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## LABOUR MANAGEMENT RELATIONS

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## I INTRODUCTION

IN THE year under survey, there have been a few judgments of the Supreme Court reported under the Industrial Disputes Act, 1947 (ID Act), and one under the Industrial Employment (Standing Orders) Act, 1946 (IESO Act), which are the subject matter of analysis in this chapter. One more judgment of the High Court of Delhi on the IESO Act has also been analysed. No judgment of the apex court has been reported under the Trade Unions Act, 1926, in 2024.

During the year under survey, the Supreme Court has dealt with various issues, namely, refusal to exercise discretionary extra-ordinary jurisdiction of the high court under article 226 of the Constitution when there is an alternate efficacious remedy available under a special legislation, like the ID Act; scope of the definition of 'workman'; issues relating to regularisation; binding nature of the settlements arrived at through conciliation machinery; court's disapproval of frivolous litigation being inflicted on the workman by the management and imposition of heavy costs by the court to deter it from resorting to such litigation; issues of non-employment; conditions precedent for invoking prosecution under section 29 of the ID Act; and the inter-relationship between the ID Act and the IESO Act.

## II INDUSTRIAL DISPUTES ACT, 1947

**Article 226 of the Constitution cannot be invoked in industrial disputes under the ID Act, which provides for an alternate efficacious remedy, more so when disputed questions of fact are involved**

In *Ernakulam Regional Co-Op. In Milk Producers Union Ltd. v. Nithu*, the Supreme Court held that article 226 cannot be invoked when an efficacious remedy is available under the ID Act, especially when the parties raise disputed questions of fact in their pleadings. The court made these observations in the following factual matrix:

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Ernakulam Milk Cooperative Society (hereinafter ‘cooperative society’) appointed the respondent workers in terms of the circulars issued in December 1992 and December 2010, respectively. The circular clearly stipulated that respondents were to be appointed temporarily on a daily wage basis. It further stipulated:

1) Only persons who are members of the member Societies and their dependents will be considered

...

3) Preference will be given to members of the member Societies first, and only thereafter, dependents will be considered.

The circular clearly stated that workers engaged under these terms would not be given preference for permanent jobs in the cooperative society. In January 2011, the cooperative society issued a notification inviting applications for regular recruitment to the post of plant attender, grade III. The job undertaken by the workers was substantially the same as that of a plant attender, grade III. The workers filed a writ petition before a single judge of the High Court of Kerala, seeking the quashing of the notification and praying for their regularisation as plant attendants. They sought interim relief to maintain the *status quo* regarding their service conditions until their dispute was resolved. In the writ petition, the workers averred that, since the cooperative society is an ‘industry’ within the meaning of the ID Act and all of them were employed for over 240 days in a period of twelve calendar months, they were entitled to be treated as permanent workers under the Act. The workers had, in the meantime, resorted to conciliation proceedings under the ID Act. Still apprehensive that their services may be terminated in the meantime, they did not seek a reference of their dispute for adjudication under the ID Act. Instead, they preferred to file a writ petition before the high court, along with an application for interim relief. The cooperative society primarily pleaded that it was not amenable to judicial review, as it was not a ‘state’ or ‘any other authority’ as contemplated by Article 12 of the Constitution, and that the workers’ appointments were illegal rather than irregular. Further, it relied on the principle laid down in *Umadevi’s*<sup>1</sup> case, namely that if the appointments were illegal, the workers were not entitled to regularisation. However, the single judge of the high court did not accept the cooperative society’s plea. He upheld the workers’ plea and directed the managing director to prepare a list of casual labourers among the writ petitioners and forward it to the director of the Dairy Development Department for consideration of their claims for regularisation. Being aggrieved by

1 (2006) 4 SCC 1.

this judgment, the cooperative society filed an appeal in the high court. The division bench upheld the single judge's directions. The cooperative society preferred a special leave to appeal, impugning both the high court judgments.

It pleaded before the Supreme Court that the respondents were engaged purely on a casual basis, were nominated amongst the members of the apex cooperative society, and that their terms and conditions, as set out in the circulars issued by it, made it abundantly clear that they would have no right to permanent employment. Further, it specifically averred in its counter-affidavit that none of the writ petitioners had worked for over 200 days in a calendar year and, as such, they were not entitled to claim permanent employment.

The Supreme Court held that this case involved disputed questions of fact that went to the root of the matter, as the management had taken a definite stand that these employees had not put in more than 200 days of work in a calendar year. At the same time, the workers claimed they had completed 240 days of continuous service in each calendar year, which entitled them to regularisation. In view of these disputed questions of fact, the Supreme Court held that this aspect required evidence and evaluation before the proper forum. These disputed questions of fact could not have been gone into by the high court in a writ of *habeas corpus*. It further held that in view of these disputed questions of fact, the high court had erred in applying the ratio of *Umadevi* to the instant case. It felt that the workers were illegal rather than irregular appointees because the circulars of 1992 and 2010 had confined appointees to the members of the members societies and their dependents to the exclusion of others. Although the scheme of appointment adopted by the cooperative society ran contrary to the spirit<sup>2</sup> of Article 16 of the Constitution of India, it was of the view that a high court could always exercise the power of judicial review under article 226 of the Constitution. However, when there were disputed questions of fact that needed adjudication, it was best left to the competent forum to examine the evidence on record before any findings could be returned. Relying on its earlier decisions,<sup>3</sup> the court reiterated that the remedy of a writ is discretionary, and it may refuse to grant it if it is satisfied that the aggrieved party can have an adequate or suitable remedy elsewhere. The high court should have imposed this limitation on itself, as it is a rule of prudence. The court was of the considered view that the proper course in this case would be to leave the

2 See *Yogender Pal Singh v. Union of India*, (1987) 1 SCC 631. The Supreme Court in this case observed thus at 642:

Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service.

3 *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; also see *U.P. State Spinning Co. Ltd. v. R.S. Pandey*, (2005) 8 SCC 264; *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh*, AIR 1961 SC 1006; *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, AIR 1959 SC 422; *Rajasthan SRTC v. Krishna Kant*, AIR 2000 SC 2573; *Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad*, AIR 1958 SC 86 and *Scooters India v. Vijai E.V. Eldred*, AIR 1957 SC 882.

parties to approach the appropriate government to refer the dispute to industrial adjudication under the ID Act. It accordingly gave workers six months to seek an appropriate remedy under the ID Act. In the interest of justice, it also directed the appellant society not to disturb the service of those employees till a reference was made and they were able to move an application for stay. It directed the matter to be heard and disposed of on its merits.

**Industrial disputes are not referable to arbitration under the Arbitration and Conciliation Act, 1996**

In *Dushyant Janbandhu v. Hyundai Autoever India (P) Ltd.*,<sup>4</sup> an application was moved under s.11(6)<sup>5</sup> of the Arbitration and Conciliation Act, 1996 (ACA 1996) for appointment of an arbitrator by the management before the Madras High Court to adjudicate upon the claim of the workman against unauthorized deduction from his wages which application was allowed by the high court. The workman contended before the Supreme Court that the dispute in question was an industrial dispute governed by the statutes, namely, the Payment of Wages Act, 1936, and the ID Act; therefore, the ACA, 1996, did not apply. The Supreme Court found that the application of the management under s.11 of the ACA 1996 before the High Court of Madras was a clear case of abuse of the remedial process. The court decided to address the issue in the appeal itself rather than remand it to the arbitral tribunal, given the peculiar facts and circumstances of the case. The facts of the case are as follows:

The workman was appointed as an assistant manager in March 2019. Due to the COVID-19 pandemic, he was asked to work from home until January 2021. However, he was called upon by the management to resume physical attendance in August 2020. A show-cause notice was issued to him for his absenteeism. This notice had no reference to the appointment condition related to the violation of the non-disclosure obligation.

While the disciplinary action was pending, the workman was not paid his salary. He issued a legal notice to the management requiring it to pay him the wages for the period for which they were payable. When the management failed to pay his wages, he filed a petition under s. 15(2) of the Payment of Wages Act, 1936 (PW Act), for the recovery of his wages. In the meantime, the management terminated

4 2024 SCC OnLine SC 3691.

