REPORTABLE

2026 INSC 87

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
[@ S.L.P. (CIVIL) NO. 9970 OF 2023]

M/S PREMIUM TRANSMISSION PRIVATE LIMITED ... APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. On 28.01.2020, the Deputy Labour Commissioner/the appropriate Government, in exercise of powers under sub-section (1) of Section 10 and Sub-section (1) of Section 12 of the Industrial Disputes Act, 1947 (For short, "the ID Act"), referred an industrial dispute for adjudication to the Industrial Court, Aurangabad. The operative portion of the reference order reads as follows:

> *"(...) And whereas, considering the said report of the Deputy Commissioner of Labour, Aurangabad Division, Aurangabad, it is satisfied that there is a prima-facie case for referring the said dispute to the Industrial Tribunal for adjudication.*
> *Accordingly, in exercise of the powers conferred under Sub Section (5) of Section 12 of the Industrial Disputes Act, 1947, which has now been conferred by the said Notification, the Deputy Commissioner of Labour, Aurangabad Division, Aurangabad sending it to the Hon'ble Member, Industrial Court, Aurangabad established under Hon'ble President,*

Industrial Court, Maharashtra, Mumbai for adjudicating the said dispute.

SCHEDULE

Demands as mentioned in the Schedule enclosed with the original file.

Signature

(Shailendra B. Pole)

Deputy Labour

Aurangabad Division Commissioner,

Aurangabad"

3. The charter of demands considered by the Conciliation Officer, which resulted in a failure report, is prefaced hereunder:

"I. All the workmen in Annexure - "A" are to be taken on muster roll of Opponent no. 1 with immediate effect,

II. All the workmen in Annexure - "A" are to be deemed to in employment of Opponent no. 1 from their respective dates of joining as set out in Annexure - "A",

III. All the workmen in Annexure - "A" are to be granted the classification of permanent workmen under the Model Standing Orders after their completing 3 months of continuous service from the first date of joining,

IV. All the workmen in Annexure - "A" are to be granted wages equal to the wages paid to the workmen named in Annexure - "B" (the highest paid to any workmen), and arrears in terms of money in respect of the wages and benefits paid to each of the workmen for the entire period actually worked in the Factory.

V. Prevent the Opponents from discharging, dismissing or otherwise teminating the workmen named in Annexure - "A" for their taking part in Industrial Dispute and for joining the

Applicant by resorting Unfair Labour Practice falling under Item 1, 4, 5, 11 of Vth Schedule of Industrial Disputes Act.

VI. All the workmen in Annexure - "A" be paid full wages, who were shown to be students / training by Opponent no. 4 from Sept. 2011 to Sept. 2015

VII. The paper arrangements between Opponent no. 1 and other Opponents from time to time are sham and bogus and that Opponent no. 1 alone is the employer of workmen of Annexure- "A" and not Opponent no. 2, Opponent no. 3 and Opponent no.4."

4. M/S Premium Transmission Private Limited, MIDC, Aurangabad, filed Writ Petition No. 7158 of 2020 against the State of Maharashtra through the Deputy Labour Commissioner, Aurangabad, Conciliation Officer, Aurangabad, and Aurangabad Mazdoor Union, Khokadpura, Aurangabad, challenging the order of reference dated 28.01.2020. The array of parties is referred to as Management, the appropriate Government, and the Union, respectively.

5. A few admitted circumstances are that the Appellant-Management is engaged in the business of manufacturing a wide range of transmission engineering products such as Worm Gearbox, Helical & Bevel Helical Gearbox, Vertical Coal Pulverising Mill Gearbox, Planetary Gearbox, Helical & Worm Geared Motors, Bevel Helical Cooling Tower Gearbox, Fluid Coupling, both Constant and Variable Speed, Extruder Gearbox, Elevator Machines etc.

5.1 According to the Management, the modern technology product line, guided and assisted by computer numerical control machines, is in place and in use in the manufacturing process. In the perennial work of operating computer numerical control machines, the Management states that it has appointed 118 fully trained personnel. The regular employees are under the

disciplinary and administrative control of the factory management, as notified by the competent authority. The extended narrative of the Management is that the production activities involve work other than regular/perennial work. For the discharge of the ancillary and incidental works in the process of manufacture, the Management entrusts these works to labour contractors registered under the Contract Labour (Regulation & Abolition) Act, 1970 (for short, "CLRA"). The said registered labour contractors provide workers to the Management. The labour contractors, having been registered under CLRA, are independent of management and have a separate identity under statutes such as the EPF & MP Act, ESIC Act, Professional Tax Act, GST Act, and other applicable statutes. The Management has been availing the services of labour contractors, and the workforce made available by the registered labour contractors was in accordance with the relevant license. The labour contractors to whom the contracts were admittedly granted are OM Sai Manpower Services Ltd. and M/S Aurangabad Multi Services. The members of the Union are stated to be workers working in the company who were drafted by the registered contractors. In other words, the contractual obligations with the registered labour contractors are fully discharged, and there is no deficiency in this behalf by the Management.

6. The record discloses that the Management availed labour contract services from 2011 to 2020. The contract labour, due to a change in contract or contract conditions, apprehended termination of their employment as contract labour. Therefore, through the Union, the contract labour moved the Conciliation Officer under Section 12 of the ID Act to maintain industrial relations and peace. On 11.06.2019, the Union filed a representation/requisition application directly before the Conciliation Officer.

The charter of demands is already noted, and for brevity, the same is not referred to herein.

7. The Union terms the said labour contracts as sham, bogus, and camouflaged to deny workers, working through the contractor, the benefits of equal wages and other attendant benefits. On the very same day, i.e., 11.06.2019, the Conciliation Officer admitted the representation as a dispute for conciliation and issued notice to the Management. On 19.06.2019, the Management responded to the letter dated 11.06.2019, and the charter of demands set out therein. The foremost objection raised by the Management is that the forum of a Conciliation Officer is directly approached by the Union, and no demand was made on the Management before actually availing the mechanism of conciliation under Section 12 of the ID Act. The Civil Appeal arises out of the preliminary objection on the maintainability of the conciliation proceedings and the consequential reference of the industrial dispute. It is important to note that the Management is not covered by the definition or meaning of public utility service covered by the first schedule read with Section 2(n)(6) of the ID Act.

8. The conciliation undertaken between 19.06.2019 and 21.01.2020 has not resulted in an amicable settlement of the alleged dispute. On 22.01.2020, the Conciliation Officer submitted a failure report to the Deputy Commissioner of Labour, Aurangabad/appropriate Government. The report dated 22.01.2020 led to the industrial dispute referred through the order dated 28.01.2020.

