M/S. Bharti Airtel Limited vs A.S. Raghavendra on 2 April, 2024

Author: Hima Kohli

Bench: Hima Kohli

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2024 INSC 265

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.5187 OF 2023

M/S BHARTI AIRTEL LIMITED

VERSUS

A.S. RAGHAVENDRA …

JUDGMENT

AHSANUDDIN AMANULLAH, J.

1. Heard learned counsel for the appellant and the respondent-in-person.

2. The present appeal arises out of the final judgment and order dated 31.03.2022 (hereinafter referred to as the "impugned judgment"), passed by a learned Division Bench of the High Court of Karnataka at Bengaluru (hereinafter referred to as the "High Court") in Writ Appeal No.4067 of 2019 (L-TER) arising from Writ Petition No.13842 of 2018 (L-TER) by which the High Court dismissed the appeal filed by the appellant (hereinafter also referred to as the "Company"), which was occasioned on account of the learned Single Judge partly allowing the respondent's writ petition.

THE FACTUAL COMPASS:

3. The respondent, upon being interviewed by the appellant's concerned officials was appointed as the Regional Business Head (South) – Government Enterprise Services on 22.06.2009, in the grade of Senior Manager (B2)-Sales. The same carried an annual bene- fits package of Rs.22,00,000/- (Rupees Twenty-Two lakhs) with fixed pay of Rs.13,20,000/- (Rupees Thirteen Lakhs Twenty Thousand) and variable pay under the Sales Incentive Plan (hereinafter referred to as "SIP") of Rs.8,80,000/- (Rupees Eight Lakhs and Eighty Thou- sand). The respondent worked as Team Leader and Regional Business Head (South) - Government Enterprise Services, heading a team comprising four Account Managers (Sales), one each for the States of Karnataka, Tamil Nadu, Andhra Pradesh and Kerala, respectively. The said Managers were working under the supervision

and control of the re- spondent and were in the B1 and B2 salary levels. On 24.03.2011, the respondent made an initial resignation request on the internal system, which was accepted by the appellant on 09.05.2011. In terms thereof, the respondent was paid Rs.5,92,538/- (Rupees Five Lakhs Ninety-Two Thousand Five Hundred and Thirty-Eight) by the appellant in full and final settlement of all his claims.

4. After about 19 months, the respondent filed a petition before the Deputy Labour Commissioner, Region-2, Bengaluru, alleging his resignation to be a forceful resignation, which resulted in initiation of conciliation proceedings but ended in failure. However, on 27.06.2013, brushing aside the appellant's objections that the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act") was not applicable in the case of the respondent as he performed managerial and supervisory work at an annual package totalling Rs.22,00,000/- (Rupees Twenty-Two Lakhs) and thus, was not a "workman", within the meaning of Section 2(s)1, ID Act, the "appropriate Government"2 [herein, the Government of Karnataka] referred the dispute to the Labour Court under Section 10(1)(c)3, ID Act on 27.06.2013. Pleadings were completed and witnesses were examined by both sides. Extracted hereinafter.

'(a) "appropriate Government" means,—

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dis- pute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956], or the Employees' State Insur- ance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Em- ployees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insur- ance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Compa- nies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation estab- lished under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehous- ing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corpora- tion of India Limited, or the Banking Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment

Board, or a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Govern- ment, the Central Government, and

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidi-

ary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

> Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.' '10. Reference of disputes to Boards, Courts or Tribunals.—(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—
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> 5. On 05.09.2017, the Labour Court made its Award recording findings of fact and held that the respondent had failed to plead or prove that he was a "workman" and that on an assessment of the evidence on record, he was performing the role of a Manager and thus was not a "workman" within the meaning of Section 2(s), ID Act, and accordingly rejected the reference. Aggrieved, the respondent filed Writ Petition No.13842 of 2018 (L-TER) be-

fore the High Court challenging the Labour Court's Award and the learned Single Judge by judgment and order dated 29.11.2019, partly allowed the writ petition, relying upon the judg- ment of this Court in Ved Prakash Gupta v Delton Cable India (P.) Ltd., (1984) 2 SCC