5 S. 11(6) of the Arbitration and Conciliation Act, 1996 provides:

Where, under an appointment procedure agreed upon by the parties,— (a) a party fails to act as required under that procedure; or (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

his services. He also filed a petition under s.2A of the ID Act challenging his termination, which was pending before the industrial tribunal. However, it may be noted that the Supreme Court was not called upon in the above appeal to decide the validity of the termination order, as it was *sub judice* before the industrial tribunal.

After receiving the legal notice from the workman, the management unilaterally appointed an arbitrator to resolve the dispute over alleged non-payment of wages. The workman applied s. Section 16 of the ACA 1996 requires the arbitrator to rule on his own competence. The arbitrator ruled that the constitution of the arbitral tribunal was not in accordance with s.11 of the ACA 1996, in light of the ratio set out in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*<sup>6</sup> The management moved an application before the authority under s.8 of the ACA 1996, seeking a reference of the dispute under s.15 (2) of the PW Act for arbitration. The authority ruled that under s.23<sup>7</sup> of the PW Act, the arbitration agreement cannot stand in the way of the claimant in respect of the claim against illegally deducted wages. Subsequently, the management filed a petition under s.11 of the ACA 1996 before the Madras High Court, which tooknote of the arbitration agreement and appointed an arbitrator.

It was this decision of the High Court of Madras that was under challenge by the workman before the Supreme Court in the special leave to appeal. The Supreme Court held that the high court ought not to have entertained the petition under s.11 of the ACA 1996 in the face of section 22(a)<sup>8</sup> of the PW Act, which bars the civil courts from entertaining any claim enforceable under section 15 of the PW Act. Admittedly, the claim against unauthorised deduction is squarely covered under section 15 and can be enforced only by resorting to the jurisdiction of the authority constituted under the said provision. The court held that claims are enforceable under section 15 of the PW Act cannot be the subject matter of arbitration under the ACA 1996. Similarly, the disputes that are subject matter of

6 (2020) 20 SCC 760.

7 S. 23 of the Payment of Wages Act,1936 reads as under:

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

8 S. 22(a) of the Payment of Wages Act,1936 reads as under:

No Court shall entertain any suit for the recovery of wages or of any deduction from wages insofar as the sum so claimed— (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17

the ID Act are not subject matter<sup>9</sup> of arbitration under the ACA 1996. Further, the court observed that, since the allegation of a violation of the non-disclosure obligation was absent from the charge memo, the dispute relating to it did not exist.

However, the court did not deal with the issue of termination of employment on merits, as the industrial dispute relating to this subject matter was pending before the adjudicatory authority.

**Management needs to be deterred by courts with high costs for resorting to frivolous litigation.**

In *Chief Genl. Manager v. Virendra Singh Chauhan*,<sup>10</sup> the respondent, was appointed as a tubewell operator by the Garhwal Jal Sansthan. His services were terminated by management in 1996, an action that became the subject of an industrial dispute. The management, in a reference made by the appropriate government to the labour court, contended before it that the employee was hired through outsourcing and that no master-servant relationship existed. The labour court held that he was a 'workman' who was not engaged through a contractor. Thereafter, the workman moved an application under section 33(C)(2)<sup>11</sup> of the ID Act, read with section 6(H)(2)<sup>12</sup> of the U.P. ID Act, 1947, demanding arrears of wages. The labour court granted him the same based on his last drawn salary. The management

9 Principle of Subject Matter of Arbitrability was enunciated by the Supreme Court in *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1 at 72 where the court observed thus:

76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable: 76.1 (1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem. 76.2 (2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable. 76.3 (3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable. 76.4 (4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute (s).

10 2024 SCC OnLine SC 2330.

11 S. 33(C)(2) of the ID Act provides:

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

12 S. 6(H)(2) of the UP Industrial Disputes Act provides:

Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules, that may be made under this Act, determined by such Labour Court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in subsection (1).

challenged this order before the high court, which dismissed it. It further challenged the said order by way of special leave to appeal before the Supreme Court, which was denied. Thereafter, a review petition was filed by the management, which met the same fate. Consequently, the labour court's award became binding.

In another round of litigation, the workman approached the labour commissioner, claiming a certain amount as arrears of wages, which claim was allowed. The management challenged this order before the high court, which remanded the matter to the labour commissioner to compute the arrears in accordance with the labour court's award.

In the third round of litigation, the workman filed a writ petition before the High Court of Uttarakhand at Nainital seeking regularisation of his services under the Regularisation Rules, 2011. It disposed of the writ petition with a direction to the management to consider the workman for regularisation and to pass a speaking order in the event of rejection of his representation.

The management passed various orders rejecting his plea for regularisation, which he assailed in another writ petition before a single judge of the high court. The single judge allowed his writ petition and quashed the orders. The high court specifically noted that the labour court had conclusively settled the controversy relating to the master-servant relationship, and that the said finding had attained finality. In the intra-court appeal preferred by the management, the division bench of the high court dismissed the appeal and held that the services of the workman would be deemed regularised with all consequential benefits. This high court order was challenged before the Supreme Court.

The Supreme Court, in light of multiple rounds of litigation to which the workman had been forced to resort, deprecated the conduct of the management. The court said that the workman had been subjected to continuous litigation by the management, even when its earlier special leave petition and the review petition had been dismissed by it. It did not shy away from approaching the court once again to force litigation on the poor workman. The court found no merit in the special leave petition and expressed its displeasure by imposing a cost of rupees five lakhs on the management to be paid to the workman who had to suffer multiple rounds of frivolous litigation.

This approach of the Supreme Court is welcome, and it is hoped that the heavy cost imposed in this case will serve as a deterrent to restrain the management in the future.

#### **Scope of the definition of 'workman'**

In *Lenin Kumar Ray v. Express Publications (Madurai) Ltd.*,<sup>13</sup> the management, a national newspaper establishment, engaged the employee as a junior engineer and subsequently confirmed him in the said post. He was thereafter promoted to the post of assistant engineer and subsequently regularised. His services were terminated in October 2003, with one month's wages instead of

13 2024 SCC OnLine SC 2987.

notice. Aggrieved by the management's action, he approached the labour authorities, who referred the matter for conciliation. The conciliation proceedings having failed, the matter was referred by the appropriate government to the labour court for adjudication. The labour court held that he was a 'workman'<sup>14</sup> within the meaning of section 2(s) of the ID Act and passed an award ordering his reinstatement along with a compensation of rupees 75,000 instead of back wages. The management impugned the award of the labour court before the high court, which upheld the finding of the labour court insofar as it had held that the employee was a 'workman' but set aside the award of the labour court to the extent that the employee was to be reinstated and paid compensation of Rs. 75,000 instead of the back wages. The workman filed a special leave to appeal before the Supreme Court. The management also challenged the judgment insofar as it held that the employee was a 'workman.'

It was the case of the employee before the Supreme Court that his services were terminated without assigning any reason and in violation of the principles of natural justice. It was because of these reasons that the labour court had rightly directed his reinstatement. The management contended that he was not a 'workman' within the meaning of s.2(s) of the ID Act as he was supervising the work of two junior engineers. He was, therefore, primarily performing duties which were supervisory in nature, and his salary was beyond the limit prescribed for supervisory personnel to fall within the definition of a 'workman' under the unamended definition under section 2(s) of the ID Act. It relied upon various judgments<sup>15</sup> of the Supreme Court prescribing the test for determining whether an employee is a 'workman' under section 2(s) or not. The legal position that emerges from these judgments is to apply the test as follows:

- i. Is the employee employed under a contract *of* service or a service contract?
- ii. If he is employed under a contract *for* service, he's not covered by the definition of 'workman' at the very threshold.

14 S. 2(s) of the ID Act provides:

In this Act, unless there is anything repugnant in the subject or context, —"Workman" means any person (including an apprentice) employed in any industry to do any manual skilled or unskilled, technical, sales promotion, operational, clerical or supervisory work or any work for the promotion of sales for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes 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 Navy Act, 1957 (62 of 1957); or (ii) Who is employed in the police service or as an Officer or other employee of a person; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) Who being employed in a supervisory capacity, draws wages exceeding one thousand six 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 or a managerial nature."