9. In *DP Maheshwari v. Delhi Administration and others*,[1] on raising preliminary objection, and carrying on the litigation at a nascent stage, this Court observed as follows:

> *"1 . It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes Where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford*

[1] (1983) 4 SCC 293.

to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask them selves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences . After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

(Emphasis supplied)

10. Let us examine whether the case on hand falls within the caution administered by this Court in *DP Maheshwari (supra)*. The Management's preliminary objection on the mode and method of initiation of conciliation before the Conciliation Officer under Section 12 of the ID Act, the resultant failure report dated 22.01.2020, and the consequential order of reference dated 28.01.2020 filed as Writ Petition No. 7158 of 2020 in the High Court of Judicature at Bombay are relevant for our consideration. The case of the Management on the reference of an industrial dispute to the Industrial Court can be stated as follows:

10.1 The Union approached the Conciliation Officer directly without first serving a charter of demands on the Management. For the existence of an "Industrial Dispute" under the ID Act, a charter of demand by the Union must first be stated or raised with the employer, and the employer rejects the same. A mere application to the Conciliation Officer without a prior dispute with the employer cannot be termed an industrial dispute. The Conciliation Officer admitted the dispute on 11.06.2019, on the very same day the Union filed the application. The initiation process was carried out in undue haste, without prior notice to the Appellant or a preliminary scrutiny/inquiry as required by the Conciliation Manual. The dispute was admitted on 11.06.2019, but the Union issued a letter informing the company about its formation and the factory committee only on 18.06.2019. Therefore, the Union had no standing to raise the dispute on the date it was admitted. The individuals named in the dispute were contract labourers employed by independent contractors, namely, M/s. Om Sai Manpower Services Pvt. Ltd. and M/s. Aurangabad Multi Services are licensed under CLRA. Therefore, there was no direct employer-employee relationship between the Appellant and these workmen. Moreover, the Deputy Labour Commissioner referred the matter to the Industrial Court unquestioningly based on the Conciliation Officer's failure report, without applying their mind to the fact that no valid industrial dispute existed due to the lack of a demand notice. The Appellant sought to quash the Conciliation Admission Order dated 11.06.2019, the Failure Report dated 22.01.2020, the Reference Order dated 28.01.2020 and

stay on the proceedings in Reference (IT) No. 01/2020 pending before the Industrial Court.

11. The Union resisted Writ Petition No. 7158 of 2020, and we find it unnecessary to refer to the detailed stand taken against the Writ Petition. The Management argued that, for an industrial dispute to exist under Section 2(k) of the ID Act, a demand must be raised at first instance with the employer, and the employer's rejection of that demand constitutes the industrial dispute. The Union did not raise a dispute with the Management; instead, it approached the Conciliation Officer directly. The Conciliation Officer, without preliminary scrutiny or serving any charter of demand on the Management, issued notice for appearance, more particularly in contravention of the *Manual of Conciliation Officer*. At any rate, the conciliation cannot be said to have commenced on the representation received from the Union. Per contra, the Union argued that serving a demand notice directly on the employer often results in immediate termination of service before the protection under Section 33 of the ID Act is availed. The Conciliation Officer has the power to intervene not just in existing disputes but also in apprehended disputes under Section 12(1) of the ID Act. The Union contended the contracts were sham and bogus, and the workers were actually direct employees. They relied on *Shambu Nath Goyal v. Bank of Baroda*,[2] asserting that a written demand is not a *sine qua non* for an industrial dispute to exist. The Management had no intention to settle. They eventually terminated the workers during the pendency of the reference, leading to complaints under Section 33-A of the ID Act and the Prevention of Unfair Labour Practices Act.

[2] (1978) 2 SCC 353.

12. The impugned judgment held that conciliation proceedings commence when the Conciliation Officer gives formal intimation in writing declaring his intention to commence proceedings from a specified date. In this case, the Conciliation Officer validly issued notice on 11.06.2019 to commence conciliation proceedings on 19.06.2019. On the requirement of serving a charter of demand first to the Management, the impugned judgment succinctly records that while normally a demand should be served on the employer first, a written demand is not a *sine qua non* for an industrial dispute to exist, unless it is a public utility service. On the crucial aspect of a dispute or an apprehended dispute, it has been held that the Conciliation Officer has discretion to intervene even if a dispute is apprehended. The Conciliation Officer ought not, and need not, wait for the situation to escalate into industrial unrest. The initiation of conciliation proceedings without a pre-conciliation meeting cannot be said to be illegal or to contravene the procedure stipulated in this regard. The conciliation manual is primarily for guidance and should be treated as a document intended to guide the officer. In the case at hand, there is a dispute regarding the relationship between the employer and the employee, between the Management and the contract labour working through the two labour contractors. The relationship is to be decided by the Industrial Court, but not the Conciliation Officer. The appropriate Government accepted the failure report, and the decision to refer the dispute to the Industrial Court for adjudication conforms to the requirements of law. Interference with the ongoing dispute-resolution mechanism would render the cause or grievance remediless.

13. We have heard Mr. C.U. Singh, Learned Senior Advocate, Mr. Sandeep Sudhakar Deshmukh, Advocate, and Shri B.H. Marlapalle, Learned Senior Advocate for the parties.

14. Mr. C.U. Singh argues that the statutory redressal mechanism under the ID Act can or could be availed by a union, subject to complying with the pre-condition of, first, serving a charter of demand to the Management, second, upon the Management declining to accept the charter of demands; and alternatively, on the assertion and denial of demands a dispute is said to be existing for deliberation before the Conciliation Officer. The Union admittedly has not placed the charter of demands before the Management. The invocation of a forum for conciliation under Section 12 of the ID Act through a representation is ex facie illegal, and the consequent submission of a failure report, leading to the reference of an industrial dispute, is likewise illegal and liable to be interfered with and set aside. The High Court justified the reference erroneously by relying on the concept of apprehended dispute. The deliberation before the Conciliation Officer could not be equated with the deliberation between the Management and the Union while examining the charter of demands. He places strong reliance on *Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal*[3] and *Prabhakar v. Joint Director, Sericulture Department.*[4] To sum up, the preliminary objections to the ongoing dispute resolution are that, firstly, there is no dispute; secondly, the dispute referred to the Industrial Court is illegal and contrary to the ID Act.