569. The learned Single Judge held that since there was an absence of power in the re- spondent, whilst in service of the appellant, to appoint, dismiss or hold disciplinary enquiries against other employees, the same indicated that the respondent did not belong to the man- agerial category and held him to be a "workman". The learned Single Judge, thus, set aside the award and remanded the matter to the Labour Court for adjudication on merits within 3 months therefrom. Aggrieved by the learned Single Judge's judgment, the appellant filed

(a) xxx; or

(b) xxx; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) xxx:

> Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :' Writ Appeal No.4067 of 2019 (L-TER) before the learned Division Bench, which was dis-
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> missed vide the impugned judgment.
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> SUBMISSIONS BY THE APPELLANT:
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> 6. Mr C U Singh, learned senior counsel for the appellant submitted that the Labour Court's order covered in detail all the factual and legal aspects based on the evidence pro-

duced before it by both sides and needed no interference. It was urged that the learned Single Judge as also the learned Division Bench of the High Court erroneously interfered in the matter. It was submitted that the respondent was a Regional Business Head, whose nature of duties clearly established that he was a senior manager in the managerial cadre, earning an annual package of Rs.22,00,000/- (Rupees Twenty-Two Lakhs) and thus, was not covered by the definition of "workman" as per Section 2(s), ID Act. He contended that even the approach adopted by the learned Single Judge of re-appreciating the entire evi- dence and coming to a fresh conclusion was not proper while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (hereinafter referred to as the "Con- stitution") as it was not a Court of first instance.

7. Mr Singh submitted that even without examining the Award and findings of the La- bour Court, the learned Single Judge concluded that the same were perverse. It was ad- vanced that the learned Division Bench, on the assumption that the learned Single Judge had examined the materials on record, concurred with the judgment of the learned Single Judge, ignoring the admitted fact that the respondent had worked in progressively more senior managerial positions before joining the appellant as Senior Manager (Sales) in Band- 2 which was equivalent to Deputy General Manager as also that his previous employment was as Regional Manager (South) in Kodak India Private Limited and he had joined the appellant as Head of Sales Operations for four Southern States (Karnataka, Tamil Nadu, Andhra Pradesh and Kerala) and was also the Team Leader of a managerial team which comprised an Account Manager (Sales) each for the four States. It was canvassed that the respondent was also writing the half-yearly and annual performance assessments and ap- praisals of the Account Managers referred supra as also liaising, negotiating and repre- senting the appellant/Company with senior government officials of the Indian Administrative Service and the General Managers of various Public Sector Undertakings.

8. Further, learned Senior Advocate submitted that the burden of proving that the re- spondent was a "workman" under the ID Act, was not discharged and he had neither pleaded nor proved the nature of duties and functions performed by him. It was his stand that once the respondent

tendered his resignation on 24.03.2011, which was accepted and he was relieved from service on 09.05.2011, pursuant whereto he accepted the full and final settlement on 23.06.2011 along with receipt of SIP on 26.08.2011, he had clearly accepted what had transpired. It was advanced that, therefore, after a period of over 1½ years raising an industrial dispute before the Deputy Labour Commissioner and Conciliation Officer, Ben- galuru, on the ground that his resignation was obtained under coercion and duress, was not tenable and was rightly rejected by the Labour Court. It was submitted that ironically the documents relied upon by the respondent himself clearly demonstrated that he was a mem- ber of the senior management cadre, being in-charge of and supervising the Accounts Man- agers in the four Southern States as noted hereinbefore, which, by no stretch of imagination can lead to the conclusion that he was a "workman". Learned Senior counsel submitted that in the written statement filed by the Company in reply to the Statement of Claim of the re- spondent, it was specifically pleaded that the respondent was not a "workman" and the na- ture of his duties were described in detail. However, the learned Single Judge grossly erred and misread the documentary and oral evidence while reaching the incorrect conclusion that the respondent was a "workman" within the meaning of Section 2(s), ID Act.