15 *H.R. Adyanthaya v. Sandoz (India) Ltd.*, (1994) 5 SCC 737; *May & Baker (India) Ltd. v. Workmen*, AIR 1967 SC 678; *A. Sundarambal v. Government of Goa, Daman & Diu*, AIR 1988 SC 1700; *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burma Shell Management Staff Assn.*, (1970) 3 SCC 378; and *Western India Match Co. Ltd. v. Workmen*, AIR 1964 SC 472

- iii. Suppose he is employed under a contract *of service* that establishes a master-and-servant relationship. In that case, the next question to be asked is: is he used to do: i) any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward?
- iv. A person to be qualified as a 'workman' must do any work specified in paragraph above.
- v. The latter part of the section excludes four classes of employees, including a person employed in a supervisory capacity drawing a wage of Rs. 1600 per month<sup>16</sup>, or a person exercising mainly managerial functions.

In this legal backdrop, the court examined whether the employee fell within the definition of 'workman'. It is observed that the law is well settled that the determinative factor for an employee to be covered under the definition of 'workman' is the principal duties and functions performed by him in the establishment, and not merely the designation. In this case, no specific document was adduced relating to the actual work and functions performed by him. In the absence of this, the management's employment orders had to be considered. He was appointed as a 'junior engineer' and later promoted to an 'assistant engineer' on the administrative side. During his cross-examination, the employee himself asserted that he was supervising the work of two junior engineers working under him. As such, applying the unamended section 2(s), since the employee was terminated from service in 2003 and was drawing a salary of more than Rs. 1600 per month, he stood excluded from the definition of 'workman.' In view of the said legal position that emerged, the Supreme Court held that the order of the high court upholding the finding of the labour court that the employee was a 'workman' within the definition of section 2(s) of the ID Act was erroneous and liable to be set aside.

As regards the award of reinstatement and payment of compensation, the court referred to clause 14 of the appointment letter, which provided that, should the employer decide to terminate the employee's services, he shall give one month's notice or pay one month's salary in *lieu* thereof. The court observed that the employee's services had been terminated in accordance with the said term, and he was relieved of duty after he was given a cheque for Rupees 6995.85, equivalent to his one month's salary, which he subsequently encashed. There was no violation of the procedure in terminating the employee's service, and, further, since he was not a 'workman' under the provisions of the ID Act, more particularly sections 25F, 25G and 25H, also had no application. Therefore, the Supreme Court found no infirmity or illegality in the high court's order setting aside the labour court's award directing the reinstatement of the employee, with payment of compensation instead of back wages, and called for no interference.

16 The pecuniary limit has been raised from rupees 1600 to rupees 10,000 *per mensem* with effect from Sep.15, 2010 by ID (Amendment) Act, 2010.

In *Bharti Airtel Ltd. v. A.S. Raghavendra*,<sup>17</sup> the issue that again arose for consideration of the Supreme Court was whether the employee was a 'workman' within the definition of section 2(s)<sup>18</sup> of the ID Act.

In this case, the employee was appointed as Regional Business Head (South) for Government Enterprise Services in June 2009, in the role of Senior Manager (B-2) Sales. The position offered an annual compensation of Rupees 22,00,000, comprising a fixed and a variable component. In this capacity, the employee led a team of four Account Managers (Sales), each responsible for the states of Karnataka, Tamil Nadu, Andhra Pradesh, and Kerala. These managers operated under his supervision and were positioned at the B-1 and B-2 salary levels. In March 2011, the employee requested resignation from management, which was subsequently accepted. A sum of Rupees 5,92,538 was paid to him in full and final settlement of all his claims.

After 19 months, the employee filed a petition before the deputy labour commissioner alleging that his resignation was forced. A conciliation proceeding was initiated to help the parties arrive at a settlement. The conciliation proceeding failed. The state government, being the appropriate government under the ID Act, referred the dispute to the labour court under section 10(1)(c) of the ID Act for adjudication. The labour court, upon perusal of the evidence on record, held that the employee had failed to prove that he was a 'workman' since he was performing the role of a manager. The employee challenged this award before the high court by way of a writ petition. The high court partly allowed the writ petition, relying on *Ved Prakash Gupta v. Delton Cable India (P) Ltd.*<sup>19</sup> It held that, since there was no power to appoint, dismiss, or have a disciplinary enquiry, the employee was not part of the managerial cadre. It remanded the matter to the labour court for adjudication on the merits. The management preferred an intra-court appeal against the judgment and order of the single judge. The division bench of the high court dismissed the management's writ appeal. The management impugned the high court's judgments by way of special leave to appeal to the Supreme Court.

The Supreme Court ruled that the mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees could not be the sole criterion to determine whether an employee is a 'workman.' It noted that an employee discharging managerial duties and functions may not be invested with the power to appoint and discharge other employees, especially if the employer has a large managerial cadre.<sup>20</sup> The court held that whenever two interpretations of a particular legal provision are possible, it must lean in favour of the interpretation that subserves the economic interest of the nation.<sup>21</sup> The power of high courts to reappraise facts is not absent or beyond the scope of articles 226 and 227 of

17 (2024) 6 SCC 418.

18 *Supra* note 16.

19 (1984) 2 SCC 569.

20 *S.K. Maini v. Corona Sahu Co. Ltd.*, (1994) 3 SCC 510.

21 *Shivashakti Sugars Ltd. v. Shree Renuka Sugar Ltd.*, (2017) 7 SCC 729.

the Constitution. However, the level of infirmity must be greater than ordinary in a tribunal's order. The employee's case was that he primarily resigned because he was subjected to an unfair rating without any feedback or review, which led to his personal and professional humiliation. Dealing with whether the resignation was forced or not, the Supreme Court observed that the phrase 'not of his free will' appearing in his resignation letter cannot be construed to mean that the resignation was forced. Further, there was no direct allegation of bias against the employee or of victimisation. The lack of proper appreciation of efforts did not mean that the management had acted arbitrarily or high-handedly. Therefore, the employee's resignation was not forced by management. The Supreme Court further held that the employee was not a 'workman' under section 2(s) of the ID Act, having regard to the nature of the duties performed by the employee, which were primarily managerial. It allowed the appeal of the management and set aside the judgment and order of the High Court of Karnataka.

**Regularisation cannot be denied by drawing an artificial distinction between workers performing similar functions.**

In *Mahanadi Coalfields Ltd. v. Brajrajnagar Coal Mines Workers' Union*,<sup>22</sup> the appellant, a subsidiary of Coal India Ltd., floated a tender for the transportation of crushed coal. It selected a contractor to perform the agreement for a period of 10 years, commencing in 1984. The contractor employed workmen to execute this work. The respondent union espoused the cause of these workers seeking their permanent status. The case of the union was that, under the relevant clauses of the National Coal Wage Agreement-IV, 1989, entered into with the union, the management was under a legal obligation not to engage contract labour for permanent and perennial jobs. According to it, the transportation of crushed coal was perennial and permanent in nature.

Based on the cause above espoused by the respondent union, the assistant labour commissioner initiated a conciliation proceeding, which culminated in a settlement between the management and the union. Under this settlement, the management agreed to regularise the services of 19 out of the 32 workmen. In respect of the remaining, the management took the stand that they were engaged in purely casual jobs not prohibited by the Contract Labour (Prohibition and Regulation) Act, 1970.

In view of the settlement being confined to only 19 workers, the appropriate government referred the entire dispute to the industrial tribunal under the ID Act. The tribunal directed the respondents to regularise the services of the remaining workmen. In its award, the tribunal rejected the management's preliminary objection that it lacked jurisdiction under the Contract Labour (Prohibition and Regulation) Act, 1970, to adjudicate the matter. It allowed the claim for regularisation of the 13 remaining workmen, holding that the nature of the work performed by them was regular and perennial, based on the evidence on record.

<sup>22</sup> 2024 SCC OnLine SC 270.