15. Mr. Sandeep Sudhakar Deshmukh, appearing for the Union, argues that the preliminary objection is premised on the ratio laid down by this Court in *Sindhu (supra)* and *Prabhakar (supra)*. There is no statutory requirement

[3] (1968) 1 SCR 515.
[4] (2015) 15 SCC 1.

as a precondition for invoking the jurisdiction of the Conciliation Officer by moving the Management a charter of demands, receiving an oral or written rejection of the demands, and then moving the Conciliation Officer for a mutually agreeable settlement under Section 12 of the ID Act. The ratio of the cases relied on by the Management, at best, could be applied to a situation where an employer-employee relationship is admitted. In the instant case, the Management does not recognise the workers engaged through registered contractors as the Management's workmen. The case of workers is that contract labour is either a sham or camouflaged to deny the workers of the Union the attendant benefits. The charter of demands is for their treatment on the muster rolls of the Management as the principal employer and for the regularisation of their services. The contract under which the workers were working was not extended, nor were the contract labour allowed to work, even if a new contractor was given the work. As rightly noted by the High Court, the charter of demands, if placed before the Management at the first instance, would result in cessation of even the contract labour employment of the workers. He relies on *Vividh Kamgarh Sabha v. Kalyani*[5] and *Cipla Ltd v. Maharashtra General Kamgar Union*[6] for the proposition that the Union has to canvas unfair labour practice resulting in termination of services of workmen who are discharging work and duties normally discharged by perennial workers. *Shambu Nath Goyal v. Bank of Baroda*[7] deals with an apprehended dispute leading to conciliation/industrial dispute, and the said ratio in all fours is applicable to the case on hand. The Management, by raising a preliminary objection, cannot deprive the workers working through

[5] (2001) 2 SCC 381.
[6] (2001) 3 SCC 101.
[7] (1978) 2 SCC 353.

the registered contractor of a legal remedy against the alleged illegal termination or discontinuation of service. The initiation of conciliation proceedings, submission of the report, and the consequent reference to the Industrial Court are valid and legal. At best, having regard to the fact in issue between the Management and the Union, appropriate issues are framed for decision, but aborting the very dispute would be contrary to the ID Act.

16. Mr. B.H. Marlappalle, Learned Senior Advocate, contends that the preliminary objection of the Management is without merit. He appears for the contractors who facilitated providing contract labour services to the Management. The charter of demands, according to him, would depend on who the principal employer is of the workers engaged through contract labour. He prays for the dismissal of the Civil Appeal.

17. We have taken note of the rival contentions and perused the record.

18. At the outset, we would like to refer to the constitution bench judgment of this Court in *Steel Authority of India Limited and others v. National Union Waterfront Workers and Others*.[8] Stated in fine, the factual background in *SAIL (supra)* is:

18.1 The appellants therein, a Central Government Company, entrusts the work of handling the goods in the stockyards to contractors after calling for tenders in that regard. The Government of West Bengal issued a notification dated 15.07.1989 under Section 10(1) of the CLRA prohibiting the employment of contract labour in four specified stockyards of the appellants at Kolkata.

[8] (2001) 7 SCC 1.

18.2 On behalf of the appellants, the Government of West Bengal initially kept the said notification in abeyance for a period of six months. It thereafter extended that period from time to time, but not beyond 31.08.1994.

18.3 The Union representing the cause of 353 contract labourers moved the High Court of Judicature at Calcutta seeking a direction to the appellants to absorb the contract labour in their regular establishment in view of the prohibition notification of the State Government dated 15.07.1989, and further prayed that the notification dated 28.08.1989, keeping the prohibition notification in abeyance, be quashed.

18.4 The High Court allowed the writ petition, set aside the notification dated 28.08.1989, and all subsequent notifications extending the period and directed that the contract labour be absorbed and regularised from the date of the prohibition notification.

18.5 Assailing the said judgment, the appellant therein filed a writ appeal and challenged the prohibition notification of 15.07.1989. They filed a writ petition in the Calcutta High Court.

18.6 While these cases were pending before the High Court, this Court delivered a judgment in *Air India Statutory Corporation v. United Labour Union*[9] holding, *inter alia*, that in the case of Central Government Companies, the appropriate Government is the Central Government. It thus upheld the validity of the notification dated 09.12.1976 issued by the Central Government under Section 10(1) of the CLRA prohibiting employment of contract labour in all establishments of the Central Government Companies.

18.7 On 03.07.1998, a Division Bench of the High Court dismissed the writ appeal as well as the writ petition filed by the appellants, taking the view that

[9] (1997) 9 SCC 377.

on the relevant date, the appropriate Government was the State Government. The legality of this judgment and order was challenged in the appeal to this Court.

19. For the present adjudication, we refer to the ratio decidendi in *SAIL (supra)* on automatic absorption and between genuine and sham contracts, which can be, in a nutshell, stated thus:

On Automatic absorption

19.1 This Court examined the scheme of CLRA and held that Section 10 is merely a regulatory and prohibitory provision. It creates a bar on employing contract labour, but it does not create a positive right of absorption for the workmen.[10] This Court settled that the prohibition of contract labour under Section 10(1) does not imply an automatic absorption of contract labour as direct employees of the principal employer.

19.2 This Court observed that CLRA provides for specific penal consequences for violating the Section 10 notification under Sections 23 and 25. Further, it was held that when the legislature has provided penalties for the violation, courts cannot read into the statute a consequence that the legislature chose not to include.

19.3 The Court prospectively overruled the ratio settled in *Air India (Supra)*, wherein it was held that after notification under Section 10 of the CLRA is issued, the intermediary vanishes. A direct relationship is established between the principal employer[11] and employee.

19.4 The Court observed that in support of the contention of automatic absorption, the emphasis is placed on the decision in *Standard vacuum*

[10] Clause (i) of Section 2 (1) CLRA.
[11] Clause (g) of Section 2(1) CLRA.

case[12], in which the Court had directed absorption of contract labour as a consequence of the prohibition of employment of contract labour. The Court pointed out that no such principle has been laid in that Judgment. Still, a mere direction extending the prohibition of contractual labour from the date of prohibition was to take effect to permit the existing contract labour to continue for the rest of the contract period.

Genuine vs. Sham contracts

19.5 The Court, while drawing a distinction between a prohibited valid contract and a sham contract, held that, on the one hand, if the contract is genuine but Section 10 of the CLRA notification subsequently prohibits contract labour, the principal employer must stop employing contract labour. The workers do not become employees. The contractor releases them.

19.6 On the other hand, if the contract is found to be sham, nominal, or a camouflage, in which the principal employer controls the workers and pays their salaries, but uses a contractor merely to bypass labour laws, then the workers are *de facto* employees of the principal employer.

19.7 Further, this Court opined that the dispute regarding whether a contract is sham or genuine is a disputed question of fact, and a writ Court should not direct absorption without adjudicating it; an Industrial Court or Labour Court must adjudicate this issue in a dispute raised by the workmen.

