M/S. Invesco India Private Limited vs The Asst. Commissioner Of Labour And ... on 14 June, 2024

THE HON'BLE SRI JUSTICE PULLA KARTHIK
WRIT PETITION No.44939 OF 2022

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

> "...to issue a writ, order or direction more particularly one in the nature of Writ of Certioraris or any other appropriate writ after calling for the records, (i) to quash the Order dated 4 November 2022 in SE IA No.43/2022 in SE Appeal No.1/2022 on the file of the 1st Respondent / Asst. Commissioner of Labour, Circle-II, RR District and authority U/s.48(1) of the Telangana S&E Act; and (ii) pass..."

2. Heard Sri G. Vidya Sagar, learned Senior Counsel, representing Sri Sai Prasen Gundavaram, learned counsel appearing for the petitioner- Company, learned Government Pleader for Services, appearing for respondent No.1 and Sri J. Sudheer, learned counsel appearing for respondent No.2.

3. Learned Senior Counsel for the petitioner submits that Invesco Limited is Multi-National Corporation and the petitioner Company i.e., Invesco (India) Private Limited (hereinafter referred to as, 'Invesco') deals with providing information technology enabled services to its subsidiaries across the globe. While so, respondent No.2 was appointed as a Director, Corporate Services, w.e.f., 30.04.2019, and the Appointment Letter has set out the indicative list of duties and responsibilities which are required to PK,J be fulfilled by him in the capacity as Director, Corporate Services, and in his capacity as Director, Corporate Services, respondent No.2 was entrusted with the responsibility of leading Invesco's strategic and operational initiatives, drive transformations within corporate services and he was also responsible for ensuring that the required support is provided to global properties, procurement, operations, vendor relationship management, and travel teams for delivering high level of services to all Invesco's internal stakeholders.

4. Learned Senior Counsel further submits that respondent No.2, in his position as Director, Corporate Services, at Invesco, exercised substantive managerial and supervisory functions. During his employment, respondent No.2 had three senior employees directly reporting to him i.e., Mr. EVK Prasantha (Director-Corporate Properties), Mr. Mohammed Kaiser (Senior Buyer-Procurement) and Mr. Tanmay Samal (Senior Procurement Analyst). Mr. EVK Prasantha, who was directly reporting to respondent No.2, himself held a supervisory position and managed Invesco's business, vis-à-vis, the specific duty and responsibility entrusted to him. Therefore, it can be concluded that respondent No.2, in his capacity as Director, Corporate Services, at Invesco, was entrusted with the managerial and administrative functions and exercised supervision over his reportees. Further, respondent No.2 was directed to report to one of the officials of Invesco namely Mr. Mike PK,J McHale (Global Head-Corporation Affairs), who is based out of Invesco Limited's

Office in the United States of America. Owing to the same, respondent No.2 was solely responsible for the duty and responsiblities entrusted to him as far as Invesco's India operations were concerned.

5. He further submits that Invesco vide its letter dated 08.12.2021, had terminated the services of respondent No.2. Challenging the same, he filed an appeal before the authority designated under Section 48 of the Telangana State Shops and Establishments Act, 1988 (for short, 'the S&E Act') vide S.E.No.1 of 2022 alleging that his termination was in violation of Section 47 of the S&E Act. In the said case, the petitioner herein filed S.E.I.A.No.43 of 2022 seeking to declare the appeal filed under Section 48 of the S&E Act, is not maintainable, as respondent No.2 falls within the exemptions specified under Section 73(1)(a) of the Telangana S&E Act. In the said interlocutory application, respondent No.2 herein has filed a rejoinder and the petitioner herein also filed a reply to the rejoined. Thereafter, the said application i.e., S.E.I.A.No.43 of 2022 was dismissed by respondent No.1 vide order dated 04.11.2022 by holding that the contentions raised by the petitioner herein with respect the respondent No.2 being engaged in a managerial capacity with Invesco, will be decided during the course of proceedings of the main case, and posted the main case to 02.12.2022 for counter of the petitioner herein, and later PK,J adjourned the matter to 16.12.2022. Challenging the said order, the the present writ petition is filed.