The management unsuccessfully challenged the validity of the industrial tribunal's award before the High Court of Orissa by way of a writ petition. The court also dismissed its review petition. The management preferred a special leave to appeal in the Supreme Court, which dismissed the same. The court held that, since only 19 workers were regularised under the settlement, the appropriate government was justified in referring the entire dispute for adjudication. The industrial tribunal was naturally bound by the reference to consider the claim of all 32 workers. It was required to examine the whole reference and give an independent finding on the issue, which it did, and rightly so, in the form of an award ordering the regularisation of all the workmen. The Supreme Court held that the high court had rightly rejected the challenge to the industrial tribunal's award. Further, the present case was not a fit case where it would exercise its discretion. The court was sensitive to the fact that all these 32 workers had entered the service of the appellant in 1984 and continued uninterrupted till 1994, when the respondent union sought their permanence. The management's stance regarding the 13 workers was unacceptable. The management had only tried to raise an artificial distinction, with the intent to leave these 13 workers out of the settlement, which was completely unjustified. The court held that it was a case of wrongful denial of employment and regularisation for no fault of the workmen. Therefore, they were entitled to full back wages from the date of the tribunal's award.

**Employment eligibility is unaffected by certain supervening circumstances.**

In *Ganapati Bhikarao Naik v. Nuclear Power Corporation of India Ltd.*,<sup>23</sup> certain lands were acquired for the Kaiga Atomic Power Project, and, as part of a rehabilitation package, jobs were offered to the people and their family members whose lands were acquired. One of the landlosers was the appellant workman's father-in-law. He applied for a certificate to avail of a job not for himself but for his son-in-law. Subsequently, his son-in-law was employed as a helper at the corporation under the said policy. In 1997, matrimonial differences arose between the said workman and his wife. At that stage, the land-loser, in his communication with a senior manager of the corporation, stated that neither he nor his family members had any objection to the confirmation of his son-in-law as a helper at the corporation. He further noted that his daughter was mentally infirm and that she was having estranged relations with her husband. Because of their strained relations, his daughter was living separately from the workman. In 2001, the workman applied. 13 of the HMA, 1955, seeking a divorce, which culminated in a divorce by consent decree. During the litigation period, the land loser complained to the relevant authorities that the workman was not married to his daughter and was therefore not entitled to secure a job intended for a family member. The said complaint resulted in the issuance of a charge memo against the workman. An enquiry was initiated against him, leading to his service being terminated by management. The workman raised an industrial dispute challenging his termination

23 2024 SCC OnLine SC 3323.

as illegal, which dispute was referred by the appropriate government to the labour court for adjudication.

The labour court answered the reference in favour of the workman, relying on the evidence of the wife, given during consideration of the maintenance petition, wherein she had averred that she was the wife of the workman. Further, it also noted that it was only upon the insistence of the land-loser that the workman was appointed as a helper in the corporation. The labour court ordered his reinstatement with full back wages.

The management filed a writ petition before the high court challenging the award above. A single judge of the high court ruled that the workman had misrepresented himself as the landowner's son-in-law and secured the job by committing fraud. Accordingly, the high court allowed the writ of habeas corpus. The workman impugned this judgment before the Supreme Court by way of a special leave to appeal.

It was the case of the management before the Supreme Court, that the final adjudication of this matter should await the decision of the court in *Management of Bharat Fritz Werner Ltd., Bangalore v. Bharat Fritz Werner Karmika Sangha, Bangalore*,<sup>24</sup> where the court had been called upon to consider whether an intra-court appeal lies before the division bench of the high court from the judgment of a single judge in a writ petition challenging the award of a labour court.

It is important to note that the court in this case was required to examine only the validity of the impugned judgment of the single judge of the high court in 2020, which set aside the award of the labour court in 2012. The Supreme Court held that, since the present special leave to appeal has arisen from the judgment and order of the single judge, it need not await the decision of the court in *Management of Bharat Fritz Werner Ltd., Bangalore*.

The apex court observed that the relevant material establishing the marriage of the workman with the landowner's daughter was entirely overlooked by the high court. It was particularly noted that, while applying for the job, the workman's attestation form was countersigned by the chief administrative officer of the management, in which the workman was described as the husband of the daughter of the land loser. The court also took notice of the fact that it had come on record before the labour court, in the evidence adduced by the workman, that in the ration card issued to the appellant workman, the daughter of the landowner was shown as his wife, along with other family members. In these circumstances, the court had no hesitation in setting aside the single judge's order and ordering the reinstatement of the appellant workman within 4 weeks, along with consequential service benefits. However, the court denied back wages to the workman for the period between the date of setting aside the labour court's award by the single judge and the date of his reinstatement.

24 The Supreme Court had granted special leave to appeal in SLP(C) No. 12658/2022 impugning the judgment and order of the single judge of the Karnataka High Court.

**Binding nature of settlements through conciliation machinery: entitlements for holidays and additional wages**

In *Public Works Department v. Tukaram Pandurang Saraf*,<sup>25</sup> the fundamental issue before the Supreme Court was whether the employees who were respondents in the present appeal were entitled to the benefits of public holidays as well as holidays on 2<sup>nd</sup> and 4<sup>th</sup> Saturdays, and for the payment of salary which is one and a half times the salary ordinarily received by them for the work done on such Saturdays under the Kalelkar Award. It will be pertinent here to refer to the background of the Kalelkar Award, which the High Court of Bombay succinctly explained in *Superintending Engineer, Public Works Department v. Kokan Sarvajanik Bandhkam Va Patbandhare Kamgar Sangh*.<sup>26</sup> The Kalelkar Award was the culmination of the State Government of Maharashtra constituting a special board

25 2024 SCC OnLine SC 2583.

26 See 2002 SCC OnLine Bom 892 (*Superintending Engineer, P.W.D.*). The High Court of Bombay at 89 observed thus:

There is no distinction drawn in the settlement between the staff in the field and in the office. The “field workers” who fell in the categories specified in cl. 5 were entitled to get the benefit thereunder and they cannot be denied those benefits without following the prescribed mandate under s. 9-A of the Act. The settlement does not carve out as an exception as a category of the field workers to be denied the benefits under cl. 5 of the settlement or for that matter under the whole settlement. The State departments which are parties to the settlement cannot unilaterally travel beyond the terms of the settlement in violation of the provisions of the Act. The impugned G.Rs. of the State Government are unilateral administrative fiats which cannot overtake the settlement by bypassing the mandatory provisions of the I.D. Act, 1947. Having attempted it has rightly attracted the item (9) of unfair labour practice under Sch. IV of the M.R.T.U. and PULP Act, 1971.

In this case, the industrial court, while dealing with the complaint of the workman who were temporary employees, held that the State Government had no power or authority to modify the award unilaterally without following the prescribed mandatory procedure under the ID Act, 1947. The high court here was dealing with the challenge to the decision of the industrial court in a writ petition of the management. The high court further observed:

The Industrial Court rightly held that the State Government had no power or authority to modify the award unilaterally without following the prescribed mandatory procedure under the Industrial Disputes Act, 1947. I do not find any illegality or infirmity in the impugned judgment and order of the Industrial Court. The State Government was a party to the said award, which was an outcome of bi-lateral negotiations and settlement. Under the circumstances, no party can unilaterally declare any change or modification in the said award. If at all the State Government wanted to have any modification in the said award, it had to give a notice of change under section 9-A of the I.D. Act and proceeded further in accordance with law to get the award modified by adjudication and not by issue of administrative fiat. In the present case, the State Government by the purported Government resolution, clarifying that the Kalelkar award was not applicable to the field staff has acted high handedly and illegally, to exclude from the umbrella of the award one category of the employees i.e. the field staff. None can be deprived of the benefits of the award except in accordance with law. The State Government has no power and authority to withdraw any part of the award unilaterally and without following due process of law. The issue of holidays is covered by Item 5 of Schedule IV of the Act and to effect any change therewith it is mandatory to give a notice of change under section 9-A of the Act in the absence of which every change would be deemed to be an illegal change. I, therefore,

of conciliation under s. 5<sup>27</sup> of the ID Act, 1947 for promoting the settlement of an industrial dispute which arose after the workmen employed under the state in (1) Irrigation and Power Department; and (2) Building and Communication Department, had submitted their charter of 13 demands. The board was a tripartite body chaired by Kalelkar. The Kalelkar Award, in fact, was the outcome of negotiations and the successful settlement of the disputes, made possible by the board's effective intervention. This settlement was signed between the management of the concerned state departments and their workmen under section 13(2) of the ID Act and was made effective retrospectively from October 1, 1966. The said conciliation settlement was published in the Official Government Gazette under section 17 of the Act. Under section under section 18(3) of the Act, such settlements are mandatorily binding on all parties to the industrial dispute.