20. The stand of the Management on the relationship between the contract labour and the Management is stated in the Civil Appeal as follows:

> *"**Questions of Law:***
>
> ***(iii)** Whether the Hon'ble High Court ought to have considered that, the Conciliation Officer has not verified the locus standi*

[12] AIR (1960) SC 948.

of the alleged Union and its members, since the alleged Union is unconnected to the business of the petitioner company and the persons listed in the Annexure of the Application are not the employees of the petitioner's company, therefore, preliminary enquiry/investigation by the Conciliation Officer was mandatory while admitting the dispute in Conciliation?"

*"**Grounds:***

***(F)** Because the Hon'ble High Court failed to consider the section 33 of the manual of the Industrial Dispute which clearly holds that, the dispute should not be admitted in conciliation if the employees on whose behalf it has been sponsored are not workmen with the meaning of the Act. Thereby the said provision clearly mandates to conduct enquiry by the Conciliation Officer to look into the members of the Union whether they are employees of the petitioner employer against whom the demand is raised. Looking to the present case, the petitioner has specifically shown that the persons listed in the Annexure along with the request application are not the employees of the petitioner company. Moreover, bulky evidence was filed on record before the Conciliation Officer as well as the Hon'ble High Court showing that the petitioner company has entered into the agreement with contract labour providing companies. The said contracts are signed In terms of Registration and Licenses issued by the Licensing Authority under Contract Labour (Abolition & Regulation) Act, 1970. Therefore, prima facie, the petitioner company has shown that the alleged Union having no connection with the petitioner company and the alleged members of the Union are not employees of the company."*

21. The preliminary objection on maintainability is examined from the case stated by the Management. The Management endeavours to preliminarily eclipse the industrial dispute by relying on the decisions of this Court in *Sindhu (supra)* and *Prabhakar (supra)*.

21.1 In *Sindhu (supra)*, the respondent/R. S. Ambwaney was appointed as an accounts clerk by the appellant therein on 13.12.1950. In 1953, the appellant incorporated a subsidiary company, originally named Makenzies Heinrich Bulzer (India) Limited and later incorporated as Sindhu Hotchief (India) Limited. On 18.09.1953, the appellant formally placed Ambwaney's services at the disposal of the subsidiary. Sindhu Hotchief issued him an appointment order dated 05.09.1953, placing him on probation and contemplating confirmation. Ambwaney worked in the subsidiary until 20.02.1958, when Sindhu Hotchief terminated his services after paying statutory retrenchment compensation. The next day, he reported to the appellant therein for duty but was refused re-employment because his former post had been permanently filled. He then demanded retrenchment compensation from the appellant. Mazdoor Mahajan/union-respondent supported this demand. Conciliation having failed, the Government of Gujarat referred the matter to the Industrial Tribunal on 15.11.1960. The reference (Demand No. 1) sought Ambwaney's reinstatement in the appellant's service with wages from 21.02.1958. The Tribunal, by order dated 10.08.1961, ordered reinstatement with back wages. The High Court of Gujarat dismissed the writ petition of the appellant therein.

21.2 This Court, in the civil appeal filed by the management, found that although Ambwaney initially remained an employee of the appellant when placed at the subsidiary's disposal, he later accepted confirmation in Sindhu

Hotchief and served there for 4½ years. A confirmation, coupled with receipt of retrenchment compensation from the subsidiary, demonstrated that his employment with the appellant therein had ended. Therefore, he had no subsisting right to reinstatement. Letters from Ambwaney (07.03.1958) and the union therein (10.07.1959) showed that their demands to the appellant were confined to retrenchment compensation, not reinstatement. Because no dispute on reinstatement existed between Ambwaney and the employer-appellant, the State Government's reference on that question was beyond jurisdiction. In this background, it has been held that a mere demand made to the Government, unpreceded by a dispute with the employer, cannot constitute an industrial dispute under the ID Act. By voluntarily taking the new job, accepting probation/confirmation, and receiving retrenchment compensation from the subsidiary, the employee effectively entered a new contract, terminating the old one.

21.3 We have to examine the circumstances in *Sindhu (supra)* to distinguish between a dispute and an apprehended dispute.

21.4 In *Prabhakar (supra)*, the petitioner–claimant was appointed as a Clerk in the Sericulture Department, Government of Karnataka, Belgaum on 01.04.1984. His services were terminated on 01.04.1985. During the period from 01.04.1985 to 1999, the petitioner did not approach any judicial/quasi-judicial authority to challenge the said termination. In 1999, the claimant approached the appropriate Government alleging that his services were terminated illegally and in violation of the provisions of Section 25-F of the ID Act. In the claim made by the petitioner, the only explanation given was that he had approached his employer on several occasions with a request to reinstate him in service and pay back wages and other consequential benefits.

The conciliation proceedings had started, which ended in failure. Thereafter, the appropriate Government referred the matter regarding the validity of the appellant's termination for adjudication. His employer stated that the dispute was not maintainable given that the claimant had raised the dispute after fourteen years of his termination. On merits, it was further pleaded that the management did not terminate the claimant's services, but the claimant left the services. After the evidence was led, the Labour Court passed the award holding that the petitioner had worked for more than 240 days and his services were terminated by the Management without complying with the provisions of Section 25-F of the ID Act. As a result, the Labour Court ordered reinstatement of the claimant but denied back wages.

21.5 The management preferred a writ petition against this award, which the Single Judge of the High Court of Karnataka dismissed. The management preferred a writ appeal against the dismissal of the Writ Petition by the Single Judge which was allowed by the division bench on 06.06.2011. Challenging the order of the Division Bench, the claimant preferred the appeal before this Court. This Court held that the existence of an industrial dispute is strictly contingent upon the demand and rejection test, whereby a formal demand by the workman and its subsequent refusal by the employer serve as a mandatory precondition; consequently, a belated demand raised after a significant lapse of time may negate the existence of a live dispute. Regarding the power of Reference under Section 10 of the ID Act, the Court held that the appropriate Government exercises a purely administrative function, requiring subjective satisfaction based on material records that a dispute exists or is apprehended, and that the claimant is indeed a workman. While the Government must apply its mind to these jurisdictional facts and cannot act

mechanically. It is legally impermissible for the appropriate Government to adjudicate the merits of the dispute, a function reserved exclusively for the Industrial Court. Therefore, the Government's order is subject to judicial review; a refusal to refer a dispute based on an assessment of merits is unsustainable in law, just as a reference made absent a valid existing or apprehended dispute is liable to be quashed. This Court held that the appropriate Government, while performing this administrative function, would not decide the dispute between the parties, which may be termed as a judicial function, and such judicial function is to be discharged by the Labour Court/Industrial Court only. To fortify this observation, the Court relied on the Judgement in *Ram Avtar Sharma v. State of Haryana*[13], wherein it was held that if the Government, while refusing to make reference, delves into the merits of the dispute, the same is not permissible under law. The appropriate course is to make a reference, and such disputes are decided by the Labour Court/Industrial Court as an adjudicatory authority. Thus, this Court concluded that where an industrial dispute exists or is apprehended, but the appropriate Government refuses to refer, such a refusal can be challenged in the court of law. Conversely, if the reference is made even when no dispute exists or is apprehended, such a reference will also be subject to judicial review.

