

# CALCUTTA HIGH COURT

Bidyut Kumar Chatterjee

Vs.

Commissioner for the Port of Calcutta

Suit No. 314 of 1963

(P.B. Mukharji, J.)

27.03.1969

## JUDGMENT

### **P.B. Mukharji, J.**

1. This is a suit instituted by three plaintiffs who are all pump drivers in the mechanical engineering department of the Commissioners for the Port of Calcutta. The defendants are the Commissioners for the Port of Calcutta and their Chairman.

2. The reliefs claimed by the plaintiffs in this suit are a declaration that the report of the Jeejeebhoy Committee fixing the scales of pay prescribed for the different classes and categories of posts including the post of pump drivers is binding on the defendants and a further declaration that the plaintiffs are entitled to a scale of pay of ₹ 60-3-81-E. B.-4-105 prescribed for the pump drivers by the report of the said Jeejeebhoy Committee. The plaintiffs also asked for a mandatory injunction directing the defendant to implement the report of the said committee including the scales of pay mentioned above.

3. The plaintiffs' case briefly is as follows : They are pump drivers in the mechanical engineering department of the Commissioners for the Port of Calcutta. The Government of India by a resolution dated 23rd August 1958 set up a committee with Mr. F. Jeejeebhoy as the Chairman to undertake the work of classification and categorization of Classes III and IV posts in the major ports of Bombay, Calcutta, Madras, Cochin, Kandla and Visakhapatnam. The resolution is alleged to have directed the said committee to examine the duties and responsibilities of the various posts and fit into one or the other of the scales of pay given in the schedule attached to that resolution. It is also provided in paragraph 4 of that resolution that the recommendations of the Jeejeebhoy Committee shall be final and binding on the port authorities as well as the labour. It is said that the committee submitted its report on the 28th May 1961 to the Government of India and the recommendations of the committee came into force with retrospective effect from the 1st October 1957. It is alleged that the committee recommended for the pump drivers in the mechanical engineering department the scale of pay of ₹ 60-3-81-E. B.-4-105.

4. What happened thereafter was that the report of that committee was placed before the Commissioners for the Port of Calcutta who at their 10th meeting of the 19th August 1961 and by resolution No. 1132 adopted at that meeting to allow all class III and class IV employees of the defendant commissioners the option either to retain their existing scales of pay or elect for the scales fixed by the said committee.

5. The plaintiffs' present complaint is that they along with other pump drivers had made repeated representations to the defendant commissioners and the authorities for the implementation of such scales of pay as prescribed in the report of the committee. A letter was sent by the Conciliation Officer (Central) to the Chief labor Officer of the defendant commissioners. That letter however has not been produced or exhibited by either side.

6. According to the plaintiffs the non-implementation of the report of the said committee fixing the pump drivers' scale of pay is the cause of action. The cause of action is alleged to have arisen on the 20th May 1961 when the report of the Jeejeebhoy Committee was published and thereafter on the 19th August 1961 when the defendant commissioners adopted the report of the Jeejeebhoy Committee. The non-implementation is said to have given rise to a cause of action from day to day. This suit was filed on the 21st February, 1963.

7. The written statement of the Commissioners for the Port of Calcutta has taken a number of points but the issues raised by the defendants have reduced them. The defense is denial of the plaintiffs' claim that they are entitled to the scale of wages pleaded in the plaint on the basis of the report of the Jeejeebhoy Committee. In paragraph 8 of the written statement it is said that the report classified the pump drivers into two categories, (i) small non-diesel pump drivers and (ii) diesel pump drivers of 40 h.p. or less and provided the scales of pay of ₹ 35-1-50/- for the former and ₹ 60-3-81-E. B.-4-105 for the latter. It is also alleged in the written statement that the duties and responsibilities of the two classes of pump drivers are not identical and the plaintiffs being the pump drivers of small non-diesel pumps are entitled to the scale of pay of ₹ 35-1-50 consistent with their duties and responsibilities as laid down in the report. It is alleged in paragraph 9 of the written statement that in the resolution of ' the Government of India dated the 20th July 1958 the decision to set up the committee was announced and it was laid down that in case the pre-existing scale was higher than the scale recommended by the committee, the higher scale should prevail and continue for existing as well as future incumbents of the port. It is also alleged in that paragraph of the written statement that it was further laid down that the pay should be refixed in the same scale after giving an increment not less than the last increment drawn by the employees in the same scale The defendants plead in that paragraph of the written statement that the pay of the plaintiffs has to be accordingly refixed in the same scale after giving them an increment as provided above. That in brief is the defense on merits. There are a number of technical points raised in the defense which will appear from the issues that I propose to take up now.

8. The issues raised by the defendants and settled by the Court and accepted by either side are as follows:

- (1) Does the plaint disclose any cause of action?
- (2) Are the plaintiffs driven of small non diesel pumps?

- (3) Are the plaintiffs entitled under the report of the Jeejeebhoy Committee to a scale of ₹ 60-3-81-E. B.-4-105/-?
- (4) Are the plaintiffs entitled to the declarations claimed or either of them or to the injunction claimed?
- (5) To what reliefs, if any, are the plaintiffs entitled?

9. On behalf of the plaintiffs, one of them, Bidyut Kumar Chatterji, has given evidence. On behalf of the defendants, Mr. Kshirode Mohan Saha, senior executive engineer, has given evidence. A number of exhibits appear in the suit. There is an agreed brief of correspondence marked exhibit A. There is also the Gazette of India publishing the Government of India resolution dated 21st July 1958 marked Ex. B, the Jeejeebhoy Committee's report marked Ex. C, entries in the Establishment Schedule of the Commissioners for the Port of Calcutta, marked Ex. E1, E2 and E3 and also Ex. 1(a) and Ex. 1(b). There are also two sketches marked Ex. D.

ISSUE No. 1 :-

10. This first issue raises the question whether the plaint discloses any cause of action in this suit. This issue raises far reaching questions. It is contended on behalf of the defendants that the plaintiffs have no cause of action on the ground that it is based neither on a contract nor on a statute. It is alleged that the plaintiffs have no legal right which can be enforced in the court. Secondly, it is also contended that the claim even, if any, of the plaintiffs is an industrial dispute for which the plaintiffs should have invoked the law and procedure of the Industrial Disputes Act and not come to a civil court by way of a suit, it is further supported by the contention put forward by the defendants that this is a case of collective right and not an individual right and therefore as the plaintiffs are only suing for themselves and not on behalf of the other pump drivers in the mechanical engineering department of the defendants no individual relief could be given in such a suit. All these considerations raise questions of far reaching significance in India.