6. Learned Senior Counsel further submits that in view of the specified exemption granted under Section 73 of the S&E Act, the order of respondent No.1 dated 04.11.2022 is arbitrary, contrary to law and evidence on record and further being not maintainable under the provisions of the Telangana S&E Act, and the authority has failed to appreciate that there are no disputed questions of facts with reference to the status of respondent No.2 having substantial control over the affairs of the establishment, via-a-vis., the duties and responsibilities entrusted upon him. He further submits that the appointment letter of respondent No.2 clearly specifies that he was offered the position of 'Director, Corporate Services' with Invesco, and he was drawing an annual remuneration of approximately Rs.65,00,000/-. The appointment letter also specified, in detail, the additional terms and conditions of the employment of respondent No.2. Hence, it is clear that respondent No.2 in his capacity as the Director, Corporate Services with Invesco, had the responsibility of managing and supervising the petitioner's corporate services portfolio. Thus, there is no disputed question of fact or law involved in determining the exempted status of respondent No.2 in terms of the provision of Section 73(1) of the S&E Act.

PK,J As such, the provisions of Section 47 and 48 of the S&E Act are not applicable to respondent No.2.

7. Learned Senior Counsel further submits that the authority has failed to appreciate the CV/Resume of respondent No.2 with the petitioner Company that was produced by him while applying for the position of Director, Corporate Services, which was filed along with the reply to the rejoinder in the interim application before respondent No.1. The said Resume clearly demonstrates that employment of respondent No.2 was confirmed by the petitioner against the backdrop of his managerial capabilities and his work experience as being appointed as a Manager/Director in his previous organizations. Keeping in view his earlier experience only, respondent No.2 was offered

appointment as the Director, Corporate Services. Thus, respondent No.2 falls within the exemption as specified under Section 73(1)(a) of the TS S&E Act. Therefore, there is no disputed question of fact or law which require a detailed enquiry in the form of evidence followed by a cross examination, to elicit reality from submissions before respondent No.1.

8. He further submits that respondent No.1 failed to appreciate that it is a specific case of respondent No.2 that in his capacity as Director, Corporate Services, at Invesco, he was performing the following functions:

> PK,J
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> a) Managing the Corporate Service partners, contract vendors and ensure compliance with local policies and regulations while these services were rendered by his team;
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> b) Managing Invesco's properties, procurement or necessities as well as business applications for Invesco's streamlined business operations;
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> c) Facilitating deliberations with other senior leaders to define and articulate location strategy, deriving projects aimed to achieve Invesco's goals and mission;
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> d) Collaborating with cross functional/business leaders and partners for operational development and delivery.
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> e) Purchase of products and services required for Invesco's smooth business operations;
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> f) Setting budgetary allocations for procurement and selecting vendors for projects as per business requirements;
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> g) Vested with the authority to enter into binding agreements for Invesco and conduct business on behalf of Invesco in his capacity as "Director - Corporate Services"; and
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> h) Vested with the substantive authority for approving financial transactions of up to USD 1,00,000 (approximately INR 78,00,000) per eligible transaction via-a-vis the Writ Petitioner's Corporate Services Division.

9. Further, respondent No.2 also had the subordinates reporting to him i.e., Director - Corporate Properties, Senior Buyer - Procurement, and Senior Procurement Analyst. In addition to the above, respondent No.2 was also assigned with the responsibility to oversee/manage the contractors (approximately 25) deployed by Invesco, and was also PK,J entrusted with the responsibility of conducting performance review and consequently, providing performance feedback to his subordinates, and the said facts are also available on record, and would not required any evidence or enquiry followed by a cross examination of the witnesses before respondent No.1.