22. The Union argues that the ratio laid down in the said decisions on facts is distinguishable and cannot be treated as an authoritative pronouncement where a tripartite situation, such as a registered contractor, workers working through a registered contractor, and a contract contested as sham and nominal only to defeat the rights of the workmen, is presented for decision. In

[13] (1985) 3 SCC 189.

a case such as the present, the preliminary objection is first examined in all fours as to whether the decisions in the above cases are applicable or distinguishable.

23. The Union relies on *Shambu Nath Goyal (Supra)* and contends that in cases where the industrial unrest is apprehended, it is sufficient to invoke the forum for conciliation. The circumstances considered in *Shambu Nath Goyal (supra)* are that the appellant therein, S.N. Goyal, was a clerk at the Bank of Baroda. He was served a charge sheet on 31.07.1965, subjected to an inquiry, and ultimately dismissed from service. The workman appealed his dismissal to the Bank's appellate forum, but his appeal was unsuccessful. Following the failure of conciliation proceedings, the appropriate Government referred to Section 10(1) of the ID Act to adjudicate whether the dismissal was justified and if the workman was entitled to relief. During the Tribunal proceedings, the Bank raised a preliminary objection that no oral or written demand regarding the workman was made to the Management before approaching the Conciliation Officer. Therefore, the Bank argued, no "industrial dispute" existed, rendering the Government's reference incompetent. The Industrial Tribunal, Chandigarh, upheld the Bank's preliminary objection. It was held that because no demand, either oral or in writing, was made by the workman to the Bank before approaching the Conciliation Officer, there was no dispute in existence on the date of the reference. Consequently, the Tribunal held that the reference made by the Government was incompetent.

24. This Court held that the term "industrial dispute" is defined broadly as any "dispute or difference" between employers and workmen connected with employment, non-employment, the terms of employment, or conditions of labour. The ID Act does not prescribe any specific manner in which a dispute

must arise. Specifically, a formal written demand by the workman is not a *sine qua non* for an industrial dispute to exist. The only exception is for public utility services, where Section 22 of the ID Act mandates a strike notice. The court relied on the judgment of *Beetham v. Trinidad Cement Ltd.,*[14] to define "difference." In the said judgment, Lord Denning observed that a difference exists whenever parties are at variance; they need not be "locked in combat" or come to blows. It is sufficient if they are "sparring for an opening". Reading a requirement for a written demand into the statute would amount to "re-writing the section". An industrial dispute exists if there is a real, substantial difference with persistence, which was satisfied here by the workman's continuous claim for reinstatement during the inquiry and appeal.

24.1 On the flair or nature of reference under Section 10(1) of the ID Act, the decision further states that the appropriate Government has the power to refer a matter for adjudication if it forms an opinion that an industrial dispute either exists or is apprehended. The resultant order of reference is an administrative act, and not a judicial or quasi-judicial determination. The factual existence and expediency of referring are matters entirely for the appropriate Government to decide. In *Shambu Nath (supra)*, this Court also considered constructive/implied demand through conduct which we may not refer to, having appreciated the definite case of the Management and the Union. This Court distinguished *Sindhu Resettlement Corporation* on two grounds: (i) Sindhu did not examine the appropriate Government's power to refer apprehended disputes, and (ii) in *Shambu Nath,* unlike in *Sindhu,* there was unimpeachable evidence that the workman had demanded reinstatement, proving a dispute actually existed. This Court held that a

[14] (1960) 1 All ER 274, 279 : 1960 AC 132.

formal written demand by a workman to the employer is not a *sine qua non* for the existence of an industrial dispute under Section 2(k) of the ID Act. An industrial dispute exists whenever there is a real and substantial difference between the parties. The Government's administrative decision to refer such an apprehended dispute under Section 10(1) ought not to be canvassed before courts as if it were a judicial determination. We keep the above in mind when applying which citations are apt to the case at hand.

25. In *Kalyani (supra),* the union representing the workmen of a canteen run by the respondent industry claimed that the members are not being treated at par with other employees and are, in fact, notionally engaged contractors to run the canteen. As the respondent was not accepting to treat the appellants as their employees, a complaint was filed under Section 28(1) of the Maharashtra Recognition of Trade Unions Act and Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU"), thereby alleging that the management therein had engaged in unfair labour practices under items 1(a), 2(b) and 4(a) of the Schedule II and items 3, 5, 6, 7, 9 & 10 of Schedule IV of the MRTU. The complaint was dismissed by the High Court of Judicature at Bombay. In *Krantikari Suraksha Rakshak Sanghatana v. S.V. Naik,*[15] the High Court of Judicature at Bombay had held that the Industrial Court, on the basis of a complaint under the MRTU Act, cannot abolish a labour contract and issue a direction to the industry to be treated as direct employees of the company. Similarly, in *General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. and Calico Printing Co Ltd.*[16]*,* this Court opined that, if there are workmen whom the employer has not accepted as its employees, then no complaint would lie under the MRTU Act. The provisions of the MRTU can be

[15] (1993) 1 CLR 1003 Bom.
[16](1995) Supp (1) SCC 175.

applied only to workmen who are admittedly employees of the employer. If there is a dispute regarding the relationship, the appropriate remedy is sought before the relevant forum. Only after the relationship is established can a complaint be made under the MRTU Act. The appellants therein submitted that they were employees of the respondent union, and only for the purposes of defeating the claim, the industry therein has not admitted this fact. This Court found no substance in the argument of the union therein. This Court concluded that the complaint was not maintainable, noting that the employee–employer relationship between the appellant and the respondent was never established and, hence, the complaint lacked *locus standi*. Lastly, this Court granted liberty to the appellant to approach the appropriate authority for a clarification/declaration regarding the status of their workmanship, and then to raise a dispute before the Industrial Court.