11. I shall first take up the plea of the defendants that this cause of action is not based either on any contract or on any statute and certainly not on any custom. Learned Counsel for the defendants has argued that the report of the Jeejeebhoy Committee is not an award of the Industrial Tribunal under the Industrial Disputes Act and has no statutory force. He argues that it is not, binding on the Port Commissioners or even on the labor although, the resolution says so, because it is contended that the resolution was a resolution of the Government of India and not of either the trade union or the plaintiffs not the labor as such on the one hand and the Port Commissioners on the other.

12. The origin of this controversy can be traced from Ex. B which is the resolution dated 20th July 1958 published in the Gazette of India (Extraordinary) on the 21st July 1958 No. 23-PLA (87) 58. This resolution indicates the following facts:

- (a) The labor unions of the port and dock workers have been making demands from time to time for the improvement of their wages and other conditions of their service.
- (b) The Government of India appointed Mr. P.C. Chaudhuri, I.C.S., as Officer on Special Duty to undertake an enquiry into the various demands of labor to enquire inter alia into

the disparities and anomalies in the scales of pay and allowances of Class III and Class IV employees of the major ports and to make recommendations for the rationalization of the pay structure of the various categories in the light of the recommendations of the Central Pay Commission (1947) for Central Government employees of comparable status.

(c) Mr. Chaudhuri, the Officer on Special Duty, made an interim report and a final report dated 5th July 1957 and 1st September 1957 respectively.

(d) The Government of India stated its conclusions on the important recommendations made by the officer on special duty. In doing so what they said was that recommendations which were purely administrative in character or which were not non-controversial or consequential had not been dealt with in the resolution marked Ex. B nor the recommendations which did not seek any change in the rules or practises. Appendix I of that resolution being Ex. B gives a list of recommendations not specifically dealt with by that resolution. It is expressly stated that the conclusions relate only to Class III and Class IV employees of the ports to whom alone the recommendations made by the Officer on Special Duty refer, (Paragraph 3 of the resolution).

13. This resolution of the Government of India marked Ex. B records, inter alia:

(1) It has been decided that the decisions of this committee shall be final and binding on the port authorities as well as the labour. (Paragraph 7(i) of the resolution).

(2) The Government of India criticizes the recommendations of this Officer on Special Duty that the fixation of pay should be done on the basis of one increment for every three years "as was done by the Central Government when implementing the recommendations of the Central Pay Commission." The Government of India in that resolution says that the recommendations made by the Central Pay Commission and followed by the Central Government was not as simple as made out by Mr. Chowdhury, Officer on Special Duty, because two further conditions were imposed on the amount of increase which could be allowed in the re-fixation of pay in the new scales. Moreover, the Government of India says that the Central Pay Commission has recommended a general revision over very low grades of pay since 1931 but the Officer on Special Duty (Mr. Chowdhury) has apparently not taken into account the fact that the scales in the ports have already been revised once and the incumbents have already been granted the initial increase over their pre-1947 pay more or less on the basis recommended by the Central Pay Commission. Thirdly, the task of the Officer on Special Duty was a limited one, viz., to rationalize and bring about uniformity and there was obviously no justification for making this an occasion for granting the same benefit again. This will appear from Para. 8 of the Resolution of the Government of India dated 20.7.58, published in the Gazette of India and marked Ex. B.

(3) Appendix I of the resolution expressly says: "Recommendations which are accepted in principle but which being administrative in character, are left to be pursued at the port level." This will appear at p. 35 of the Gazette of India, Extraordinary (Ex. B). From this, learned Counsel for the defendants contends that this recommendation is not compelling

or binding. The entire resolution was recommendatory and that the resolution of the Government of India has not the force of law. It is particularly stressed by the defendants that the express direction of pursuing the recommendations at the port level makes this resolution of no legal effect. It is also contended that the decision recorded in paragraph 7 of the said resolution of 20-7-58 saying that "it has also been decided that the decisions of the committee shall be final and binding on the port authorities as well as labour" does not make the decision of the committee binding because it is only the Government of India which was saying so, and not the parties affected. It may be noticed here that the expression used is "it has also been decided"; it does not say that it was decided by the Government of India alone. It is a reasonable construction to think that it was decided with the consensus of both the port authorities as well as the labor.

14. Then comes the setting up of the Jeejeebhoy Committee. Its report is marked as Ex. C. It shows that by Resolution No. 23 PIA (91)/58 dated 23.8.58, published in the Gazette of India, Extraordinary, Part I, S.I. No., 84-A, dated 25.8.58 the Government of India in its Ministry of Transport and Communications (Department of Transport; constituted the Jeejeebhoy Committee with Mr. F. Jeejeebhoy as the Chairman and with representatives both from labor as well as from the ports. So far as the Port of Calcutta is concerned, one Mr. T.A. Eastment was nominated by the Port authorities to represent this Port on this committee. This will be found from paragraphs 1 and 3 of the report of Jeejeebhoy Committee. In paragraph 5 of that report, Ex. C, reference is made to Mr. Chowdhury's earlier report and it is expressly stated by the Jeejeebhoy Committee's Report that "the Government of India, thereafter, in agreement with the unions, appointed this committee to undertake the work of classification and categorisation of Class III and Class IV posts of the six major ports. In effect, the committee was required to classify and categorize over 3200 different categories after examining the duties and responsibilities of each post. "The Jeejeebhoy Committee in its report sets out the procedure it adopted. The procedure is important and relevant for the decision of the point whether the plaintiffs' claim can be said to be based on a contract or on statute in the present case.

15. Paragraphs 8 and 10 of this report show that it was agreed that representatives of the port authorities in the committee should, in the first instance, prepare and submit a co-ordinate scheme for the classification and categorisation of Class III and Class IV employees of all the major ports based on the Government resolution dated 23.8.58. It was also decided that the representatives of labor would thereafter file their observations on the suggestions made by the port authorities. This procedure agreed to by all the parties was followed. In paragraphs 11-13 of that report it is stated that on the side of the labour, All India Port and Dock Workers' Federation also filed a statement in reply to the suggestions of the port authorities. Similarly, there was also response from the Indian National Dock Workers Federation to file their statements before the Jeejeebhoy Committee. Besides these two All-India labor federations, 21 unions and 213 individuals and groups of employees also filed their representations before the Jeejeebhoy Committee. This procedure shows that it was an agreed and representative procedure affecting all interests concerned.

16. About the nature of the decisions of the Jeejeebhoy Committee, paragraph 15 of the Report, Ex. C, significantly records that-

"At the commencement of the first of such session on 6.1.61 it was agreed that after the Committee had taken decisions, the report would be signed by the chairman and the members and would be forwarded to the Government and as it would be final and binding on all parties, no question of any dissenting note would arise."