9. On the legal aspect, it was contended that the High Court had exceeded its jurisdic- tion in such matters, as the law was that a writ of certiorari under Article 226 of the Consti- tution can be issued only to correct errors of jurisdiction where a Court or Tribunal acts with material irregularity or in violation of natural justice but not for the purpose of re-appreciation of evidence or acting as a Court of appeal. For such proposition, reliance was placed on the judgment in Syed Yakub v K S Radha Krishnan, AIR 1964 SC 477, the relevant being Paragraph 74. Similarly, it was contended that in matters pertaining to industrial law, it has '7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of been held that unless the High Court first concludes that the Award or Order of a Labour Court or Industrial Tribunal is based on no evidence or is perverse, the High Court cannot proceed to reappreciate the evidence under Articles 226 or 227 of the Constitution. In this regard, following judgments were relied on - Indian Overseas Bank v IOB Staff Canteen Workers Union, (2000) 4 SCC 245; Anoop Sharma v Public Health Division, Haryana, (2010) 5 SCC 497, relevantbeingParagraphs 12-145, and; Pepsico India Holding (P) Ltd. v Krishna Kant Pandey, (2015) 4 SCC 270.

evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued

if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168].' '12. A reading of the impugned order shows that the Division Bench of the High Court set aside the award of the Labour Court without even adverting to the fact that challenge to similar award passed in the cases of other em- ployees was negatived by the High Court and this Court. We have no doubt that if the Division Bench had taken the trouble of ascertaining the status of the disputes raised by other employees, then it would have discovered that the award of reinstatement of similarly situated employees has been upheld by the High Court and this Court and in that event, it may not have passed the impugned order. That apart, we find that even though the Division Bench did not come to the conclusion that the finding recorded by the Labour Court on the issue of non-compliance with Section 25-F of the Act is vitiated by an error of law apparent on the face of the record, it allowed the writ petition by assuming that the appellant's initial engagement/employment was not legal and the respondent had complied with the conditions of a valid retrenchment.

13. In our view, the approach adopted by the Division Bench is contrary to the judicially recognised limitations of the High Court's power to issue writ of certiorari under Article 226 of the Constitution—Syed Yakoobv. K.S. Ra- dhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64] , Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd. [(1999) 1 SCC 566] , Lakshmi Precision Screws Ltd. v. Ram Bahagat [(2002) 6 SCC 552 : 2002 SCC (L&S) 926] , Mohd. Shahnawaz Akhtar v. ADJ, Varanasi [(2010) 5 SCC 510 : JT (2002) 8 SC 69] , Mukand Ltd. v. Staff and Officers' Assn. [(2004) 10 SCC 460 : 2004 SCC (L&S) 798] , Dharamraj v. Chhitan [(2006) 12 SCC 349 :

> (2006) 11 Scale 292] and CIT v. Saurashtra Kutch Stock Exchange Ltd. [(2008) 14 SCC 171 : (2008) 12 Scale 582]

14. In Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477: (1964) 5 SCR 64] the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939.

10. Further, it was submitted that unless a person proves that he is employed to perform any manual, unskilled, skilled, technical, operational, clerical, or supervisory work, such per- son does

not fall within the definition of “workman” under Section 2(s), ID Act and that it has been held that a teacher, an advertising manager, a chemist employed in a sugar mill, gate sergeant in a tannery, and a welfare officer in an educational institution are not “workman”, and that a legal assistant, whose job is not stereotyped and involves creativity can never be a “workman”. It was submitted that the High Court has, thus, clearly fallen in error in not appreciating the ratios of judgments of this Court in Heavy Engineering Corporation v Presiding Officer, Labour Court, (1996) 11 SCC 236; Muir Mills Unit of NTC Ltd. v Swayam Prakash Srivastava, (2007) 1 SCC 491; C Gupta v Glaxo Smithkline Ltd., Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479-80, para