There was a specific clause 5 in the said agreement in respect of the holidays which provided:

The work charged, regular, temporary, and permanent employees shall be granted the public holidays sanctioned by the Government for their respective categories. The daily-rated employees will be

do not find any illegality or infirmity in the impugned judgment and order of the Industrial Court. Rule is discharged. Writ petition is dismissed with no orders as to costs.

The high court on perusal of the Kalelkar Award held that it was clear that except the daily-rated employees all other categories of the employees were entitled to get such public holidays as were sanctioned by the government for these categories of employees. The daily-rated employees were allowed three paid holidays in a year and four more optional paid holidays in a year as provided therein. The court referred to the general clause of the settlement which specifically clarified as to who were governed by the said settlement. The said clause of the settlement read as under:

In these present the expression 'employee,' 'worker' shall mean an employee or worker of the Buildings and Communications Department or the Irrigation and Power Department of the Government of Maharashtra, who falls under the definition of a 'workman' in S. 2(s) of the Industrial Disputes Act, 1947.

The court, therefore, did not find any illegality or infirmity in the impugned judgment and order of the Industrial Court. The writ petition of the management was dismissed. The petitioners were directed to give effect to the order of the Industrial Court within time frame specified by the high court.

27 S. 5(1) of the ID Act provides:

The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute. (2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. (3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party: Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party. (4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number: Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

giventhree paid holidays per year, i.e., on (1) 26th January, (2) 15th August, and (3) 2nd October, as at present. They will also be granted, subject to the exigencies of work, four additional optional paid holidays in a year, which the employees may take on any festival of their choice. These optional holidays must be applied for in advance.

Certain employees were appointed as Mailmujar and Mali in the Public Works Department between 1982 and 1997. In February 2004, they were placed in the converted temporary establishment in accordance with the Kalelkar Award. These employees were not granted the benefit of all the governmental holidays and the holidays on the second and fourth Saturdays. They made multiple representations to the employer corporation requesting enforcement of their rights under the Kalelkar Award. The employer corporation refused to enforce the Kalelkar Award against them. Consequently, they filed a complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Maharashtra Act) before the industrial court, seeking enforcement of their rights under the Kalelkar Award. Further, the employees sought that the corporation grant them holidays in accordance with their entitlements under the said award, along with back wages for the work performed during such holidays. The industrial court allowed their complaint and ordered the employer corporation to enforce the Kalelkar Award. The industrial court overruled the corporation's objection. It held that the circular dated May 27, 1996, only concerned itself with the issue of cases which were either disposed of or pending before the industrial court at Bombay and didn't exclude the employees who were the complainants. Further, it ordered the corporation to pay an appropriate sum towards the overtime work done by them. Subsequently, the corporation challenged this order before the High Court of Bombay by way of a writ petition. The high court ruled that the issue before it was squarely covered by the judgment in *Superintending Engineer, P.W.D.*<sup>28</sup> and refused to interfere. The corporation approached the Supreme Court by way of special leave to appeal, which, after referring to the relevant clauses of the Kalelkar Award, found no reason to interfere with the findings of the industrial court as upheld by the high court. It held that, except for daily-wage employees, all other categories of employees are entitled to the public holidays sanctioned for their categories. The respondent-employees in the present factual matrix were temporary, not daily-wage employees. As of February 27, 2004, they had been placed on the converted temporary establishment in accordance with the Kalelkar Award. Therefore, they were entitled to all the holiday benefits and other emoluments stipulated under the said Award.

The circular dated May 27, 1996, relied upon by the appellant employer pertained specifically to the issues involved in disposed of cases and those pending before the industrial court in Bombay. The instructions in this circular were related to the cancellation of facilities and concessions granted through interim orders in those particular cases. Therefore, the above-stated circular did not govern the

28 *Supra* note 28.

employees who were shifted to the converted temporary establishment under the Kalelkar Award; neither did it state that the said employees would be ineligible for the benefits outlined in the Award, such as government holidays and overtime allowances.

In fact, the provisions of the Kalelkar Award explicitly stated that all employees, except those on daily wages, were entitled to these benefits. The apex court held that the appellant employer's reliance on the 27<sup>th</sup> May, 1996 circular to deny the complainants their rightful entitlements was misguided and could not be allowed to negate the entitlements under the Kalelkar Award to these employees.

#### **Unfair discharge**

In *Municipal Commissioner and Another v. Aparna Anil Kesarkar*,<sup>29</sup> an issue arose regarding the legality of discontinuing the services of an employee appointed on an *ad hoc* basis. The factual matrix of the case is as follows:

The appellant corporation issued a local advertisement seeking applications for eight vacancies for laboratory technicians at a hospital run by the municipal corporation of Greater Mumbai. The corporation conducted interviews, and following the selection process, eight candidates were given *ad hoc* appointments. The respondent Aparna was one of them. She was appointed to the post in January 1999 for a six-month term. Thereafter, after giving her a one-day break, she was re-appointed, along with others, to the same position on an *ad hoc* basis for another three months or till further orders. Her services were discontinued in December 2000. Therefore, she, along with her two colleagues, filed a complaint of an unfair labour practice by the management before the labour court under section 28 of the Maharashtra Act. The labour court, by its interim order, directed the complainants to remain in service until regular candidates were appointed. The said interim order became the subject matter of a meeting between the representatives of the labour union and the municipal authorities. At the meeting, the parties agreed that four of the eight candidates from the reserved category would be absorbed. The remaining four candidates in the open category were taken on an *ad hoc* basis until suitable candidates were available for the post. It is pertinent to note that, of the eight people appointed on an *ad hoc* basis, she was the only one left out. She was not reinstated, even though she belonged to the reserved category and should have been appointed regularly under the settlement reached between the union and the municipal authorities. In 2007, the said complaint was dismissed by the labour court relying on the ratio laid down in *Secretary, State of Karnataka v. Uma Devi*.<sup>30</sup>

29 2024 SCC OnLine SC 841.

30 (2006) 4 SCC 1 (*Umadevi*). For a detailed critique of *Secretary, State of Karnataka v. Uma Devi*, see Bhushan Tilak Kaul, "Labour Management Relations" XLII ASIL, at 525 (2006).

She challenged this order in a revisional application before the industrial court under section 44 of the Maharashtra Act. It ruled that termination of an employee appointed on an *ad hoc* basis did not amount to retrenchment within the meaning of s. 2(oo) read with section 2(oo)(bb)<sup>31</sup> of the ID Act, 1947. However, it ruled that the discontinuation of her service was not in good faith and amounted to a discharge, as it stemmed from a colourable exercise of power by the employer. Accordingly, the industrial court issued a direction to the employer to reinstate her with continuity of service and full back wages, or to pay salaries equivalent to those of a regular employee until a regular appointment was made to the post.

The employer challenged this decision by way of a writ petition before the High Court of Bombay, which noted that she had the requisite qualifications prescribed for the post of laboratory technician. Further, it observed that the employer's question mark regarding the respondent's qualifications was an afterthought. It ruled that the ratio in *Uma Devi*<sup>32</sup> could not be applied to the present facts, since the respondent was qualified and appointed through a selection process. The high court directed her reinstatement with full back wages.

This decision was impugned by the employer before the Supreme Court by way of special leave to appeal. It noted that the respondent belonged to the OBC category and was entitled to be absorbed into the four vacancies reserved for candidates from reserved categories. It refused to show indulgence to the appellants on account of the discrimination meted out to her insofar as the issue of her absorption was concerned, coupled with the categorical finding of the unfair labour practice resorted to by the employer in discontinuing the services of the respondent. The court took serious note of the fact that the employer belatedly filed the writ petition before the high court after six years.

In view of the peculiar facts of the case, the Supreme Court instead of allowing full back wages upon reinstatement of the respondent directed the appellant to pay rupees 50 lakhs in all to the employee towards the back wages which would include approximately 23 lakhs already deposited by the employer in the high court in pursuance of the consent order of the high court passed earlier and also the interest that would have accrued on the said amount. Further, the court directed that if the amount already deposited by the employer and the interest thereon fell short of rupees 50 lakhs, the appellant would make good the deficiency within 8 weeks from the date of the employee's reinstatement. The Supreme Court dismissed the employer's appeal.