10. He further submits that respondent No.1 erred in referring to the judgment of the Hon'ble Apex Court in D.P. Maheshwari v. Delhi Administration and others [1983 (4) SCC 293]. Further, the Hon'ble Apex Court, in V.G. Jagadishan v. Indofos Industries Limited [2022 (6) SCC 167], held that it cannot be considered as an absolute proposition of law wherein, the issue touching the jurisdiction of the Court cannot be decided by the Court as a preliminary issue and that the Court has to dispose of all the issues whether preliminary or otherwise, at the same time. In this regard, the finding of respondent No.1 is perverse as the jurisdiction of the authority is only limited to entertain the application arisen upon termination of respondent No.2 covered under Section 47 of the Telangana S&E Act, and as per Section 73(1)(a) of the S&E Act, it is clear that an employee engaged in any establishment in a position of management and having control over the affairs of the establishment and whose average monthly wages exceed Rs.1,600/- shall be exempted from the application of the provisions set out under the Telangana S&E Act. Further, respondent No.2 is an employee vested with powers of PK,J management and had control over the affairs of the petitioner Company and was also drawing a salary of Rs.65,00,000/- per annum, prior to his termination. Therefore, respondent No.2 squarely falls within the exemption and thus, respondent No.1 has no jurisdiction to entertain the appeal. Thus, the judgment of the Hon'ble Apex Court in V.G. Jagadishan v. Indofos Industries Limited would squarely apply in the extant matter.

11. Learned Senior Counsel further submits that respondent No.1 erred in not considering the judgment of this Court in State of A.P. v. Bandlam Srinivasulu and others [AIR 1982 AP 291], wherein, this Court held that where the jurisdiction of a Court is questioned, the preliminary issued regarding the jurisdiction or bar should be normally taken up in the first instance. Further, it was held that where the bar to the suit is contemplated by the statute, it warrants framing of preliminary issue and initial decision of the same. He further submits that respondent No.1 also failed to appreciate the judgment of this Court in SS Zaffar v. Labour Court, Hyderabad and Ors., [1990 (3) ALT 617], wherein, this Court dealt with a similar situation and contention with regard to exemption of an employee under the Shops and Establishments Statute, and held that an employee who is working in a particular zone will exercise the control over the zone and therefore, he would satisfy requirement of Section 61(1)(a) of the Shops and Establishments Act, 1966 (similar to PK,J Section 73(1)(a) of the Telangana S&E Act), which exempts him from invoking the provisions of Shops and Establishments Act, 1966. In the present case, respondent No.2 was having control over the affairs of corporate services division being designated as the Director of Corporate Services Portfolio. Therefore, he squarely falls within the ambit of the 'exempted employee' under Section 73(1)(a) of the Telangana S&E Act.

12. He further submits that respondent No.1 failed to appreciate that the preliminary issue was raised in view of the position that respondent No.2 held, having been entrusted with the managerial duties and responsibilities, and whether he would fall under the exemption as specified under Section 73(1)(a) of the S&E Act against the backdrop of admitted position in view of the terms specified in his appointment letter and resume submitted for applying for the position of Director, Corporate Services. As such, the facts available on record does not require any detailed enquiry in the form of an evidence followed by cross examination as detailed in Rule 20 of the Telangana Shops and Establishments Act, 1990, and there was no requirement to undertake such a rigorous exercise as facts which are not in dispute clearly demonstrate that respondent No.2 cannot invoke

jurisdiction of the authority under the Telangana S&E Act. He further submits that an appeal can be entertained if the Authority has jurisdiction to entertain such an application and whether respondent No.2 herein is covered within the provision of the Telangana S&E Act.

