitioner herein for its adjustment against the outstanding amount towards loan / advance obtained by the deceased.

36. In view of the aforesaid discussions, both the petitions are hereby partly allowed. So far as Special Civil Application No.4696 of 2010 is concerned, the amount of difference of medical bill of Rs.91,659.38, salary of suspension allowance of Rs.52,165/-, and leave salary of 184 days of Rs.78,696/- are payable by the

petitioner herein with interest at the rate of 6% instead of 12% from the date of filing of the recovery application till the amount is deposited before the Registry of this Court. The difference of the interest amount be refunded to the petitioner – Bank herein. The cost awarded by the Labour Court is not disturbed. With the aforesaid observations, the award dated 16.10.2009 passed by the Labour Court in Recovery Application No.3 of 2006 stands modified to the aforesaid extent.

36.1 So far as Special Civil Application No.4697 of 2010 is concerned, Rs.1,77,999/- along with the interest accrued thereon be paid to the petitioner herein and remaining amount of Rs.1,77,999/- be paid to the respondent along with the interest at the rate of 6% from the date of filing of Recovery Application No.472 of 2006 till the amount is deposited in the High Court. The amount of cost is not disturbed. The award dated 16.10.2009 passed by the Labour Court in Recovery Application No.472 of 2006 is modified to the aforesaid extent.

36.2 Both the parties are directed to submit their joint calculation in accordance with the aforesaid observations before the Registry. On such joint submission is made, Registry shall

accordingly disburse the amount to them as referred to hereinabove.

37. It is clarified that during the pendency of the petition, quarterly interest, if any, paid to the respondent on fixed deposit need not be recovered from the respondent.

38. Rule is made absolute to the aforesaid extent in both the petitions. No order as to costs.

Sd/-
(DR. A. P. THAKER, J)

FURTHER ORDER

At this stage, on behalf of Ms.Raval, learned advocate for the petitioner, it is prayed to stay operation of this judgment for a period of four weeks from today. The prayer is declined.

Sd/-
(DR. A. P. THAKER, J)

V.R. PANCHAL