31 S. 2(oo)(bb) of the ID Act provides:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or...

32 *Supra* note 32.

**Breach of fixed-term contract**

In *Bhavnagar Municipal Corpn. v. Dharmendra B. Vegad*,<sup>33</sup> the question arose whether termination of fixed-term contracts before the date or time stipulated therein without any reason is actionable under the ID Act and what reliefs, if any, could be granted in such cases.

On November 9, 1993, the Bhavnagar Municipal Corporation appointed 10 workers on a contractual basis under section 2(oo)(bb)<sup>34</sup> of the ID Act for conducting survey work for town planning in certain areas. This work was expected to be completed in one month. Each worker was to be paid Rupees 758 in a lump sum for this work. The contract stipulated termination if the corporation was dissatisfied with the work performed by the workers. The corporation terminated its contract on November 26, 1993, even before completing one month of service. After 12 years, the respondent worker sent a demand letter to the corporation seeking reinstatement with full back wages and the continuation of service from the date of his termination. He claimed that he was not allowed to defend himself before he was relieved of his duties, while the corporation retained persons junior to him and subsequently made permanent. The assistant labour commissioner initiated a conciliation proceeding between the parties, which failed. Thereafter, he referred the dispute to the labour court, which passed an award in favour of the worker and directed the corporation to reinstate him with 10% back wages and to continue his service from the date of termination of the contract. The corporation filed a writ petition before the High Court of Gujarat impugning the award; a single judge of the high court modified the prize, setting aside the direction to pay 10% back wages and other consequential benefits. However, the judge ordered his reinstatement from the date of the labour court's award, that is, May 25, 2009, rather than November 26, 1993. The corporation filed a writ of appeal impugning this order. The division upheld the single judge's order. Aggrieved, the corporation impugned this order before the Supreme Court by way of special leave to appeal.

The Supreme Court directed that the special leave to appeal by management will be heard only after management complies with the high court's order. However, the court stayed the operation of the directions passed in the award as modified by the high court, during the pendency of the proceedings. The management complied with the labour court's award dated May 25, 2009. However, it did not pay the respondent worker the wages due under the labour court's award, as modified by the high court. Subsequently, the Supreme Court modified its earlier interim order and directed that the respondent would be entitled to salary, treating May 25, 2009, as the date of his appointment order.

The apex court, after hearing the matter on merits, held that it was not a case of retrenchment, as the appointment was a fixed-term one. It was a case of termination of the contract without assigning any reason before the stipulated period. However, the court observed that it could not ignore the long time between

33 2024 SCC OnLine SC 4038.

34 *Supra* note 33.

the termination date and the issuance of the demand letter. The court, at the time of final hearing of the matter, was conscious of the fact that it was its own interim order which had directed the corporation to reinstate the respondent, as an interim measure, pending final decision in the matter and that the respondent had put in 12 years of service since the interim order was passed and had drawn wages payable to a regular Mazdoor in the corporation. The court found that the corporation's submission that the workman had slept over his rights was justified and that the workman had approached the industrial adjudicator for relief after 12 years and therefore could not claim full back wages. This stand of the corporation had rightly been weighed with the single judge of the high court, who directed the respondent workmen be reinstated with continuity of service only from May 25, 2009, that is, the date of the award and not from November 26, 1993, as was held by the labour court. The court found that the modification made by the single judge, as upheld by the high court's division bench, aligned with the principle that a person cannot be rewarded for sleeping on his rights. The court held that in the peculiar circumstances of this case, it was not inclined to interfere with the order of the single judge of the high court. It, however, made it clear that the instant case should not be treated as precedent for any other matter. It directed that any arrears payable by the corporation to the respondent workman in terms of the order of the single judge shall be paid to him within four weeks of the judgment. It dismissed the management's appeal.

#### **Sanction for prosecution under section 29 of the ID Act must be specific**

In *Yugal Sikri v. State of U.P.*,<sup>35</sup> a criminal complaint was filed before the magistrate by the workman, alleging that the management's failure to comply with a binding settlement amounted to the commission of an offence punishable under section 29<sup>36</sup> read with sections 32 and 34 of the ID Act. The magistrate took cognisance of the alleged offence and recorded the statements of the accused and the witnesses. Based on which, he summoned the accused under s.204 of Cr.P.C., 1973. The accused approached the High Court of Allahabad seeking the quashing of the summoning order and the criminal proceedings. The court dismissed the petition under section 482 of Cr.P.C., 1973; the accused preferred the present special leave to appeal.

The case of the workman was that a memorandum of settlement (MoS) was entered into between him and the management on August 30, 1996. To demonstrate

35 2024 SCC OnLine SC 2053.

36 S. 29 of the ID Act, 1947 provides:

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

that there was a binding settlement, here referred to a joint affidavit filed by the parties on December 9, 2015, in the High Court of Allahabad. The respondents sought to treat that MoS in the affidavit as an agreement. The Supreme Court, on perusal of the affidavit as well as the statement made by the accused under section 200 of Cr.P.C, noted that only a vague reference was made to the memo contained in the joint-affidavit. It further stated that, under the verification statement of the accused under section 200 of Cr.P.C, there was no mention of any settlement in the joint-affidavit. In the statement of a witness recorded under section 202 of Cr.P.C, no breach of agreement incorporated in a joint-affidavit was alleged. Further, the MoS was neither referred to nor relied upon in the complaint.

The Supreme Court observed that before any person could complain of a breach of a settlement which is punishable under section 29 of the ID Act, it had to be shown that there was a binding 'settlement' within the meaning of section 2(p) of the ID Act. In the present case, there was no written agreement entered into between the management and the workman, which had to be registered under the Central Industrial Disputes Rules, 1956, to make it binding between the parties under section 18(1)<sup>37</sup> of the ID Act. There was no such agreement, nor was it registered under the rules. Therefore, the question of binding nature and violation thereof didn't arise. The court deprecated the magistrate's failure to exercise his judicial mind before summoning the accused in the present case. The court set aside the magistrate's summoning order and the criminal proceedings initiated against the accused. It concluded that the respondent had failed to place anything on record which could constitute a "settlement"<sup>38</sup> within the meaning of section 2(p) of the ID Act.

It is well settled that under s. Under section 34 of the ID Act, no court can take cognisance of an offence punishable under the ID Act except on a complaint made by or under the authority of the appropriate government. The object of section 34(1) of the ID Act is to prevent the filing of frivolous and vexatious complaints. The grant of authority to complain is *asine qua non* for the trial of an offence. Such authority granted ought to be in respect of a specific offence and cannot be vague. The order passed in this case in exercise of power conferred under section 34 did not refer to the commission of an offence punishable under section 29. It only referred to the violation of section 9A of the ID Act.

The magistrate took cognisance without considering whether the authority to file a complaint was in respect of a violation of section 29 of the Act, which was

37 S.18(1) of the ID Act, 1947 provides:

A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

38 S. 2(p) of the ID Act, 1947 reads:

In this Act, unless there is anything repugnant in the subject or context, —means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

not present. The authority to file a complaint was limited to breaches of section 9A of the Act. The Supreme Court sharply criticised the trial court for taking cognisance of the offence in such circumstances and held that it amounted to a failure of mind on the part of the magistrate. It is considered needless to go into the broader question of the authority of the second respondent to file the complaint. The court reiterated the importance of applying the mind at the stage of taking cognisance, since setting up the criminal law in motion has serious consequences. Ultimately, it set aside the impugned judgment of the High Court of Allahabad, which declined to quash the magistrate's order. It also quashed the order of summoning issued by the trial court.

The question of whether a private person could have been authorised to file a complaint under s. 34 for a violation of s. 29 of the ID Act was left open.

**Proper forum for the determination of conferment of permanent status under state legislation**

In *T.N. Medical Services Corpn. Ltd. v. T.N. Medical Services Corpn. Employees Welfare Union*,<sup>39</sup> the following two questions arose for the consideration of the Supreme Court:

- i. Whether the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act) would apply to the workers of the corporation, and
- ii. Whether the impugned judgment of the high court was sustainable insofar as it had directed the workmen to raise an 'industrial disputes claim' relating to their non-employment, even though the inspector of labour had held that the Tamil Nadu Act applied to them and had granted them the permanent status under the Tamil Nadu Act.