PK,J Therefore, the preliminary issue cannot be brushed aside on the ground of technicalities. Hence, learned Senior Counsel for the petitioner prays this Court set aside the order dated 04.11.2022 passed by respondent No.1 in S.E.I.A.No.43 of 2022 in S.E.No.1 of 2022. In support of his contentions, learned Senior Counsel relied on the following decisions:

i. S.K. Verma v. Mahesh Chandra and Anr. 1 ii. H.R. Adyanthaya and Ors. v. Sandoz (India) Ltd. and Ors. 2 iii. Mukesh K. Tripathi v. Senior Divisonal Manager, LIC and Ors. 3 iv. Chauharya Tripathi and Ors. v. Life Insurance Corporation of India and Ors. 4

13. Per contra, learned counsel appearing for respondent No.2 submits that respondent No.2 was never in the capacity of a managerial position of the petitioner Company (Invesco), and the issue of whether an employee is in a managerial cadre of not is a mixed question of fact and law, and the same cannot be inferred without leading evidence only by the designation of the employee as observed by respondent No.1 in the impugned order. Further, as per the law laid down by the Hon'ble Apex Court in T. Prem Sagar v. M/s. Standard Vacuum Oil Company, Mardras, wherein, the Hon'ble Apex Court held that the question about the status of an employee is a mixed question of fact and law, and the same cannot be considered 1 (1983) 4 SCC 214 2 (1994) 5 SCC 737 3 (2004) 8 SCC 387 4 (2015) 5 SCC 737 PK,J without leading evidence by the parties before the competent authority, and without coming to clear conclusions in the order. He further submits that respondent No.2 specifically pleaded before respondent No.1 that he is designated as a Director, his subordinates are also shown as Directors, and Ms. Mamata, who filed the counter before respondent No.1, is also designated as a Director. As such, designation cannot be the criteria to determine whether respondent No.2 is an employee or an employer, nor salary is the criteria to determine the same.

14. Learned counsel further submits that the duties and responsibilities mentioned by the petitioner Company in their writ affidavit are not part of the appointment letter of respondent No.2 or were they even communicated to respondent No.2. Further, the Hon'ble Apex Court in D.P. Maheshwari v. Delhi Administration and others [1984 4 SCC 293] held that in exercise of jurisdiction under Article 226 of the Constitution of India is only supervisory but not appellate jurisdiction, as such, in the light of the above proposition, respondent No.1 rightly rejected the application of petitioner Company, relying on the judgments of the Hon'ble Apex Court.

15. Learned counsel further submits that respondent No.2 was terminated from service on 08.12.2021. Since then, he has been out of service. Furthermore, the present writ petition came to be filed on 13.12.2022, and this Court has granted an interim stay on operation of PK,J the order of respondent No.1 till the next date of hearing vide order dated 15.12.2022, and the same is being extended from time to time, due to which, the grievance of respondent No.2 is not being adjudicated before respondent No.1. Moreover, the present writ petition is filed only to delay the expeditious delivery of justice, for which labour tribunals have been formed. Therefore, learned counsel for

respondent No.2 prays this Court to dismiss the present writ petition and sought vacation of interim order dated 15.12.2022. In support of his contentions, learned counsel placed reliance on the following decisions:

> a. T. Prem Sagar v. M/s. Standard Vacuum Oil Company, Madras and Ors. 5 b. Major S.S. Khanna v. Brig. F.J. Dillon 6 c. D.P. Maheshwari v. Delhi Administration and Ors. 7

16. This Court has taken note of the rival submissions made by learned counsel for the respective parties.

17. A perusal of the record discloses that aggrieved by the orders of termination dated 08.12.2021 passed by the petitioner Company, respondent No.2 preferred an appeal before respondent No.1 vide S.E.No.1 of 2022, wherein, the petitioner Company has filed an interlocutory application vide S.E.I.A.No.43 of 2022 seeking a declaration that 5 (1964) 4 SCR 409 6 (1964) 5 SCR 1030 7 (1983) 4 SCC 293 PK,J respondent No.2 falls under the exemption of Section 73(1)(a) of the Telangana State Shops and Establishments Act, 1988, and to dismiss the appeal. Section 73(1)(a) of the Telangana Shops and Establishments Act, 1988, which is extracted hereunder:

> "73. Exemption:- (1) Nothing in this Act shall apply to
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> (a) Employees in any establishment in a position of management and having control over the affairs of the establishment, whose average monthly wages exceed sixteen hundred rupees."