This is a significant statement where all the parties including the port authorities and labor agreed that the decision of the Jeejeebhoy Committee should be final and binding on all the parties. This, I consider, makes the decision of the Jeejeebhoy Committee in respect of their recommendations a contract between the parties. It was also significantly pointed out that on the ground that the decision was to be final and binding on all the parties, no question of any dissenting note would arise. In fact there was no dissent recorded in the report. Another significant point recorded in paragraph 15 of this report is that "In the deliberations of the Committee, due weight would be given to the views of the Second Pay Commission". It is expressly recorded in paragraph 15 of that Report : "These" agreed points of procedure have been duly observed." (See in this connection particularly paragraphs 15(b) and (c) of this report, Ex. C).

17. Relevant and significant observations of the Jeejeebhoy Committee's Report appear in paragraph 55 thereof. It records, inter alia, the following facts and observations:

"This is the first occasion on which the wage structure of the major Ports of India has been investigated on a broad and rationalized basis. This is also the first occasion on which the representatives of the ports and the representatives of the labor have sat in a conclave to decide the questions at issue. It is also the first occasion where it has been provided that the recommendations of this committee would be final and binding on the port authorities as well as on labor. This democratic set up has been appreciated by all the parties."

18. I am, therefore, not a little surprised to hear the argument from the learned Counsel for the Commissioners for the Port of Calcutta after all this, that they are not bound and that this Report has no basis either in contract or in law. As I said, this Report was signed by the representative of the Port of Calcutta, Mr. T. Eastment. It was no doubt signed also by the representatives of the labour. If the Calcutta Port's representatives signed the recommendations then I find it rather odd when the Port Commissioners of Calcutta are now saying through their counsel that the recommendations do not bind them. It was, inter alia, a recommendation by the port authorities themselves. This Mr. Eastment was the Officer on Special Duty of the Port Commissioners of Calcutta chosen and selected to represent the Port of Calcutta on the Jeejeebhoy Committee. I would require more than ordinary persuasion to allow the defendant commissioners to back out from the agreement that their representatives have signed by expressly stating in paragraph 15 of their report that their decision should be final and binding on all parties and by repeating them in paragraph 55 of the report by present argument at the Bar that this is not an agreement or a contract nor has the recommendation contained in the report any binding legal effect statutory, contractual or customary.

19. I am satisfied on those facts that there is a contract or an agreement on which the plaintiffs can found their cause of action. It has been contended on behalf of the defendants that even if it was an agreement, it was an agreement or a contract without consideration. I am not impressed by this contention of the defendants. The consideration is tremendous. The report as well as the 20th July 1958 resolution of the Government of India as well as the plaint record the demands of the labor in this respect. The contract by which the parties agreed to meet those demands by Joint Committee therefore does not lack legal consideration. The consideration is not only industrial peace in general or industrial peace in particular ports but also the specific demands which were intended to be composed by this agreed procedure to fix a rational pay structure for different classes of workers including the plaintiffs as pump drivers.

20. This is not only a question of estoppel, an argument from the Bar which I shall discuss in due course. This, in my opinion, is a regular lawful and enforceable agreement and contract between the parties concerned.

21. In this connection it will be necessary and appropriate to refer to Section 52 of the Calcutta Port Act. This section provides as follows:

"The Commissioners may in a meeting compound or compromise for, or in respect of, any claim or demand made against them, for such sum of money or other compensation as they shall deem sufficient: provided that no settlement shall be made under this section without the previous sanction of the Central Government, if such settlement involves the payment by the Commissioners of a sum exceeding ₹ 25,000."

22. This appears in Part II of the Calcutta Port Act with the title: "Of the mode of transacting business and entering into contracts." Here it therefore a statutory power to the Port Commissioners to compound or compromise any claim or demand made against them. The language of Section 52 of the Act makes it clear that such a claim or demand may be not only for a sum of money but also for other compensation. The demand of the employees for higher scales of wages come both under demand or claim for money as well as for other compensation within the meaning of Section 52 of the Calcutta Port Act. It is therefore clear that the Commissioners of the Port of Calcutta could be taken to have acted under Section 52 of the statute which governs them to enter into this arrangement to compromise or compound the demands or claims of labor for higher wages and scales of pay by entering into a contract whose main object and consideration were that this claim or demand was being referred to a Joint Committee of both the port authorities and the labor by which they agreed in writing that the decisions of such committee shall be final and binding. It has been argued on behalf of the defendants that Section 52 really refers to other claims and not claims of this nature. Normally it may be concerned with such other claim which the counsel had in view, but the language of the section does not confine it only to such claims but is wide enough to cover the present claim or demand.

23. I have, therefore, come to the conclusion that the plaintiffs' cause of action is based both on contract as well as on the statute. The plaintiffs therefore have a legal right to agitate this claim, Under Section 9 of the Civil Procedure Code subject to its provisions the courts have jurisdiction

to try all suits of "civil nature" excepting of course suits of which their cognizance is either expressly or impliedly barred. The claim certainly is of a civil nature in this case.

24. What is therefore argued on behalf of the defense is that Industrial Disputes Act expressly or impliedly bars such a suit. I shall now consider that point.

25. This question has the far reaching implication whether there can be a suit to agitate and decide an industrial dispute. Many types or classes of industrial disputes in modern legislation involving collective bargaining are statutory creations and statutory rights in modern law. They are not, inter alia, rights indicated by the common law relationship between the master and the servant. The Industrial Disputes Act is a special legislation in India whose preamble makes it clear that it is "an Act to make provision for the investigation and settlement of industrial disputes". It is contended on behalf of the defendants that the present dispute is a collective dispute affecting the interests of other pump drivers and not merely the three plaintiff pump drivers who are litigating in this suit. Therefore, a decision only with regard to the present plaintiffs will create a collective problem of discrimination against similarly circumstanced pump drivers in the mechanical engineering department specially when it is not a representative suit which the plaintiffs have instituted not only for themselves but on behalf of other similarly placed drivers, following the procedure prescribed under Order 1, Rule 8 of the Code of Civil Procedure.