7) “7. ... A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was in- sufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.”’ (2007) 7 SCC 171; E.S.I. Corporation's Medical Officers' Association v ESI Corpora- tion, (2014) 16 SCC 182; Sonepat Cooperative Sugar Mills v Ajit Singh, (2005) 3 SCC 232; H R Adyanthaya v Sandoz (India) Ltd., (1994) 5 SCC 737; Management of M/s May and Baker (India) Ltd. v Workmen, AIR 1967 SC 678, and; Pepsico India Holding (su- pra).

11. Even with regard to Chauharya Tripathi v Life Insurance Corporation of India, (2015) 7 SCC 263, the relevant being Paragraphs 9-166, the appellant contends the said decision squarely covers the case, but has not been accepted by the learned Single Judge. ‘9. We have quoted in extenso as the Constitution Bench has declared the pronouncement in S.K. Verma case [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] as per incuriam.

10. At this juncture, it is condign to note the position in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] which has been rendered by the three-Judge Bench that has been placed reliance upon by the High Court while deciding the writ petition. In Mukesh K. Tripathi case [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , the question arose whether the appellant, who was appointed as Apprentice Development Officer, could be treated as a workman. While dealing with the said question, the three-Judge Bench referred to earlier decisions and the Con- stitution Bench decision in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] and opined that : (Mukesh K. Tripathi case [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , SCC p. 396, paras 21-23) "21. Once the ratio of May and Baker [AIR 1967 SC 678] and other decisions following the same had been reiterated despite observations made to the effect that S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and other decisions following the same were rendered on the facts of that case, we are of the opinion that this Court had approved the reasonings of May and Baker [AIR 1967 SC 678] and subsequent decisions in preference to S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] .

22. The Constitution Bench further took notice of the subsequent amendment in the definition of 'workman' and held that even the legislature impliedly did not accept the said interpretation of this Court in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and other decisions.

23. It may be true, as has been submitted by Ms Jaising, that S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] has not been expressly overruled in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] but once the said decision has been held to have been rendered per incuriam it cannot be said to have laid down a good law. This Court is bound by the decision of the Constitution Bench." We respectfully agree with the aforesaid exposition of law. There can be no cavil over the proposition that once a judgment has been declared per incuriam, it does not have the precedential value. After so stating, the three-Judge Bench did not accept the stand of the appellant therein that he was a workman and accordingly declined to interfere.

11. As has been stated earlier, the decision that was pressed into service in the application filed for review is the judgment in R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] . In the said case, the question that was posed in the beginning of the judgment reads thus : (SCC p. 321, para 2) "2. Whether jurisdiction of the Industrial Courts is ousted in regard to an order of dismissal passed by Life Insurance Corporation of India, a corporation constituted and incorporated under the Life Insurance Cor- poration Act, 1956, is the question involved in this appeal which arises out of a judgment and order dated 3-2- 2006 [LIC v. Industrial Tribunal, Writ Appeal No. 3360 of 2001, decided on 3-2-2006 (Ker)] passed by a Di- vision Bench of the Kerala High Court at Ernakulam."

12. The facts of R. Suresh case [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] that were the subject-matter of the lis in the said case were that the respondent was appointed as a Development Officer of LIC and a departmental proceeding was initiated against him and eventually he was found guilty in respect of certain charges and was dismissed from service by the disciplinary authority. As an industrial dispute was raised by him, the appropriate Government referred the dispute for adjudication by the Industrial Tribunal. The Tribunal passed an award on 6- 2-1993 and reduced the punishment imposed by the employer. The said order was assailed before the High Court in the writ petition. Before the High Court, the decision in M. Venugopal v. LIC [(1994) 2 SCC 323 : 1994 SCC

(L&S) 664 : (1994) 27 ATC 84] was cited. The High Court opined that the said decision was not applicable and placed reliance on the authority in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] . Thereafter, the Court referred to the jurisdiction of the Industrial Tribunal in interfering with the quantum of punishment and after refer- ring to various provisions of the Life Insurance Corporation Act, 1956, opined that it is "State" and on that basis ruled thus : (R. Suresh case [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] , SCC p. 328, paras 35-36) "35. The jurisdiction of the Industrial Court being wide and it having been conferred with the power to interfere with the quantum of punishment, it could go into the nature of charges, so as to arrive at a conclusion as to whether the respondent had misused his position or his acts are in breach of trust conferred upon him by his employer.

