

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.7674/2023 (L-RES)

BETWEEN:

THE MANAGEMENT OF
M/S. TATA ADVANCED SYSTEM LIMITED,
NO.42-43, ELECTRONIC CITY,
PHASE-1, HOSUR ROAD,
BENGALURU – 560 100.
REPRESENTED BY ITS HEAD - H.R.
MRS. PREMA .N
INCORPORATED UNDER
THE COMPANIES ACT, 1956/2013.

... PETITIONER

(BY SRI PRASHANTH B.K., ADVOCATE)

AND:

1. THE SECRETARY TO
DEPARTMENT OF LABOUR,
GOVERNMENT OF KARNATAKA,
VIKASA SOUDHA,
DR. AMBEDKAR VEEDHI,
BENGALURU – 560 001.
2. SHRI. RUDRACHARI,
3. M/S. ADECCO INDIA PRIVATE LIMITED
NO.73/1, 13TH FLOOR,

BRIGADE METROPOLIS,
GARDACHAR PALYA,
MAHADEVAPURA POST,
WHITE FIELD MAIN ROAD,
BENGALURU – 560 048.
REP. BY ITS AUTHORIZED
REPRESENTATIVE/LEGAL-MANAGER
INCORPORATED UNDER
THE COMPANIES ACT, 1956/2013.

4. M/S. TEAM LEASE SERVICES LIMITED
6TH FLOOR, BMTc COMMERCIAL COMPLEX,
80 FEET ROAD, KORMANGALA,
BENGALURU – 560 095.
REP. BY ITS AUTHORIZED
REPRESENTATIVE/LEGAL-MANAGER
INCORPORATED UNDER
THE COMPANIES ACT, 1956/2013. ... RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R-1;
SMT. KAVYASHREE G.S., ADVOCATE FOR R-2;
R-3 & R-4 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED ORDER OF REFERENCE DATED 06.02.2023 BEARING
NO.LD-IDM/121/2023/LD.DO.6.L.S MADE BY THE R-1 AT
ANNEXURE-H.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED
ON 12/01/2024 FOR ORDERS AND COMING FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

ORDER

The moot question that requires consideration by this Court is:

"Whether an individual workman seeking regularization can raise an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947?"

2. The management of M/s. Tata Advanced Systems Limited is before this Court assailing the legality and correctness of the order of reference dated 06.02.2023 by respondent No.1.

3. The relevant facts are that:

Respondent No.2 was employed by M/s. Adecco India Private Limited, one of the Labour Contractors at the petitioner's company. Respondent No.2 submitted a petition to the Labour Commissioner, expressing grievances about his employment, the Labour Commissioner transferred the petition to the jurisdictional Deputy Labour Commissioner. The conciliation proceedings held by the Deputy Labour

Commissioner and Conciliation Officer ended in failure and the Conciliation Officer submitted a factual report to the Government. On receipt of failure receipt from the Conciliation Officer, respondent No.1 vide order of reference dated 06.02.2023 referred the dispute to the Industrial Tribunal, Bangalore for adjudication as to "whether respondent No.2 is justified in raising the dispute regarding the regularization/permanency of his job with the petitioner company and if yes, what relief, respondent No.2 is entitled for".

4. Heard Sri. Prashanth B.K., learned counsel for the petitioner, Smt. Rashmi Patel, learned HCGP for respondent No.1 and Smt. Kavyashree G.S., learned counsel for respondent No.2.

5. Learned counsel for the petitioner would contend that as per Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act' for short) the appropriate Government may refer an industrial dispute

between the workmen/union and the management for adjudication, the pre-condition for referring a dispute between the management and the workman is that, the dispute must be an "industrial dispute" as envisaged under Section 2 (k) of the ID Act and the dispute must be espoused by the group of the workmen or trade union. Learned counsel would contend that the dispute between the single workman/employee and his employer will not become an industrial dispute unless the said dispute is pertaining to termination, dismissal or discharge of workman as stipulated under Section 2(a) of the ID Act and would contend that respondent No.1 has committed serious error while making the impugned order of reference.

6. *Per contra*, learned counsel appearing for the respondents would justify the order of reference.

7. The reference by respondent No.1 to the industrial Tribunal for adjudication is regarding the regularization/permanency of his job with the petitioner-

company. Section 10 (1) of the ID Act authorizes the appropriate Government to refer the industrial dispute to a Tribunal or the Labour Court. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

"2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

x x x x x x

(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;"*

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the

dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of **Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)**¹ has held at paragraph No.3 as under:

"3. Section 2(k) defines an "industrial dispute" as meaning any dispute or difference between employers and employees, 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 condition of labour, of any person. This definition shows that before any dispute raised by any person can be said to be an industrial dispute, it must be shown that it is connected with the employment or non-employment of that person. This condition is satisfied in the present case, because the dispute is in relation to the dismissal of 18 workmen, and in that sense, it does relate either to their employment or non-employment. The question however, still remains whether it is a dispute between employers and

¹ Civil Appeal No.532/1963 D.D. 16.03.1965

workmen. Literally construed, this definition may take within its sweep a dispute between a single workman and his employer, because the plural, in the context, will include the singular. Besides, in the present case, the dispute is in fact between 18 workmen on the one hand, and their employer on the other, and that satisfies the requirement imposed by the fact that the word "workmen" in the context is used in the plural. But the decisions of this Court have consistently taken the view that in order that dispute between a single employee and his employer should be validly referred under s. 10 of the Act, it is necessary that it should have been taken up by the Union to which the employee belongs or by a number of employees. On this view, a dispute between an employer and a single employee cannot, by itself, be treated as an industrial dispute, unless it is sponsored or espoused by the Union of workmen or by a number of workmen. In other words, if a workman is dismissed by his employer and the dismissed workman's case is that his dismissal is wrongful, he can legitimately have the said dispute referred for adjudication before an Industrial Tribunal under s. 10(1) of the Act, provided a claim for such a reference is supported either by the Union to which he belongs or by a number of workmen, vide Central Provinces Transport Services v. Raghunath Gopal Patwardhan MANU/SC/0067/1956 : (1957) ILLJ 27 SC and The Newspapers Ltd. v. The

State Industrial Tribunal, U.P. MANU/SC/0078/1957 : (1957) IILLJ 1 SC."

8. The Co-Ordinate Bench of this Court in the case of ***Prakash and Ors. Vs. Superintending Engineer (Electrical), O and M Circle, Belgaum and Ors.***² has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

9. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors.***³ has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

10. In light of the provisions enumerated and the decisions stated supra, the proposition is well settled and no more *res integra* that an individual workman can raise a dispute, it can only be for removal, termination or dismissal and if the workman wants to raise a dispute with regard to

² WP Nos.41747-757/1999 D.D. 31.03.2000

³ WRIT PETITION (c) 6247 & 6682/2002 D.D. 04.01.2007

absorption and regularization, that can only be done by a union, which can raise a dispute on behalf of the workman.

11. For the foregoing reasons, this Court pass the following:

ORDER

- (i) The writ petition is ***allowed***.
- (ii) The reference dated 06/02/2023 No.LD-IDM/121/2023/LD.DO.6.L.S made by respondent No.1 at Annexure-H is hereby ***set-aside***.

**SD/-
JUDGE**

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