26. In support of this contention, a large number of authorities have been cited from the Bar. In the 5th Edn. of Craies on Statute Law at pp. 228-237, the general principle has been broadly stated to mean that if a statute creates a new duty or imposes a new liability and prescribes a specific remedy in case of neglect to perform the duty or discharge the liability, the general rule is that no remedy can be taken except the particular remedy prescribed by the statute. Willies, J., in the leading and classical decision of *Wolver-hampton New Water-works Co. v. Hawkesford*, reported in<sup>1</sup> elucidates this principle of law by the following celebrated observations:

"There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at Common Law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at Common Law: there, unless the statute contains words which expressly or by necessary implication exclude the Common Law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely but provides no particular form of remedy. There, the party can only proceed by the action at Common Law. But there is a third class, viz., where a liability not existing at Common Law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The present case falls within this later class, if any liability at all exists. The remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

27. These observations have been consistently followed as laying down the principle of law on

this point. The Privy Council in the case of *The Secy. of State v. Mask and Cooperation*<sup>2</sup>, approved and

<sup>1</sup>(1859) 6 C.B. (N.S.) 336 : 141 E.R. 486 at page 495

<sup>2</sup>67 Ind App 222

followed these principles of Willes J. (See the observations of Lord Thankerton at p. 237 of that Report). In the leading case of the House of Lords in *Barraclough v. Brown and Co*<sup>3</sup>. Lord Harschell in construing Section 56 of an Old English Harbours and Docks Act of 1847 using the language-

"or the undertakers may, if they think fit, recover such expenses from the owner of such boat, barge or vessel in a court of summary jurisdiction."

observed at p. 622 as follows:

"the right and the remedy are given uno flatu and the one cannot be dissociated from the other. By these words, the Legislature has, in my opinion, committed to the summary court exclusive jurisdiction, not merely to assess the amount of expense to be repaid to the undertaker, but to determine by whom the amount is payable; and has, therefore, by plain implication indicated that no other court has any authority to entertain or decide these matters."

28. It is argued in this case that the Industrial Disputes Act and the Industrial Tribunals and the forums and proceedings prescribed by the statute are the only methods and manner of deciding an industrial dispute and that no right of action lies in respect of that. Lord Herschell in the case just quoted above at p. 620 in discussing a particular argument from the Bar made the following observations:

"It was argued for the appellant that, even if not entitled to recover the expenses by action in the High Court, he was at all events entitled to come to that court for an adjudication that on the true interpretation of the statute he had a right to recover them, It might be enough to say that no such case was made by the appellant's claim. But apart from this it would be very mischievous to hold that when a party is compelled by a statute to resort to an inferior court, he can come first to the High Court, to have his right to recover the very matter relegated to the inferior court determined. Such a proposition was not supported by authority and is, I think, unsound in principle."

The principle is further illustrated by *Lord Halsbury L.C. in Pasmore v. Oswald, Twistle Urban District Council*<sup>4</sup>, in these terms :-

"The obligation which is created by this statute is an obligation which is created by the statute and by the statute alone. It is nothing to the purpose to say that there were other statutes which created similar obligations, because all those statutes are repealed; you must take your stand upon the statute in question, and the statute which creates the obligation is the statute to which one must look to see if there is a specified remedy contained in it. There is a specified remedy contained in it which is an application to the proper Government Department."

29. The contention on behalf of the defendants is that when the Industrial Disputes Act provides a special remedy for these special disputes which are called 'industrial disputes' affecting a class

much beyond individuals, then the Industrial Disputes Act is the only Act under which the remedy should be sought and not by individual actions, or else such individual actions would lead to multiplicity of courts giving multiplicity of decisions creating differences and discrimination among different persons in the same group of Workers.

<sup>3</sup>1897. A.C. 615

<sup>4</sup>[1898] A.C. 387 at pp. 394-95

30. But the first principle to bear in mind in this connection in my view is whether the special statute creating a special forum and a special procedure for special disputes is permissible or obligatory and whether the claim made arises out of that special statute or whether it can be related to a common law right or a right of any contract or agreement. On the first point it is necessary to refer to the decision of the House of Lords in *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Govt*<sup>5</sup>. and specially to the observations of Lord Jenkins at p. 17 where it was said:

"For these reasons the principle of *Barracloch v. Brown*, (1897), 1897 AC 615 = 66 LJ QB 672, (supra) has in my judgment, no application here, and apart from that principle I can find no special ground for holding that Section 17 (of the Town and Country Planning Act, 1947, quoted at p. 12 of the report) provides an exclusive method of determining questions of the kind to which it relates, and deprives the courts of the jurisdiction which they ordinarily possess of determining by declaration questions of that description. Clear words would be necessary to produce this result and paying due regard to the terms of Section 17, and to the argument that it must be read in conjunction with Sections 15 and 16, I cannot find any sufficient indication that it was intended to oust the jurisdiction of the court on any question which might have been made the subject of an application under Section 17. The section is permissive and not imperative. That in itself is not a circumstance of any positive weight (see the permissive language of the section in [1897] A.C. 615), but the fact remains that it is not in terms made obligatory to apply under Section 17 which is at least consistent with the company's contentions. Much more important is the circumstance that Section 17 made its first appearance in planning legislation in the Act of 1947. In its absence the right now claimed by the company of going to the court for declaratory relief could hardly have been doubted. If the introduction of Section 17 had been intended to change the law by ousting the jurisdiction of the court on questions capable of being dealt with under the section, that important change would surely have been made in express terms. For the reason which I have stated, I am of opinion that the preliminary objection fails."

31. Now this is an important and major consideration on this branch of the law as I understand it, The first consideration is to see whether the claim made in this suit or in an action is such which is only the creation of a statute and where no such relief could be given either under contract or agreement or by custom or by common law. If it is found that it is a good and valid claim under a contract or an agreement, then the exclusive application of the special statute to oust jurisdiction of ordinary courts would be determined by the language of ouster. Normally, such an ouster could be by express language and in any event in exceptional cases it may be made by the most necessary and compelling implication. The relevance of this consideration will be apparent when

I come to discuss the position of the Indian Industrial Disputes Act and its bearing upon the point. But before I do so, it will be necessary to refer to some authorities cited by the learned Counsel for the plaintiffs. One is the recent decision in *Baron v. Sunderland Corporation*<sup>6</sup> dealing with a claim of a teacher for additional salary and whether it was subject to arbitration. There is a ring of similarity between that case and the present one in