36. It may be true that quantum of loss may not be of much relevance as has been held in Suresh Pathrella v. Oriental Bank of Commerce [(2006) 10 SCC 572 : (2007) 1 SCC (Cri) 612 : (2007) 1 SCC (L&S) 224] , but there again a question arose as to whether he was in the position of trust or not."

13. At this juncture, we are obliged to state that the two-Judge Bench in R. Suresh case [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] referred to the decision in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and also stated that they were not unmindful of the principle stated in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] . Dealing with the decision in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , the Court said that there the question was whether the Apprentice Development Officer would be a "workman" within the meaning of the provisions of Section 2(s) of the Act and observed that it was not dealing with the case that pertains to an apprentice.

14. Mr Singh, the learned Senior Counsel appearing for the appellant built the plinth of his argument on the basis of the aforesaid authority with the hope that an enormous structure would come into existence but as we find on a studied and anxious reading of the judgment, we notice that there is no reference to the Constitution Bench decision in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] and the two-Judge Bench, though has referred to S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] but has not taken note of what the three-Judge Bench has said in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] with regard to the precedent and how S.K. Verma case [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] is no more a binding precedent.

15. In our considered opinion, the decision in R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] cannot be regarded as the precedent for the proposition that a Development Officer in LIC is a "workman". In fact, the judgment does not say so but Mr Vasdev, the learned Senior Counsel would submit that inferring such a ratio, cases are being decided by the High Courts and other authorities. Though such an apprehension should not be there, yet to clarify the position, we may quote a few lines from Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213 : AIR 1987 SC 1073] : (SCC p. 221, para 18) "18. ... It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathem [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] .)" In view of the aforesaid, any kind of interference is not permissible but, a pregnant one, it has dealt with the cases of Development Officers of LIC.

16. As we find, the said judgment R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] has been rendered in ignorance of the ratio laid down by the Constitution Bench in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] and also the principle stated by the three-Judge Bench in Mukesh K. Tripathi [(2004) 8 SCC 387 :

> 2004 SCC (L&S) 1128] that the decision in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] is not a prece- dent, and hence, we are compelled to hold that the pronouncement in R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] is per incuriam. We say so on the basis of the decisions rendered in A.R. Antulay v. R.S. Nayak [(1988)
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> 12. Learned counsel summed up his arguments by pointing out that the Labour Court had rightly noticed Clause 5.5 of the respondent's Appointment Letter which starts with "be-

ing a managerial cadre employee you will be.....", which should leave no manner of doubt that the respondent cannot come within the definition under Section 2(s), ID Act and his post/position was a pure managerial position.

13. Learned counsel submitted that the learned Single Judge has erroneously relied on Ved Prakash Gupta (supra) to hold that since there was an absence of power to appoint, dismiss or hold disciplinary enquiry against other employees, the same indicated that the respondent did not belong to the managerial capacity as the observation therein was not a water-proof compartment to hold that the respondent was a "workman". Mr Singh urged that the impugned judgment deserved to be set aside.