26. The ratio or the principle laid down in *Cipla (Supra),* to some extent, is nearer to the facts under consideration before the conciliation officer. The facts in issue in Cipla are that the respondent Union filed a complaint under Section 28 of the MRTU Act against Cipla Ltd. The complaint alleged unfair labour practices under Schedule IV, Items 1(a), (b), (d), and (f) of the MRTU Act. The union therein alleged that Cipla engaged persons to keep the factory premises clean and hygienic, but fraudulently showed them as contract workmen working for a contractor. They claimed the contractor was merely a name-lender and the actual employer was Cipla. The union therein asserted that Cipla terminated these workmen every 11 months to deprive them of permanent status and wages applicable to permanent employees. Cipla denied the existence of an employer-employee relationship, contending that the workmen were employees of a specialised agency engaged for

housekeeping services under a valid agreement. The legal principle can be stated that unless the employer-employee relationship is undisputed or indisputable, the question of unfair labour practice cannot be inquired into by the Labour Court under the MRTU Act if workmen seek to repudiate their contract with a contractor and claim a direct legal relationship with the principal employer, such an adjudication can only be done by a regular Industrial Court or Court under the ID Act. The Labour Court cannot adjudicate as it is constituted under the MRTU Act. Moreover, the proceedings under the MRTU Act are summary in nature. Elaborate considerations required to determine the existence of an employer-employee relationship, if necessary by lifting the veil, fall outside the scope of Section 28 or Section 7 of the MRTU Act. Section 32 of the MRTU Act, which allows the court to decide matters arising out of an application, does not enlarge the court's jurisdiction. It applies only to incidental questions where the employment status was initially undisputed but later disputed, not to those where the relationship was denied from the inception.

27. The citations relied on at the bar have been discussed in considerable length to appreciate the actual controversy for decision in the Civil Appeal. In fine, the management, by raising the preliminary objection, seeks to nip the alleged industrial dispute in the bud, on the ground that no prior demand was made on the management before approaching the conciliation officer. Admittedly, the statute does not require moving the management at the first instance and then approaching the Conciliation Officer. The sine qua non condition is argued based on the ratio in *Sindhu (Supra)* and *Prabhakar (Supra*).

28. Now, let us examine the circumstances of the case. The Management admits to the existence of registered contractors through whom the labour services of the members of the Union were availed. The contract is in compliance with CLRA. There is no employer-employee relationship between the Management and the members of the Union. On the contrary, the Union alleges that the said contract is a sham or a camouflage. The principal employer is the Management. The termination or discontinuation is illegal. The Management resorted to unfair labour practices. Therefore, in the charter of demands, the Union claimed adjudication of the relationship between the Management and the members of the Union, as well as the nature of the contract. From the cases pleaded by both parties, applying the ratio laid down in *Kalyani (supra)* and *Cipla (supra),* the Union cannot work out a remedy under the MRTU Act, and the applicable remedy is an Industrial Dispute before the Industrial Court. *SAIL (supra)* is an authoritative pronouncement for the notification issued under Section 10 of CLRA, the consequences thereof, and the remedies available to the workmen discontinued by the management. By applying the principle laid down by the constitution bench, the proper forum is the Industrial Court/Court for adjudicating issues concerning the employment and termination of employment of contract labour. In the backdrop of well-settled principles of law, a workman working under a contract has to determine their remedies on discontinuation or termination before the Industrial Court. The next question is whether the reference is illegal for want of a prior demand before the Management.

29. In the analysis, we notice that there existed a tripartite relationship, namely, between the Management and the contractor; between the registered contractor and the workers; and the extended limb of the above relationship

is the contract labour working for the Management through a registered contractor. The Management does not admit that it is the principal employer of the workmen. Section 2(k) of the ID Act reads as follows:

> *"(k) "industrial dispute" means any dispute or difference between 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 labour, of any person;"*

30. Plainly interpreted, an industrial dispute means any "dispute or difference" between employers and workmen connected with employment, non-employment, the terms of employment, or conditions of labour.

31. From Management's perspective, the members of the third respondent union are not its workers. The very denial of the status could also be considered as a dispute in the established facts and circumstances of a case.

32. The relevant portion of Section 10(1) of the ID Act reads as follows:

> *"Where the appropriate Government is of opinion that any industrial dispute exists or <u>is apprehended</u>, it may at any time (…)*
>
> *<u>(Emphasis supplied)</u>"*

33. Section 10 enables the appropriate Government to refer an industrial dispute to a board, to a labour court or to a tribunal, depending upon the nature of the dispute. The step taken under Section 10 sets in motion a process for adjudication of a dispute between the parties. The steps envisaged under Section 12 are known as a conciliatory measure without actually inviting adjudication between the Management and the Union. Section 12, in terms, does not stipulate that a condition precedent to invoking its

jurisdiction is to first approach the Management and receive a reply, and then knock on the doors of the Conciliation Officer. The process of reference is administrative in nature and is not tested on the touchstone of a judicial or quasi-judicial order by a statutory authority or a court.

34. Sub-section (1) of Section 10 of the ID Act, from a plain reading, enables the appropriate Government to refer a dispute to a Board, Labour Court or a Tribunal an "Industrial Dispute." Let us assume for the present that, in terms of the ratio of *Sindhu (supra)* and *Prabhakar (supra),* a demand before Management on the dispute is essential to invoke the forum of the Conciliation Officer. Notwithstanding the ratio, if a case falls within the second limb or Section 10(1) of the ID Act, the appropriate Government is within its jurisdiction to refer an apprehended dispute to the Labour Court. By applying the same rule of interpretation, it can be construed that the appropriate Government may refer an Industrial Dispute apprehended to the Board, Labour Court and Tribunal. The argument of management introduces words into the Section and, at the same time, ignores the second contingent circumstance, namely, where an Industrial Dispute is apprehended and renders otiose the words apprehended. Such an interpretation is clearly unavailable, and the argument fails.

35. A dispute in fact or a dispute in law cannot be exhaustively dealt with either by examples or through a definition. The dispute is presented in a variety of dynamic circumstances where one party asserts a right, and another party denies the right. Similarly, a party affirms the existence of a fact, and another party disputes its existence. These situations would attract the simple meaning of a dispute. Similarly, industrial disputes can have different combinations; namely, between workers and management, union

and management, and, as in the present case, contract labour and the Management. In a situation where an unresolved dispute subsists, the same is resolved through the process of conciliation. The management, in the instant case, objects to the status of workers and, at the same time, cannot be heard to argue that the status asserted by them is not adjudicated by the Industrial Court. The inconsistency is that the preliminary objection is raised to reject the ongoing proceedings in Reference (IT) No. 1 of 2021, as there is no demand made to the management beforehand. The Union and the workers complain of unfair labour practice against the Management, and the remedy for redressal of both unfair practice and declaration that the contract is a sham is before the Industrial Court. Therefore, for the rule of law to prevail, the grievances are not wished away without adjudication. *Ubi jus ibi remedium,* i.e., where there is a right, there is a remedy in law, is a principle to be kept in perspective. Through the reference, a forum for redressal alone is provided to the contract labour. The argument of the Management deprives a forum to the Union/workers and hence not accepted.

35.1 Further, as per the ratio of *SAIL (supra),* the contract labour is given the option to question the contract as a sham and nominal, and pray for appropriate reliefs. The objection to continuing the industrial dispute under Section 10 is substantial and has been rightly rejected by the High Court.