<sup>5</sup>(1959) 3 All E.R. 1

<sup>6</sup>(1966) 2 W.L.R. 363

so far as that claim arose out of the Burnham Report on education. The plaintiff in that suit was a school teacher employed by the defendants who were required to pay him a salary in accordance with the scales and provisions set out in the Burnham Report. The Burnham Report established a kind of a general committee of reference who were to determine any question relating to the interpretation of the provisions of that report brought forward by a local education authority acting through the authorities' panel or by any association of teachers acting through the teachers' panel or by the Chairman of the Burnham Committee. The English Court of Appeal proceeded on the reason that it was an essential ingredient of an arbitration clause that it conferred parallel rights of reference of any dispute arising between the parties to an independent arbitrator and that since the plaintiff himself had no right to refer his claim to the committee of reference but had to depend on some other body or person to bring it forward on his behalf, the Burnham Report was not an arbitration clause and did not constitute a valid submission and it did not amount to a statutory ouster of the jurisdiction of the courts to determine disputes between individual school teachers and local authorities involving any question of interpretation of the provisions of the Burnham Report. It was held there that the action was triable by the courts. It is necessary to emphasize, as Davies L.J. emphasized at p. 368, that this was a common law right under a contract of service. The Lord Justice observed at p. 368 of that Report:

"What it is really meant to deal with is a question brought up by the teachers' side on the one side or the local authorities' body on the other in order to obtain a decision on a broad question of interpretation which may affect a large number of teachers up and down the country. This, I think, is no such case. This is a simple common law claim by an employed person for salary which he claims to be due to him under his contract of service. And I can see nothing either on the ground on which the Judge proceeded, or on the alternative ground proposed by Mr. Persy this afternoon, which would justify the court in interfering with the normal process of this action."

It is, therefore clear from this authority also that it was not a special remedy which was sought but a common law right under a contract of service.

32. Declaratory judgments and reliefs about declarations are changing in the modern context. Merely declaratory judgments are now being given and the court even has been authorised in England to make binding declarations whether any consequential relief is or could be claimed or not. The law will be found in 22 Halsbury 3rd Edn., pp. 746 to 751, Articles 610 and 611. There it is stated that there is a general power to make a declaration, whether there be a cause of action or not and at the instance of any party who is interested in the subject-matter of the declaration and although a claim to a consequential relief has not been made or has been abandoned, but even then the declaration claimed must relate to some legal right and must confer some tangible benefit to the plaintiff see *Nixon v. Attorney-General*<sup>7</sup> There is, however, no jurisdiction to make

a declaration on a subject whose relief is beyond the jurisdiction of the court nor can a declaratory judgment be given where the only remedy open to the plaintiff is one prescribed by a particular statute as in *Barraclough v. Brown*<sup>8</sup>, already noticed.

<sup>7</sup>[1931] AC 184

<sup>8</sup>(1897), 1897 AC 615 = 66 LJ QB 672

33. It will now be necessary to examine the scheme and provisions of the Industrial Disputes Act to see how far they expressly or impliedly bar the jurisdiction of this Court in enforcing the plaintiffs' claim by a civil suit or action. I have already noticed the preamble of the statute. Section 2(k) of the Industrial Disputes Act defines "industrial dispute" to mean any dispute or difference between the employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person. The definition to my mind is wide enough to include the present claim of the plaintiffs for higher salary which certainly is an industrial dispute and within the meaning of that expression under Industrial Disputes Act. But then, that does not put the plaintiffs out of court. The more important question remains and that is whether the Industrial Disputes Act has ousted the jurisdiction of this Court to try the plaintiffs' claim in a suit, when such claim is based also on an agreement under the contract, as I have indicated. The first point noticed in the Industrial Disputes Act is that it contains no section in express language to oust the jurisdiction of courts to determine the legal rights in a civil dispute even though they may concern employer or employee, the conditions of service, labor or wages. The second point under the Industrial Disputes Act is to find out whether the language of any of its sections is such that it is compelling and obligatory on the part of the employer or employee to take recourse to the procedure prescribed by that Act as the only procedure for determining the dispute.

34. An examination of the Industrial Disputes Act on this point of view reveals the different authorities under the Act under Chapter 2 of this statute as in Sections 3, 4, 5, 6, 7A, 7B and 7C. The different authorities under the Act are:

- (a) Works Committee.
- (b) Conciliation Officers.
- (c) Board of Conciliation.
- (d) Courts of Inquiry.
- (e) labor Courts.
- (f) Tribunals.
- (g) National Tribunals.

The Works Committee under Section 3 of the Act is not regarded as an agency for collective bargaining nor has it the function to settle a rationalisation scheme such as the present one. That view was approved by the Supreme Court in *North-brook Jute Cooperation Ltd. v. Their Workmen*<sup>9</sup>, The next authority is provided by the Conciliation Officers and the Board of Conciliation under Sections 4 and 5 of the Industrial Disputes Act.

35. These sections provide that the appropriate Government may appoint Conciliation Officers with the duty of mediating in and promoting the settlement of industrial disputes either for a

specified area or for specified industries in a specific area or for one or more specified industries and either permanently or for a limited period. For the same purpose, the appropriate Government may also appoint Boards of Conciliation which contain equal members of representatives from the parties to the dispute with an independent Chairman. The power is with the appropriate Government and not with the parties to the dispute. It may be also noticed here that the Works Committee is also set up by the appropriate

<sup>9</sup>(1959) AIR 1959 Cal 349 (v 46)

Government who may, by general or special order, require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workers.

36. Then follow Courts of Enquiry under Section 6 of the Industrial Disputes Act which again may be set up by the appropriate Government for enquiring into any matter appearing to be connected with or relevant to an industrial dispute. The other type of courts are the labor Courts which the appropriate Government may set up for the adjudication of industrial disputes relating to any matter specified in the Second Schedule of the Act and for performing such other functions as may be assigned under the Act. But the labor Court consists only of one person appointed by the appropriate Government with judicial experience. The provision for the labor courts is made under Section 7 of the Act. Then come the tribunals under Section 7A of the Industrial Disputes Act which again the appropriate Government may constitute for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or Third Schedule. Lastly, there are the National Tribunals under Section 7B which the Central Government may constitute for the adjudication of the industrial disputes involving questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.

37. These are the forums under the Industrial Disputes Act. The main feature of these provisions is that they can only be set up by the appropriate Government and there is no permanent right of recourse to any such forums for any of the parties to the dispute. It will be noticed that these provisions are permissive, for all these sections indicate that the appropriate Government may set up such forums. It must also be emphasized that under Section 9 of the Industrial Disputes Act, the order of the appropriate Government or the Central Government has certain finality specified in that section.