SUBMISSIONS BY THE RESPONDENT-IN-PERSON

14. The respondent, who appeared in person, vehemently opposed the instant appeal. He submitted that the arguments advanced on behalf of the appellant are without any basis. He submitted that before the learned Single Judge and the learned Division Bench of the High Court, he had succeeded in establishing that he was a "workman" based on the nature of duties performed by him. Further, he contended that the Labour Court had ignored the fact that there was enough oral and documentary evidence showing the nature of duties 2 SCC 602 : 1988 SCC (Cri) 372] , Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] and Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] . ' performed by him, which was ignored in a hyper-technical manner on the ground that spe- cific pleading that he was a "workman" was missing in his Statement of Claim. It was his stand that only because of his designation and salary, it was held that he was not a "work- man" which was an incorrect approach by the Labour Court. He submitted that the proceed- ings before the Labour Court do not require strict compliance of Rules of Evidence, Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973. He canvassed that basically it is the rules of natural justice which have to prevail. It was further argued that in the State- ment of Claim, the expression "workman" was not expressly

used as he had engaged the services of an advocate to draft such claim and was also because of inadvertence and sheer oversight. The respondent urged that the same cannot be held to be against him as he has mentioned in sufficient detail, the duties performed by him and nature thereof, which are neither managerial nor supervisory but, as per him, purely clerical. He reiterated that the appellant had obtained his resignation under coercion, and he was removed from his ser- vices wrongfully/unlawfully and virtually at gunpoint. He submitted that the resignation was not out of his free will as he had pleaded for alternative job/employment with the appellant and had stated the reason for resignation.

15. It was submitted that the appellant is a telecommunications enterprise and offers telecom-related products and services to individuals and entities as also to Government Departments and participates in government tenders. The respondent stated that the ap- pellant has a separate division called "Government Vertical Division/Department" which has to liaison with Government Departments by collecting information and passing it on to the superior officers/management in the Company. The Respondent states that he was working in such vertical division and thus his duties were clerical in nature.

16. Continuing, the respondent stated that he had no decision-making knowledge, and/or qualification, and/or powers and nobody reported to him. The stand taken was that to facil- itate its employees for having ease of access to Government Departments, the appellant like many other private organisations, tactfully gave fanciful and impressive designations like "Regional Business Head", "Team Leader", etc. without any real power or authority. It was submitted that subsequently, the appellant did not issue any further Memo or Letter designating him as "Regional Business Head" or "Team Leader". He reiterated that he was not writing any appraisals of any employee and was also not an "Assessing Manager". The respondent also tried to indicate discrepancies in the stand of the appellant before different fora.

17. The respondent, in support of his contentions above, has placed reliance upon the following pronouncements:

> Devinder Singh v Municipal Counicl, Sanaur, (2011) 6 SCC 584; Suo-Motu Contempt Petition (Civil) No.3 of 2021 [2022 SCC OnLine SC 858]; Shankarbhai Nathalal Prajapati v Maize Products, 2002 SCC OnLine Guj 143; Suzuki Parasrampuria Suitings Private Limited v Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation), (2018) 10 SCC 707; Muthu Karuppan, Commissioner of Police, Chennai v Parithi Ilamvazhuthi, (2011) 5 SCC 496; K D Sharma v Steel Authority of India Limited, (2008) 12 SCC 481; Tularam Manikrao Hadge v Sudarshan Paper Converting Works, Nagpur, 2020 SCC OnLine Bom 965; Bombay Mothers and Children's Society v General Labour Union (Red Flag), 1991 SCC OnLine Bom 88; Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.ED.), (2013) 10 SCC 324;
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> Ishwarlal Mali Rathod v Gopal, 2021 SCC OnLine SC 921; Anvar P V v P K Basheer, (2014) 10 SCC 473; Sri Shivadarshan Balse v The State of Karnataka, rep. by its

Secretary, Revenue Department, 2017 SCC OnLine Kar 2317; Atlas Cycle (Haryana) Limited v Kitab Singh, (2013) 12 SCC 573; National Kamgar Union v Kran Rader Private Limited, (2018) 1 SCC 784; Ananda Bazar Patrika (P) Ltd. v The Workmen, (1970) 3 SCC 248; Ved Prakash Gupta (supra), and; Arkal Govind Raj Rao v Ciba Geigy of India Ltd. Bombay, (1985) 3 SCC 371.