36. The two decisions relied on by the Management, once they are excluded, would compel this Court to apply the principle laid down in *SAIL (supra)* and *Shambu Nath (Supra)* to hold that even if an unfair labour practice is alleged, the applicable statute is the ID Act and the forum, the labour court. In *SAIL (supra),* this Court has held that in the case of sham and nominal contracts, adjudicatory reliefs of the status of workman vis-à-vis the principal employer

are a *sine qua non* for any other relief. The roadmap for workers under registered contractors for adjudication of disputes is as follows.

37. The power to refer an 'apprehended' dispute is the statutory application of the old adage 'a stitch in time saves nine'. It enables the State to intervene before the industrial peace is shattered. Consequently, permitting Preliminary Objections to stall this urgent process negates the preventive intent of the statute, converting a mechanism of immediate relief into an engine of delay. The appropriate Government, in its armchair, while referring an Industrial Dispute for resolution, keeps in its perspective industrial peace and prosperity, to enable workers to work out their just and economic demands and avoid strikes and lockouts. The administrative decision merely looks at an Industrial Dispute or an apprehended Industrial Dispute. The merit or otherwise of the dispute is for the adjudicatory body to decide.

38. The Union or the workers can move the labour court for a declaration that the contract between the Management and the contractor is sham and nominal and, consequently, that the contract labour is entitled to enter into the rolls of the Management and regularisation, etc.

39. The Management establishes that the labour contract complies with the provisions of law, including the CLRA. Being so, the issue is limited to the benefits to which the employees are entitled under the CLRA. The relief a party is entitled to before the Industrial Court is dependent on the case pleaded and proved by both parties.

40. In the circumstances of this case, the Management's preliminary objection is that the industrial dispute referred to is illegal and without merit. For the reasons stated above, we are in agreement with the impugned judgment. To keep the ongoing adjudication in line with the principles laid

down by this Court, the labour court is directed to frame two issues, namely, (i) whether the contracts through which the employment is provided to the contract labour are sham and nominal, and (ii) whether, considering the nature of work discharged by the workmen of the subject Union, the Management is the principal employer of the members of the Respondent-Union.

41. The Industrial Court is directed to dispose of Reference (IT) No. 1 of 2021 expeditiously, preferably within four months from the date of receipt of a copy of this judgment.

42. Therefore, the Civil Appeal fails and is dismissed accordingly. No order as to costs.

43. Pending applications, if any, are disposed of accordingly.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

New Delhi;
January 27, 2026.

REPORTABLE

2026 INSC 122

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
[@ S.L.P. (CIVIL) NO. 12192 OF 2023]

M/S PREMIUM TRANSMISSION PRIVATE LIMITED ... APPELLANT(S)

VERSUS

KISHAN SUBHASH RATHOD AND OTHERS ... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. The instant appeal is at the instance of Premium Transmission Private Limited/Appellant and assails the order dated 17.01.2023 of the Industrial Court, Maharashtra bench at Aurangabad as confirmed by the High Court in Writ Petition No. 3259 of 2023 dated 21.03.2023. This Civil Appeal has been tagged and heard along with the Civil Appeal filed by the Appellant herein in Civil Appeal arising out of S.L.P.(Civil) No. 9970 of 2023. For convenience, judgments are pronounced separately.

3. The circumstances leading to the industrial dispute, several rounds of litigation, orders of this Court as well as the High Court are set out in the judgment disposing of the companion Civil Appeal. To avoid repetition, these events are not adverted to once again. It would be sufficient if the narrative starts with the complaint filed on 05.05.2022 by the Respondents before the Industrial Court in Complaint No. 1 of 2022 praying for the following reliefs:

> *"**5.1.** The cause of action leading to the instant Complaint has arisen in the territorial jurisdiction of this Hon'ble Court;*

5.2. *The Unfair Labour Practices complained of has been emerged from 18.04.2020 and is continued on day to day basis. There is no limitation period prescribed for a Complaint under Section 33-A of the ID Act. Even otherwise in view of the Orders passed by the Hon'ble Supreme Court in Suo Moto Writ (Civil) No.3/2020 the instant Complaint under Section 33-A is within limitation.*

5.3. *The subject matter of this Complaint is not res-subjudice before any other Court, Tribunal, High Court or Supreme Court;*

5.4. *The subject matter of this Complaint is coming up for consideration of the Hon'ble Court for the first time; and,*

5.5. *The Complainants are not in receipt of any caveat from the Respondent.*

(c) *Direct the Respondents to pay compensation to the tune of equal amount of wages due to each of the Complainant Nos. 1 to 118 in terms of prayer clause 9B) above;*

(d) *Allow the Complaint.*

At Aurangabad, dated 05.05.2022.

Signatures of the Complainants"

4. The Management resisted the interim prayer. The Industrial Tribunal vide order dated 17.01.2023 allowed the prayers and found prima-facie case, balance of convenience and irreparable loss in favour of the workmen. One of the main points for consideration in the order of the Industrial Tribunal was under Section 33(1) of the Industrial Disputes Act, 1947 (for short, "ID Act"). The view of the Industrial Tribunal on Section 33(1) of the Act is summarised:

4.1 Since a dispute (Reference (IT) No. 1 of 2020) was already pending, it was incumbent upon the Appellant Company to approach the Tribunal under Section 33(1) of the ID Act before altering service conditions or stopping the work of the workmen. The failure to do so constituted a breach of the Act.

4.2 The Tribunal observed that the workmen were removed from service through a "mere exchange of letters" between the Appellant Company and the Contractors, which was not legally sufficient to sever their engagement given the pending dispute. Hence**,** the balance of convenience lay in favor of the workmen. It held that denying interim relief would cause "great hardship" and "irreparable loss" to the workmen and their families, who were left without work.

4.3 The Tribunal allowed the interim application and directed the Appellant Company to provide work at the factory to the workmen (listed in Annexure-A of the reference, excluding deleted names) within one month and pay wages to these workmen regularly during the pendency of the complaint.

5. The management filed WP No. 3259 of 2023, through the impugned order, the Writ Petition was dismissed, hence the Civil Appeal.

6. Mr. CU Singh, Learned Senior Counsel, contends that directing workers working through a registered contractor either for continuation or regularisation is completely illegal. The relief of regularisation or coming on the muster rolls is dependent on the workers establishing their status *vis-à-vis* the management. The prayer, as granted, virtually amounts to allowing the dispute in the companion Civil Appeal. The test is not a *prima facie* case, balance of convenience or irreparable loss; but, the legal test is whether admittedly, the workers engaged through a registered contractor are workmen of the contractor or if the Management is the principal employer. The applicability of Section 33(1) of the ID Act arises only when the status of a workman is established.