38. This characteristic of the Industrial Disputes Act will be further enforced by consideration of Sections 10 and 10A of the statute. Section 10 of the Act provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may by order in writing refer the dispute to these forums for settlement or adjudication. It is settled law that Section 10 is again permissive and it is an administrative act on the part of the Government to make a reference or not to make a reference. The discretion in this respect is entirely with the Government. This is followed by the provision for voluntary reference of disputes to arbitration under Section 10A of the Industrial Disputes Act. Its main feature is that where an industrial dispute exists or is apprehended and the employers and the workmen agree to refer the disputes to arbitration, they may at any time, before the dispute has been referred to under Section 10 of the statute, by a written agreement refer such a dispute to arbitration. This arbitration is not controlled by the Arbitration Act, 1940, which is specially excluded by Section 10A (5) of the Act.

39. Analysing these different provisions of the Industrial Disputes Act, it appears to me that they do not confer any legal right to any party to an industrial dispute to which such party can compel a settlement or adjudication under the statute. The authority to move in these matters remains with the appropriate Government which, under Section 2A, may include the Central Government or the State Government and it is clear that so far as a major port is concerned and for any industrial dispute concerning it, the Central Government is the appropriate Government.

40. Now the appropriate Government in the facts of this case did not choose to proceed under the machinery of the Industrial Disputes Act. The procedure followed in the facts of this case was first by way of a pay commission and the second by way of the Jeejeebhoy Committee, The procedure adopted, therefore, was not a procedure under the Industrial Disputes Act. Having regard to the provisions of the Industrial Disputes Act which I have underlined, it follows that the plaintiffs in this case could not have availed of the procedure under the Industrial Disputes Act. I am, therefore, of the opinion that this case comes within the exceptions discussed by the authorities which I have quoted above. The special statute here does not possess the element of compulsion nor does it oust the ordinary jurisdiction of the courts to enforce a legal right provided it is a right which can be recognized and enforced by law, such as the one that I find in this case where the plaintiffs and the defendants were agreed to a course of action signed the recommendations under the agreed course and also by resolution the defendants adopted the recommendations.

41. There is not much of Indian authority on the subject. In *Judhithir Chandra v. P.R. Mukerjee*<sup>10</sup>, the learned Judge came to the conclusion that though an award under the Industrial Disputes Act had become ineffective by the passing of time the rights flowing therefrom could not be wiped out and the award directing payment of certain dearness allowance which remained unpaid created a debt which was binding and payable by the employer. In that case it was held that the payment on such debt can be enforced by civil suit. The other case is one of my decisions in *Rifle Factory Co-operative Society Ltd v. Fourth Industrial Tribunal, West Bengal*<sup>11</sup>, The ratio of that case was first that the Industrial Tribunal was bound by the terms of reference and could not go beyond them and that under Section 20 of the Industrial Disputes (Appellate Tribunal) Act, there was no jurisdiction in that Industrial Tribunal to construe previous awards so as to give either enhanced or mitigated effect to such awards by a process of interpretation or construction. Secondly, I came to the conclusion in that case that the Industrial Tribunal was an ad hoc tribunal with ad hoc jurisdiction to determine Specified industrial dispute. Those observations in the two decisions were made under the Industrial Disputes Act and proceedings thereunder which consideration is absent in the facts of the present suit. Therefore, they do not, in my view, apply in the present case. But even then the observations made there support the conclusion generally on the nature of the Industrial Disputes Act.

42. For these reasons I have come to the conclusion that the Industrial Disputes Act does not expressly or impliedly bar the jurisdiction of this court to decide and determine the present dispute although it is otherwise an industrial dispute within the meaning of the Industrial Disputes Act. I have, therefore, come to the conclusion that there is a cause of action which this Court can entertain and decide in the facts of the present case.

43. Long arguments were advanced suggestion's cause of action based on a kind of estoppel. The essences of this contention is that the parties agreed to a course of action.

<sup>10</sup>54 Cal WN 222

<sup>11</sup>(1960) 2 Lab LJ 517

That course of action was to produce the report of the Jeejeebhoy Committee. That was a unanimous report. It contained the agreement of all the members of the committee which included representatives both of the plaintiffs and the defendants. The matter does not end there. The parties have changed their position by taking action upon it. The defendants agreed that the recommendations of the report of the Jeejeebhoy Committee should be binding on both the labor and the Port authorities. In fact, the defendants Port Commissioners by a resolution adopted this report of the Jeejeebhoy Committee, although it was not necessary to do so having regard to the Committee's own rendering of the agreement that it would be binding on both the labor and the Port authorities.

44. It is on the basis of these facts that the contention has been raised that this is a kind of estoppel which gives the cause of action. It has been argued that in the facts of this case it is a kind of equitable estoppel or promissory estoppel which might be considered to constitute a cause of action in modern law.

45. Now the whole problem how far estoppel can be a cause of action is a vexed problem of law. There is a good deal of modern ferment on this subject. The law is not clearly settled as yet. Numerous authorities have been cited. It is necessary at least to refer to some.

46. In 1879 *Brett L.J. in Simm v. Anglo-American Telegraph Co*<sup>12</sup>. observed at p. 207:

"In my view estoppel has no effect upon the real nature of the transaction: it only creates a cause of action between the person in whose favour the estoppel exists and the person who is estopped."

Here is clearly a view that an estoppel is a cause of action. This was a decision of the Court of Appeal which was considering the problem of transfer of companies, stocks and shares and the question of estoppel arose in that connection. In that case there is also even a significant observation by Cotton L.J. at p. 216 of that report where it is said: "If stock is sold, the buyer can only gain title to it by an instrument executed in the manner required by the as tides of association, No right can be acquired by an estoppel to any specified portion of stock, except where the owner has represented that which in a Court of Equity he may be bound to make good. The only right by estoppel which can be gained against the company is a right of action founded upon statements by the company, which, if true, would have entitled the plaintiff to be registered as stockholder,' This observation of Cotton L.J. also appears to support the view that estoppel can be at least a qualified cause of action in an appropriate case. Curiously enough eight years after the decision in 1887, Brett L.J., who then had become Lord Esher, M.R., came again to an entirely different conclusion on the point of estoppel in *Seton v. Lafane*<sup>13</sup> where he said at p. 70 of the report:

"An estoppel does not in itself give a cause of action : it prevents a person from denying a certain state of facts."

The previous decision of the Court of Appeal in (1879) 5 Q.B.D 188 was neither noticed

in this subsequent decision in (1887) 19Q.B.D. 68 nor was it cited in the arguments at the Bar.

<sup>12</sup>(1879) 5 Q.B.D. 188

<sup>13</sup>(1887) 19 Q.B.D. 68

47. The question is further complicated by the consideration whether estoppel is a rule of evidence or a matter of substantive law. I shall select two leading cases of the Privy Council. Lord Russell delivering the judgment of the Privy Council in *Dawson's Bank Ltd. v. Nippon*<sup>14</sup>, made the following observations:

"Estoppel is not a cause of action. It is a rule of evidence which comes into operation if (a) a statement of the existence of a fact has been made by the defendant or an authorised agent of his to the plaintiff or someone on his behalf, (b) with the intention that the plaintiff should act upon the faith of the statement, and (c) the plaintiff does not act upon the faith of the statement.