ANALYSIS, REASONING AND CONCLUSION:

18. Having carefully considered the facts and circumstances and submissions of the parties, the Court finds that the Impugned Judgment as also the judgment passed by the learned Single Judge cannot be sustained. The moot issue is whether the respondent would or would not come within the definitional stipulation of a "workman" as laid out under Section 2(s), ID Act. The same reads as under:

> "2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
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> (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 prison; or
>
> (iii) who is employed mainly in a managerial or administrative capacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

19. The story begins with induction of the respondent into the appellant-Company on 22.06.2009. Perusal of the Appointment Letter of even date, which has also been taken note of by the Labour Court, reveals at the very beginning that the respondent's appointment was as "Senior Manager(B2) - Sales" in the Company.

20. Clause 5.5 of the Appointment Letter provides as under:

> "Being a managerial cadre employee you will be responsible for the overall smooth and effective functioning of the department/ establishment/ office/ staff/ employees under you charge and will be directly responsible for the successful and timely completion of any job / work assigned to you or any person working under your control and supervision and/ or within the department/ establishment/ office of which you are for the tire being holding the charge You would adhere to the norms of office discipline. You would also be responsible to ensure proper and effective adherence to the norms of office discipline including working hours, systems and procedures by the staff/ employees working under your supervision and/or In the department/ office/ establishment under your charge." [sic]

21. Coupled with the above, Annexure 'A' to the Appointment Letter discloses that the respondent had perks such as Special Allowance, Car Hiring Charges, Petrol and Maintenance, Driver's Salary, Professional Body Membership(s) and Credit Card Reimbursement etcetera.

22. The fixed pay of the respondent was Rs.13,20,000/- (Rupees Thirteen Lakhs and Twenty Thousand), whereas the SIP was Rs.8,80,000/- (Rupees Eight Lakhs and Eighty Thousand), with the total coming to Rs. 22,00,000/- (Rupees Twenty-Two Lakhs) per annum. In the orders of the Labour Court, the learned Single Judge and the learned Division Bench as also the material placed before us in the present proceedings, it is clear that even prior to joining the appellant-Company, the respondent, had worked in a managerial capacity in another organisation7. The respondent himself described his position as a Member of the senior management cadre, in-charge of supervising the Account Managers in the four Southern States. Even the application made by the respondent seeking employment in the appellant-Company shows that it was for the position of "Head Sales Operations". Further, in the said application, relating to professional experience, he disclosed that he was Regional Manager South – Graphic Communication Group in Kodak India Private Limited from June, 2007 till the date of making the application; in Xerox India as "Corporate Account Relationship Manager"(2005-2007), "Manager Graphic Arts" (2002- 2005) and "Account Manager – Government" (2000-2002); in Food World Supermarkets Limited as "Assistant Manager-Operations" (April, 2000-October, 2000) and in STM & Sterling Resort (I) Limited as "Assistant Manager Sales" (July, 1992–March, 2000).

23. The records also show that the respondent, in fact, performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers Kodak India Private Limited.

in the B-1 & B-2 Levels. Moreover, after adducing the evidence led by both sides, the Labour Court vide a detailed order and discussion, has held the respondent not to be covered under "workman" as per Section 2(s), ID Act. The learned Single Judge has not appreciated the discussion by the Labour Court and the available evidence in their true perspective, relying mainly upon the judgment in Ved Prakash Gupta (supra). In Paragraph 12 of Ved Prakash Gupta (supra), it was held "...It must also be remembered that the evidence of both WW1 and MW1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the

factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported."

24. A bare perusal of the above makes it crystal clear that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in Ved Prakash Gupta (supra) that the appellant therein was a "workman". At this juncture, we may note that although Ved Prakash Gupta (supra) was decided by a 3-Judge Bench, in a later judgment by a 2-Judge Bench of this Court in S K Maini v M/s Carona Sahu Company Limited, (1994) 3 SCC 510, it was held that "...It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. ..." The judgment in S K Maini (supra) is innocent of Ved Prakash Gupta (supra), but we do not find any inconsistency in the statement of law laid down in S K Maini (supra), given our reading of Ved Prakash Gupta (supra) as enunciated hereinabove.