These two issues arose in light of the following facts and circumstances:

T.N. Medical Services Corporation Ltd. was a company incorporated under the Companies Act, 1956. The corporation was engaged in various activities, including supplying medical equipment, establishing warehouses for storing medicines, and constructing hospital infrastructure. The state of Tamil Nadu managed it. It employed workmen in various capacities on a daily wage basis pending the framing of service rules.

The union of the corporation's workmen made representations seeking permanent status for some of their employees who, according to the union, had completed 480 days of service over two calendar years, entitling them to permanent status under the Tamil Nadu Act. These representations were rejected by management. The union filed a writ petition before the Madras High Court for the issuance of a writ of mandamus directing the corporation to grant permanent status to the workmen who were eligible under the Tamil Nadu Act from the date of their joining the service, for payment of back wages and other attendant benefits.

39 2024 SCC OnLine SC 982.

A single judge of the Madras High Court heard the writ petition and passed, *inter alia*, the following order:

- i. The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) applies to the second respondent corporation; and
- ii. The 'Inspector' having jurisdiction over the second respondent is directed to inspect and verify the records of the second respondent corporation and pass appropriate orders under section 3 of the said Act about the claim made by the members of the petitioner Union.

The corporation challenged this order passed by the single judge by way of a writ of appeal. Simultaneously, in furtherance of this order, the union approached the inspector seeking an inquiry into the conferment of permanent status to them. In the writ appeals before the division bench, the management filed civil miscellaneous petitions seeking an interim stay. The interim stay was granted against the operation of the single judge's order. Subsequently, the workers filed civil miscellaneous petitions in both the writ appeals to vacate the orders granting interim stays. After the order vacating the interim stay was pronounced, the writ appeals were kept pending.

After considering the facts and circumstances surrounding the dispute over the grant of permanent status to the workmen, the inspector ordered that the Tamil Nadu Act applied to the corporation. The inspector issued an order stating that 53 employees had been continuously in the service of the corporation for 480 days over a period of 24 months and, therefore, could be granted permanent status. The claim of 42 other workmen was rejected. The management challenged the inspector's order by way of a writ petition before the High Court. A few workmen who were conferred the permanent status by the inspector also filed a writ petition before the high court seeking implementation of the order passed by the inspector. These writ petitions were tagged along with the corporation's writ appeals preferred against the single judge's order. A division bench of the Madras High Court dismissed the corporation's writ appeals. It allowed the workmen's writ petition seeking implementation of the order passed by the inspector. It is pertinent to note that the corporation didn't file a special leave to appeal before the Supreme Court against the order dismissing its writ appeals.

The corporation preferred a special leave to appeal petition before the Supreme Court against the dismissal of its writ petition challenging the order passed by the inspector. In the said special leave to appeal, the Supreme Court held that the high court's division bench didn't consider whether the Tamil Nadu Act applied to the corporation. Consequently, the court remanded the matter to the high court for fresh consideration. While considering the matter afresh, the division bench concurred with the findings of the inspector and the single judge

in the prior round of litigation. It ruled that the Tamil Nadu Act applied to the corporation as it was an ‘industrial establishment’ within the meaning of the Act. The high court held that since the fundamental facts were disputed, it was not the appropriate forum to indulge in a fact-finding exercise. It held that the proper course for the workers who were denied permanent status or the ones who were conferred permanent status but not absorbed by the corporation was to raise an ‘industrial dispute’ before the competent authority. Both the corporation and the workmen assailed this judgment and the order of the division bench by way of the present special leave to appeal.

The Supreme Court, dealing with the first issue, observed that it was essential to appreciate that the definition of ‘commercial establishment’<sup>40</sup> under the Tamil Nadu Shops and Establishments Act, 1947, has been adopted for the purpose of defining ‘establishment’ under section 2(3)(e)<sup>41</sup> of the Tamil Nadu Act. The court observed that, based on the affidavit filed by the corporation, it was clear that the corporation had been engaged in multiple activities and had consistently made profits over the years and could not claim that it was working as a non-profit organisation and, therefore, would not fall under the definition of commercial establishment. The court stated that the commercial element was not absent in the corporation. It also observed that though s.7<sup>42</sup> of the Tamil Nadu Act excluded the application of its provisions to workmen employed in industrial establishments engaged in construction activities, construction was not the principal activity undertaken by the corporation. Apart from construction, it undertook the supply of medicines and warehousing, among other activities. Therefore, the corporation was an ‘industrial establishment’ for the Tamil Nadu Act. Further, it noted that the workmen who were the respondents in the present appeal were not the ones undertaking construction activities.

The court, while answering the second issue, observed that the scope of the review was limited to the applicability of the Tamil Nadu Act. On the question of granting permanent status to some and refusing it to others, the inspector had

40 S. 2(3) of the Tamil Nadu Shops and Establishments Act, 1947 reads thus:

‘commercial establishment’ means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker’s office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

41 S. 2(3)(e) of the Tamil Nadu Act means an establishment as defined in the Tamil Nadu Shops and Establishments Act, 1947:

‘industrial establishment’ means—  
(e)... “an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947).

42 S. 7 of the Tamil Nadu Act reads:

Act not to apply to workmen employed in certain industrial establishment. – Nothing contained in this Act shall apply to workmen employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work whether structural, mechanical or electrical.

already examined the evidence on record and given his findings on the appreciation of evidence to determine whether the eligibility criteria for the grant of permanent status were fulfilled or otherwise. The high court had wrongly relegated the employees to the remedy of raising a dispute under the ID Act regarding their non-employment. The high court had no reason to disturb the inspector's findings on the fulfilment of the criteria for the grant of permanent status, which were correctly arrived at by the inspector.

Upon perusal of the corporation's affidavit and the Inspector's findings regarding the corporation's turnover and profits, the court inferred that a commercial element was present in the corporation's activities.

### III THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

#### **Harmonising the ID Act with the IESO Act**

In *Indian Express Pvt. Ltd. v. Indian Express Newspapers Workers Union*,<sup>43</sup> the pertinent issues which came for consideration before the High Court of Delhi were (i) whether the reference to the industrial tribunal was maintainable even when certified standing orders applicable to the establishment which provided for the age of retirement and modification of the same could be sought under the IESO Act; (ii) whether region-cum-industry formula was applied in its full vigour by the industrial tribunal; and (iii) whether espousal by the respondent union was proper. These issues arose in the following facts and circumstances:

Indian Express Pvt. Ltd. has its registered office in Mumbai and offices and a factory in Noida. It is in the publishing business. Cl. 15(d) of the certified standing orders applicable to the company provided for the age of retirement as 58 years.<sup>44</sup> Since the Indian Express was a newspaper establishment, cl. 3 of Schedule I-B of the Model Standing Orders appended to the IESO Act applied to it, which provided for a superannuation age of 58 years.<sup>45</sup> The Indian Express Workers' Union was a registered union of workers employed in the said company. On October 15, 2009, it raised an industrial dispute for adjudication before the industrial tribunal. The terms of reference were as follows:

Whether the demand of the workmen represented by the Indian Express Newspaper Workers Union for increasing the retirement age of the workmen from 58 years to 60 years is legal and justified, and if so, to what relief are they entitled, and what directions are necessary in this regard?

The industrial tribunal passed an order in favour of the union, increasing the age of retirement to 60 years with effect from the date of reference, October 15, 2009, and providing all consequential benefits. The company challenged this award by way of a writ petition before the Delhi High Court.