This decision was given in 1933 by the Privy Council. But 12 years later, the Privy Council again in *Canada and Dominion Sugar Co., Ltd. v. Canadian National Steamships Ltd*<sup>15</sup>. through Lord Wright delivering the judgement of the Privy Council made the following observations at p 56 of that report:

"Estoppel is a complex legal notion, involving a combination of several essential elements, the statement to be acted on, action on the faith of it resulting in detriment to the actor. Estoppel is often described as a rule of evidence, as, indeed, it may be so described. But the whole concept is more correctly viewed as a substantive rule of law. Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action."

Lord Wright apparently was qualifying the original view that estoppel was only a rule of evidence and has said it was a more correct view to regard it is a substantive rule of law. The question then as if it is a substantive rule of law, then breach of that rule creates a legal right on the party who has the benefit and a legal obligation on the party who has to act accordingly. In that case it may just well be that the estoppel is a cause of action.

48. It will be necessary at this stage to make a reference to some of the authorities dealing with equitable estoppel and promissory estoppel. Lord Denning is largely responsible for the advance of this branch of the law in recent times. *Central London Property Trust Ltd. v. High Trees House Ltd*<sup>16</sup>. reported the decision by Denning J., given in 1946. There at p. 258 of the report, Denning J. made the following observations:

"What then is the position in view of the developments in the law in recent years? The law has not been standing still ever since *Jorden v. Money*<sup>17</sup> There has been a series of decisions over the last 50 years which, although said to be cases of estoppel, are not really such. They are cases of promises which were intended to create legal relations and which, in the knowledge of the person making the promise, were going to be acted on by the party to whom the promise was made, and have in fact been so acted on. In such cases the

courts have said that these promises must be honoured. There are certain cases to which I particularly refer: *Fenner v. Blake*<sup>18</sup> Re Wickham (1917) 34 T.L.R. 158; Re William Porter & Co. Ltd. (1937) 2 All E.R. 361; and *Buttery v. Pickard*<sup>19</sup> Although said by the learned Judges who decided

<sup>14</sup> Ind App 100

<sup>16</sup>(1956) 1 All E.R. 256

<sup>18</sup>[1900] 1 Q.B. 426

<sup>15</sup>[1947] A.C. 46

<sup>17</sup>(1854) 5 H.L.C. 185

<sup>19</sup>(1946) 174 L.T. 144

them to be cases of estoppel, all these cases are not estoppel in the strict sense. They are cases of promises which were intended to be binding, which the parties making them knew would be acted on and which the parties to whom they were made did act on. *Jorden v. Money*<sup>20</sup> can be distinguished because there the promisor made it clear that she did not intend to be legally bound, whereas in the cases to which I refer the promisor did intend to be bound. In each case the court held the promise to be binding on the party making it, even though under the old common law it might be said to be difficult to find any consideration for it. The courts have not gone so far as to give a cause of action in damages for breach of such promises, but they have refused to allow the party making them to act inconsistently with them. It is in that sense, and in that sense only, that such a promise gives rise to an estoppel. The case are a natural result of the fusion of law and equity; for the cases of *Hughes v. Metropolitan Ry. Co*<sup>21</sup>. *Birmingham and District Land Co. v. London and North-Western Ry. Co*<sup>22</sup>. and *Salisbury v. Gilmore*<sup>23</sup> show that a party will not be allowed in equity to go back on such a promise. The time has now come for the validity of such promise to be recognised. The logical consequence, no doubt, is that a promise to accept a smaller sum in discharge of a larger sum, if acted on, is binding notwithstanding the absence of consideration, and if the fusion of law and equity leads to that result, so much the better. At this time of day it is not helpful to try to draw a distinction between law and equity.... I am satisfied that such a promise is binding in law." Now the same learned Judge as *Denning L.J. in Lyle-Mellor v. A. Lewis & Co*<sup>24</sup>. advanced his previous theory in these clearer terms at pp. 250-51:

"I do not think it necessary to go into these refinements about law and fact. I am clearly of opinion that this assurance was binding, no matter whether it is regarded as a representation of law or of fact or a mixture of both, and no matter whether it concerns the present or the future. It may not be such as to give rise to an estoppel at common law, strictly so called, for that was confined to representations of existing fact; but we have gone far beyond the old common law estoppel now. We have reached a new estoppel which affects legal relations."

"The new estoppel applies to representations as to the future, Take the kind of assurance which was held binding in (1956) 1 All E.R. 256 and in *Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd*<sup>25</sup>. (House of Lords). In each of those cases a creditor during the war gave a promise or assurance to the other party that he would for the time being forgo sums which were thereafter to become due to him. In (1956) 1 All E.R. 256, it was rent. In (1955) 2 All E.R. 657, it was sums payable by way of compensation, The assurance was not a contract binding in law, but it was an assurance as to the future; it was intended to be acted on, it was acted on, and it was held binding on the party who gave

it.... This new estoppel also applies to representations about legal relations."

Apparently the original view of *Bowen L.J. in Low v. Bouverie*<sup>26</sup> to the effect that an estoppel is only a rule of evidence; you cannot found an action upon estoppel, is being slowly adjusted.

49. Denning L.J. appears to have described the new estoppel as capable of affecting legal

<sup>20</sup>(1854) 5 H.L.C. 185      <sup>22</sup>(1888) 40 Ch. D. 268      <sup>24</sup>(1956) 1 All ER 247

<sup>21</sup>(1877) 2 A.C. 439      <sup>23</sup>(1942) 1 All E.R. 457      <sup>25</sup>(1955) 2 All E.R. 657

<sup>26</sup>(1891) 3 Ch. 82 at p. 105

relations but at the same time holding on to the reservations that it does not create a cause of action and that it remains really a shield and not a sword. In a very recent Privy Council decision in *Emmanuel Ayedeki Ajayi (The Colony Carrier Co.) v. R.T. Briscoe Ltd*<sup>27</sup>. Hodson L.J. observed at p. 559 as follows:

"Their Lordships are of opinion that the principles of law as defined by Bowen L.J. in (1888) 40 Ch. D. 268 has been confirmed by the House of Lords in the case of (1955) 2 All E.R. 657, where the authorities were reviewed and no encouragement was given to the view that the principle was capable of extension so as to create rights in the promisee for which he had given no consideration. The principle, which has been described as quasi-estoppel, and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agree not to enforce his rights, an equity will be raised in favour of the other party. This equity is, however, subject to the qualification (a) that the other party has altered his position, (b) that the promiser can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position and (c) the promise only becomes final and irrevocable if the promisee cannot resume his position."