7. Mr. Sandeep Deshmukh, Learned Counsel appearing for the respondents, submits that the workmen have been prevented from entering

the services because of the dispute referred by the Appropriate Government. The workmen have been working on regular works and there is no dispute on the working of the contract labour in the Management. The interim prayer conforms to the larger dispute referred to the Industrial Tribunal.

8. We have appreciated the limited submissions canvassed by the counsel appearing for the parties. The definition of workman in ID Act and the CLRA is captured through the plain reading of Section 2(s) of the ID Act, and Sections 2(1)(i) and 2(1)(b) of CLRA for a comparative study:

ID Act		**CLRA**
Provision(s)	**2(*s*)** "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person— (*i*) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the	**2(1)(*b*)** a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer; **2(1)(*i*)** "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person— (*A*) who is employed mainly in a managerial or administrative capacity; or (*B*) who, being employed in a supervisory capacity draws

	Navy Act, 1957 (62 of 1957); or (*ii*) who is employed in the police service or as an officer or other employee of a prison; or (*iii*) who is employed mainly in a managerial or administrative capacity; or (*iv*) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.	wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or (*C*) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.
Definition	Any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward.	A person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward.
Inclusion	Does not explicitly exclude "Out-workers" (people working from home/outside).	Does not explicitly include dismissed/discharged workmen in the definition itself (focus is on current employment).
Exclusion	Does not explicitly exclude "Out-workers" (people working from home/outside). Excludes	Excludes "Out-workers" (people to whom articles are given to be processed at their own home/not under control

	persons employed mainly in a managerial or administrative capacity.	of the principal employer). Excludes persons employed mainly in a managerial or administrative capacity.
Supervisory Exclusion	Excludes supervisors drawing wages exceeding Rs.10,000/month.	Excludes supervisors drawing wages exceeding Rs. 500/month (Note: This amount is outdated in text but practically interpreted similarly).
Relationship	Requires a Direct Employer-Employee relationship (Master-Servant) between the Management and the Workman.	Recognizes a Tripartite relationship: The workman is hired by the Contractor but works for the Principal Employer.

9. Though the definition of "workman" under Section 2(1)(i) of the CLRA is textually derived from Section 2(s) of the ID Act, 1947, the two differ fundamentally in their juridical scope and the structural basis of the employment between employer and employee. The definition under ID Act is broad, which includes persons dismissed, discharged, or retrenched in connection with an industrial dispute to ensure they retain locus standi for adjudication. The CLRA, being regulatory in nature, contains no such "extended meaning" for terminated employees. Furthermore, the CLRA introduces a specific statutory exclusion for "out-workers" whereas the ID Act does not have this specific statutory exclusion. Under the ID Act, the status of such workers is determined by the "Control and Supervision Test".[1] If the employer controls how the work is done, they may still be workmen under ID Act, even if working off-site. Under CLRA, they are statutorily barred from the

[1] *Dharangadhara Chemical Works Ltd. v. State of Saurashtra,* AIR 1957 SC 264.

definition. Finally, the ID Act presupposes a direct privity of contract (master-servant relationship) between the management and the worker, whereas the CLRA definition strictly operates through the medium of a contractor, covering workers hired "by or through" a third party for the establishment's work.

10. A plain reading of Section 33[2] of the ID Act makes it clear that the restrictions from change of conditions etc., by the management is attracted

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[2] *"**33.** Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.--(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,--*
(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,
(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—
(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or
(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.
Explanation.--For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.
(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.
(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such

and applicable if a workman is employed by the Management. The question on relationship between the Management and the Workman is for decision in Complaint (IT) No. 1 of 2021. At this stage, the interim prayer amounts to a virtual pre-judgment of the main dispute between the parties. In this litigation, the Management attempts to nip the dispute in the bud by raising preliminary objections and the Union is praying for relief which the union should agitate after the preliminary issues are decided in favour of the workmen. Both the parties are not conforming to the requirements of law in resolving a dispute of fact or dispute in law. *Steel Authority of India and others. v. National Union Waterfront Workers and others*[3], in the event of discontinuation or discharge, provides for a few measures for workmen working under a registered contractor and are summed up as follows:

10.1 Remedies Available if Notification Under Section 10(1) is Issued for Abolition of Contract Labour

10.1.1 The issuance of a Section 10 notification does not lead to the automatic absorption of contract workers as regular employees of the principal employer.

10.1.2 The immediate legal effect of such abolition is that the contract labour working in that specific process must cease to function in that capacity. The principal employer is prohibited from employing contract labour for that job thereafter.

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order in relation thereto as it deems fit: Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit: Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed."

[3] (2001) 7 SCC 1.

10.1.3 The workers do not become unemployed immediately; they remain employees of the contractor. The contractor can utilize their services in any other establishment where contract labour is not prohibited.

10.2 Remedies Available if the Contract is Continued as a "Camouflage" (Sham Contract)

10.2.1 If it is proved that the contract was a mere ruse or camouflage to hide the real employer-employee relationship and that the principal employer retained full control and supervision over the workers the contract is disregarded as a legal fiction.

10.2.2 In such cases, workmen "will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour". Unlike the Section 10 scenario, here the workers become direct employees of the company. They are entitled to back wages and benefits as if they were regular employees from the start (or a date determined by the Tribunal).

10.2.3 Determining whether a contract is "sham" or "genuine" involves disputed questions of fact (e.g., Who supervised the work? Who paid the wages? Who supplied the tools?). Therefore, only the Industrial Tribunal/Court can adjudicate the dispute. Writ Courts generally do not decide these disputed questions under Article 226 of the Constitution of India.

10.3 Modes and Methods of re-employment if discontinuation of the contract is valid

10.3.1 If the principal employer intends to employ regular workmen for the work previously done by contract labour, they must give preference to the erstwhile contract labourers.

10.3.2 The principal employer cannot simply hire fresh candidates from the open market while ignoring the displaced contract workers. They are legally bound to consider the contract workers who were working in that establishment.

10.3.3 To ensure this "preference" is meaningful, the principal employer may relax maximum age limit and academic qualifications; specifically, non-technical posts to accommodate experienced workers.

11. In fine, we conclude in the facts and circumstances of the case, the relief granted by the High Court and the Industrial Court through the orders dated 21.03.2023 and 17.01.2023 are unsustainable. The impugned orders are set aside. Liberty to the workmen is granted to pray for an interim measure in terms of the dictum in *SAIL (supra)* before the Industrial Court. The Civil Appeal is allowed with these observations. No order as to costs.

12. Pending applications, if any, are disposed of accordingly.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

New Delhi;
January 27, 2026.