The single judge of the high court heard the matter on the merits. Addressing the question of maintainability of reference, the high court observed that, as a

43 2024 SCC OnLine Del 325.

matter of principle, there was no conflict between the IESO Act and the ID Act. The ID Act was beneficial legislation with a broader field of operation than the IESO Act, which was more specific. Upon perusal of the authorities, it was manifest that the IESO Act neither expressly nor impliedly ousts the jurisdiction of the industrial tribunals under the ID Act—the process for modification of the retirement clause under Section 10(2) of the IESO Act was the established course of modification, which would have been an ordinary course to be adopted. However, an industrial tribunal was also empowered to adjudicate upon it. The court also dealt with the ancillary issue of whether the central government was the ‘appropriate government’ to refer to the industrial tribunal. It was held that the company had acquiesced in the reference and, therefore, on the determination of merits, it was precluded from contesting the propriety of the reference. It was observed that although the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 regulates the working conditions of the journalists and other persons employed in newspaper establishments, the said Act did not, however, preclude the application of the ID Act in relation to industrial disputes. Deciding upon the issue of the legitimacy of the espousal, the high court, based on material on record, such as the deposition by the general secretary of the union, held that since no objection to the espousal was taken by the company before the conciliation officer, the espousal by the respondent union was legitimate. The court observed that the technicalities of espousal would not stop it from considering the matter on the merits.

The court expressed the view that in determining whether the age of retirement should be increased to 60 years, the industrial tribunal ought to have taken into account the industry-cum-region formula<sup>46</sup> and compared the age of retirement with other newspaper concerns such as Times of India, Hindustan Times, Statesman, The Hindu, PTI and UNI, having its offices in Delhi and outside Delhi in respect of journalists and non-journalists. The court held that the industrial tribunal ought to have compared comparable concerns of the industry in and around Delhi and observed thus:<sup>47</sup>

44 Cl. 15(d) of the certified standing order read as under:

The employment of an employee shall terminate on his attaining the age of superannuation (58 years) and one months’ notice will be given in such cases. The employer may, however, at his discretion extend the period of his service or re-employ him on such terms and conditions as may be mutually agreed upon.

45 Cl. 3 of the Model Standing Order read as under:

The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of 58 years of age by the workman.

46 See *Novex Dry Cleaners v. Workmen*, (1962) 1 ILJ 271; *Kamani Metals & Alloys Ltd. v. Workmen*, AIR 1967 SC 1175; *Hindustan Antibiotics Ltd. v. Workmen*, AIR 1967 SC 948; and *Concept Pharmaceuticals Ltd. v. Concept Pharmaceuticals Kamgara Sangathana*, 2005 SCC Online Bom 652.

47 See 2024 SCC OnLine Del 325 at 39.

Comparison, if at all, with other institutions, has to be in respect of their relative standing, extent of the labour force, extent of respective customers, profits and losses for a few years, financial position, productive capacity, wage structure in neighbouring industries, inflexibility or flexibility of retirement age, totality of the basic wage structure, additional liability which would be imposed upon the employer, consideration whether the employer would be able to bear it for a sufficient period in the future, and the different classes of employees for which it is sought to be employed.

The court set aside the impugned award and remanded the matter to the industrial tribunal for fresh adjudication after considering all materials and the Supreme Court's judgments on the subject, and gave a fresh decision with robust reasoning.

In *Divgi Metal Wares Ltd. v. Divgi Metal Wares Employees Association*,<sup>48</sup> the issue before the court was whether, in the absence of any provision permitting management to transfer employees from one establishment in one state to another establishment in a different state, the contract of employment providing for such a transfer could be enforced. The issue arose in the following facts and circumstances:

Divgi Metal Wares Ltd. was engaged in the business of manufacturing automobile gears, with factories in Pune, Maharashtra, and Sirsi, Karnataka. In 1989, the certifying officer and the deputy labour commissioner issued an order certifying the company's standing orders. It is pertinent to note that cl. 20<sup>49</sup> of the certified standing orders dealt with the transfer of employees from one establishment of the company to another, and cl. 31<sup>50</sup> provided that nothing contained in the certified standing orders operated in derogation of the law in force for the time being. Further, cl. 5 of the appointment letter stipulated that the employees' services were transferable to other establishments of the company on short notice. An appeal challenging the certified orders was filed with the industrial tribunal, which was dismissed as time-barred under section 7 of the IESO Act.

In 1998, management transferred 66 workers from the factory in Sirsi to the factory in Pune due to a reduction in orders and insufficient work. The employees were paid Rupees 1000 towards travel expenses. They collected the sum but refused to join the Pune factory. In 1999, the transferred workmen raised an industrial dispute. Meanwhile, in the application of the respondent employees' association, the certifying officer modified the standing order and deleted<sup>51</sup> the stipulation regarding the transfer of workers between establishments. The company challenged the said deletion before the industrial tribunal, which partly allowed the appeal and set aside the deletion by the certifying officer. In 2001, the employees'

48 2024 SCC Online SC 366.

association challenged this order by filing a writ petition before the high court. Deciding upon the industrial dispute raised by the workers, the industrial tribunal held that their transfers were not *mala fide* and answered the reference in favour of the company. This award was also challenged in a writ petition by the workmen. Parallely, in 2001, three other workmen who had been transferred in 1998 raised an industrial dispute, which was decided in their favour by the industrial tribunal. The company impugned the award of the industrial tribunal in a writ petition. In 2006, the single judge of the high court dismissed the writ petition filed by the employees' association, impugning the order of the industrial tribunal and seeking to set aside the modification to the certified standing orders. The employees' association preferred a writ appeal against the dismissal of their writ petition. The division bench heard the appeal above and clubbed it along with the two writ petitions pending before the single judges of the high court. It allowed the appeal of the employees' association. It is this order of the division bench that is challenged before the Supreme Court in the present special leave to appeal.

To decide the issue at hand, the Supreme Court observed that guidance may be drawn from its earlier decision in *Cipla Ltd. v. Jayakumar R*, where the court adopted the rule of harmonious construction in interpreting the relevant standing orders and the terms of appointment. The court in that case held that situations covered by certified standing orders would apply with full vigour, and that, where standing orders are silent on a subject matter, the terms of the appointment would have binding effect. Applying the said principle in the present case, the court held that nothing contained in the standing orders could operate in derogation of or to the prejudice of the provisions as provided in the contract of service. Since transfer in the certified standing orders was not expressly provided for, the terms of the contract of appointment would govern the subject. The Supreme Court allowed the management's appeal.

#### IV CONCLUSION

In the year under survey, a few Supreme Court decisions were reported in the area of industrial relations law in the country. However, it is heartening to note

49 Cl. 20 of the certified standing orders read as under:

Transfers : An employee shall be liable to be transferred at any time from the unit/factory/office/establishment of the company located anywhere in India or from one department to another within the same unit/factory/office/establishment or from one job of similar nature and capacity to another job of same nature and capacity from one job to another similar job or from one shift to another shift, provided such a transfer does not affect his normal wages. Any refusal to accept a transfer as above will be treated as misconduct as per Rule 31.2.1949.

50 Cl. 31 of the certified standing orders read as under:

Nothing contained in these standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage, or an agreement settlement or award applicable to the establishment.

51 The certifying officer deleted the following words from the transfer clause:

from the unit/factory/office/establishment in which he is working to any other unit/factory/office/establishment of the Company located anywhere in India, or

that the apex court has strongly disapproved of the management's approach of adopting either dilatory tactics or filing vexatious petitions with the intent to harass the workers. The court has not shied away from imposing high costs<sup>52</sup> to deter management from resorting to such unacceptable tactics in the future. Such an approach is the need of the hour. It is hoped that this approach will be followed with vigour in such cases, so that workers are reassured of access to justice that is expeditious and fair, enabling them to enforce the rights they have earned after enduring many trials and tribulations. The court has also encouraged social context-based adjudication in matters of regularisation and reinstatement arising from unfair labour practices to protect and promote workers' rights. Both the Supreme Court and the High Court of Delhi have made a strong case for harmonising<sup>53</sup> the provisions of the ID Act and the IESO Act. This approach will be a step forward in furthering the vision of the judiciary already discernible in its earlier judgment in *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corpn. Ltd.*,<sup>54</sup> where Ahmadi, J.S., had stressed the need to harmonise the ID Act with the IESO Act to secure lasting industrial harmony and peace in the industry.

52 *Supra* note 12.

53 *Supra* note 50.

54 (1991) 1 SCC 4. For a detailed critique of *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corpn. Ltd.*, see Bhushan Tilak Kaul, "Industrial Relations Law" XXVI ASIL 291 at 316-317 (1990).