50. The significant change that is coming in the law of estoppel is that in the old estoppel, the representation has to show that he had acted on the representation so as to alter his position to his detriment; but it appears that in the new estoppel the requirement as to detriment has not as yet been so universally and explicitly insisted upon. In (1877) 2 A.C. 439, and also in (1888) 40 Ch. p. 268, both already noticed above, detriment in the old sense was shown. At the same time, it is worth noticing that Viscount Simonds in (1955) 2 All E.R. 657, protested by saying at p. 660 as follows:

"I lay stress on this because I would not have it supposed, particularly in commercial transaction, that mere acts of indulgence are apt to create rights, and I do not wish to lend the authority of this House to the statement of the principle which is to be found in *Combe v. Combe*<sup>28</sup> and may well be far too widely stated."

51. There can be no debate that a mere act of indulgence cannot create rights as pointed out by Viscount Simonds. But that expression appears to be a little too journalistic in this context. "Indulgence" is not a right word to use in this connection. For instance, here in the present case

before me, the parties act, adopt a definite course, take their time, set up a committee, write a report, sign the report and then adopt the report. This is not indulgence. This is sensible, deliberate and well thought out course of action in an organisation, a step in human behaviour and in relationship of labor and management to settle a dispute. See a recent discussion and criticism on this point on the law in Estoppel by Representation by Spencer Bower and Turner, 2nd Edition., 1966 at paper. 347-351. The elements of change that are coming in the old doctrine of estoppel are: (1) that the former view that no estoppel can be founded upon a representation other than from existing fact is being altered and is being extended to an assurance as to future and (2) the facts must show that the promisee intended to be legally bound; but (3) the detriment of the representation acting upon the representation is acquiring a broader and general view

<sup>27</sup>(1964) 3 All E.R. 556

<sup>28</sup>(1951) 1 All E.R. 767 (770)

than its old technical limits."

52. If estoppel is a shield and not a sword and if estoppel cannot itself be a cause of action and can only be a defense, then it has been said that in the present case it is the defendants who are taking the defense that there is no cause of action and they should be estopped from raising that plea on the grounds alleged. This argument is ingenious but I do not think is conclusive. The plaintiffs in an action must establish that they have a cause of action before they can succeed, irrespective of the defense taken. It will be unnecessary for me in this case and for the purposes of this case to decide whether there is estoppel in the present instance and whether it is enough to found a cause of action for the plaintiffs because I have come to the conclusion that the plaintiffs have a cause of action on the basis of Jeejeebhoy Committee's report where the parties have agreed and signed that its recommendations shall be binding on them. This fact read with Section 52 of the Calcutta Port Act is enough in my view to found a cause of action for the plaintiffs. It is, therefore, unnecessary to invoke the doctrine of promissory estoppel or equitable estoppel or estoppel as founding a cause of action to support the plaint.

53. I, therefore, hold that the plaint does disclose a cause of action and answer the first issue in the affirmative.

\* \* \* \*

After discussing factual point, the The Judge then proceeds Edition.

**ISSUE No. 4:**

76. This issue raises the question whether the plaintiffs are entitled to the declarations claimed or either of them or to the injunction claimed.

77. The plaintiffs are asking in prayers A and B of the plaint for two declarations. One is a declaration that the report of the Jeejeebhoy Committee including the scales of pay prescribed for the different classes and categories of posts including the posts of pump drivers is binding on the defendants. This consider to be a declaration to which the plaintiffs are not entitled. My reasons are, the plaintiffs could not ask for a declaration affecting the people other than the plaintiffs themselves because it is not a representative suit nor is it a suit brought by the plaintiffs on behalf of the different classes and categories and posts or even for other pump drivers in the mechanical engineering department. Declaratory decrees are discretionary on the part of this Court. It is well

settled that loose declarations in an action between the parties should not be made whose effect extends beyond the parties except in a properly constituted proceeding. Having regard to the ambit of the claim of the relief in prayer A of the plaint, I refuse it in those circumstances.

78. The second declaration that the plaintiffs are asking is to be found in prayer B of the plaint, Here the plaintiffs are asking for a declaration that the plaintiffs are entitled to the scale of pay of ₹ 60-3-81-E. B.-4-105 prescribed for the pump drivers by the report of the said Jeejeebhoy Committee. On the findings of the issues as aforesaid I hold that the plaintiffs have established their claim to get this declaration. I, therefore, grant this declaration in terms of prayer B of the plaint. This scale of pay will be operative against the defendants from the 1st October 1957 according to paragraph 2(a) of the note of the defendants' chairman on the reports of the Jeejeebhoy Committee and the second pay commission appearing as Annexure A to the plaint and also in Ex. A of the admitted brief of documents.

79. I should make it clear that this declaration in terms of prayer (b) of the plaint is limited only to the plaintiffs themselves and to nobody else.

80. The third prayer of the plaintiffs is for a mandatory injunction directing the defendants to implement the report of the Jeejeebhoy Committee including the scales of pay, viz., ₹ 60-3-81-E. B.-4-105 prescribed for the pump drivers by the said report of the said committee. In my judgement, there can be no mandatory injunction in respect of such a prayer. This relief is also at the discretion of the court. I am not inclined to exercise my discretion of granting that kind of relief in a claim of this nature.

**ISSUE No. 5:**

81. This is a consequential issue raising the question, viz., "To what reliefs, if any, are the plaintiffs entitled?" I have already specified the reliefs to which the plaintiffs are entitled under Issue No. 4. I shall only add that under Section 4 of the Calcutta Port Act, the Commissioners for the Port of Calcutta are a body corporate with perpetual succession and common seal and it is expressly provided there that this body corporate shall sue and be sued by the name of the Commissioners for the Port of Calcutta. Therefore, there cannot be any justification for the plaintiffs joining the Chairman of the Commissioners for the Port of Calcutta as a separate defendant 2 to the suit in addition to the Commissioners for the Port of Calcutta. There is no cause of action against the Chairman of the defendants in the facts and circumstances of this case. The plaintiffs' suit, therefore, against defendant 2, the Chairman of the Commissioners for the Port of Calcutta, must fail and is dismissed with costs.

82. There will be judgement and decree for the plaintiffs in terms of prayer (b) of the plaint against defendant 1, the Commissioners for the Port of Calcutta, with costs.

Order accordingly.