25. That being said, in our considered view, mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of "workman" under Section 2(s), ID Act. We cannot be oblivious of the impact of our decisions. In this context, reference to the decision in Shivashakti Sugars Limited v Shree Renuka Sugar Limited, (2017) 7 SCC 729 is apposite:

> "43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/physical sciences) come into play and the impact of other disciplines on Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as "globalisation" of economy. India is on the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-
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> makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as "Law and Economics". In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles.

> Monopoly laws (popularly known as "Antitrust Laws" in USA) have been transformed by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions.
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> 44. We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions.

However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative." (emphasis supplied)

26. As regards the power of the High Court to re-appraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a Tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.

27. Though much emphasis was laid by the respondent on his claim that his resignation was forced, this Court is not persuaded to accept such a contention, basically on the ground that the language employed by the respondent in his resignation letter is to the effect that he was submitting his resignation, which may be approved, keeping the interest of his family and career and also that with utmost feeling of humiliation and insult he was submitting such resignation. It further indicates that over the six months preceding his resignation, he felt that he had been subjected to unfair rating, which indicates his disillusionment and dissatisfaction, while working for the Company. Pausing here, the Court would indicate that a person, in the employment of any company, cannot dictate terms of his employment to his employer. He has channels of venting her/his grievances but ultimately, it is the view of the competent authority within the organisation that will prevail with regard to his appraisal/rating. In his resignation letter dated 24.03.2011, the respondent has further

stated that because of being subjected to unfair rating without any feedback or review, he faced personal and professional insult, harassment and was left with no option but to submit his resignation, which was not out of his free will. Again, the Court would indicate that the phraseology, "not of his free will" would not mean that it was forced upon him by the Company. Rather, what can be gathered from the materials on record and the orders of the fora below, is that the resignation was more out of a sense of being unfairly rated by the appellant. From the material available, it also transpires that the respondent had made a complaint to the Ombudsman pertaining to his unfair rating. Needless to point out, it would be far-fetched for the Court to assume that the entire organisation i.e., the Company would be against one individual (the respondent) and that a person of such high calibre and quality, who could deliver so much to the Company, would be forced to put in his papers.

28. The respondent asserts that he was one of the best performers and an asset to the Company. Such being the situation, it is hard to fathom why all his superiors would have turned against him. On the record, there is no direct allegation of any bias against or victimisation of the respondent as he himself has stated as also written to various persons venting his grievances. Only because things did not turn out the way the respondent wanted them to, or for that his grievances were not adequately or appropriately addressed, cannot lead to the presumption that the resignation was forced upon him by the Company. One way to label the respondent's resignation as "forced" would be to attribute the compulsion to the respondent, rather than factors relating to the Company and/or its management. In other words, it can be termed a result of feeling suffocated due to lack of proper appreciation and not being given his rightful due that led to the chain of events supra, rather than by way of any arbitrariness or high-handedness on the part of the appellant. Bearing due regard to the nature of duties performed by the respondent, we are satisfied that the same do not entail him being placed under the cover of Section 2(s), ID Act.

29. For reasons aforesaid, this appeal succeeds and is, accordingly, allowed. The impugned judgment as well as the judgment rendered by the learned Single Judge are set aside. The judgment of the Labour Court is revived and restored. Ex consequenti, it is held and declared that the respondent is not a "workman" and thus, reference to the Labour Court under the ID Act against the appellant would not be maintainable. We commend the respondent for his spirited resistance to the appeal.

30. Parties to bear their own costs.

……J. [HIMA KOHLI] ……J. [AHSANUDDIN AMANULLAH] NEW DELHI APRIL 02, 2024