18. The record further discloses that respondent No.2 herein has filed a counter affidavit in the said I.A. before respondent No.1, by way of a rejoinder, mainly contending that respondent No.2 did not have the control over the affairs of the petitioner Company, and therefore, he is not exempted under Section 73(1)(a) of the Telangana Shops and Establishments Act, 1988. Furthermore, he has narrated several instances to show that he is a reportee and worked to the instructions of his bosses.

19. On consideration of the said aspects, respondent No.1 has dismissed the said interlocutory application filed by the petitioner Company relying on the decision of the Hon'ble Apex Court in D.P. Maheshwari (referred 7 supra), wherein, it was held as follows:

> "...There was a time when it was though prudent and wise policy to decide preliminary issue first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, PK,J particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art.226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art.226 of the Constitution not the jurisdiction of this Court under Art.

> 136 may be allowed to be exploited by those who can well afford to wait the detriment of those who can ill afford to wait by dragging the letter from the Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art.226 and Art 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore asked themselves whether such threshold part- jurisdiction is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Art.226 is supervisory and not appellate while under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court not this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

20. Coming to the judgments relied by the learned Senior Counsel appearing for the petitioner Company.

21. In S.K. Verma's case (referred supra), the Industrial Tribunal upheld the preliminary objection and ruled that the Development Officers in L.I.C. of India are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, and the same was also confirmed by the Delhi High Court, but the Hon'ble Apex Court set aside the order of the Industrial Tribunal and Delhi High Court and remanded the matter back to the Tribunal for disposal according to law. The relevant observation of the Hon'ble Apex Court is extracted hereunder:

> PK,J "9. A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India, that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in any way. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them for canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them.

He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no sub-ordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a

workman within the meaning of Section 2(s) of the Industrial Disputes Act."

22. In H.R. Adhyanthaya's case (referred supra), the Hon'ble Apex Court upheld the decision of the Industrial Tribunal holding that the medical representatives are not workmen within the meaning of the Maharastra Act. The relevant observations and findings of the Hon'ble Apex Court are extracted hereunder:

> "13. In S.K. Verma v. Mahesh Chandra4, the dispute was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant Development Officer w.e.f. 8-2-1969. The Court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing 'supervisory' and 'technical' work. The three-Judge Bench of this Court did not refer to the earlier decisions in May & Baker1, WIMCO2 and Burmah Shell3 cases. The Bench only referred to the decision of this Court in Workmen v. Indian Standards Institution5 where while considering whether ISI was an 'industry' or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an 'industry', the test must be so applied as to give the widest possible connotation to the term 'industry' and, therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern PK,J was an industry or not. The Court, therefore, held that to decide the question whether the Development Officers in the LIC were workmen or not, it should adopt a pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workman fell, viz., labour or management, and then to consider whether there were any good reasons for moving them over from one side to the other.

The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz., (i) Officers, (ii) Development Officers, (iii) Supervisors and Clerical Staff, and (iv) Subordinate Staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas that of Officers was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation 'Development Officer' was no more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the Corporation in any way. His principal duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post- sale services to policyholders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist

them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to "stimulate and excite"

> the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman were set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in May & Bakerl, WIMCO2 and Burmah Shell3 cases. and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Buramah Shell case3 by a Coordinate Bench of three Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as per incuriam.
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> 39. We are, therefore, of the view that the contention raised on behalf of the management in this appeal, viz., since the medical PK,J representatives are not workmen within the meaning, of the Maharashtra Act the complaint made to the Industrial Court under that Act was not maintainable, has to be accepted. Hence the complaint filed by the appellant-workmen under the Maharashtra Act in the present case was not maintainable and hence it was rightly dismissed by the Industrial Court.
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> 40. Although we hold that the complaint filed by the workmen is not maintainable under the Maharashtra Act, we are of the view that taking into consideration the fact that a long time has lapsed since the filing of the complaint, it is necessary that we exercise our powers under Article 142 of the Constitution, which we do hereby and direct the State Government to treat the employee's said complaint as an industrial dispute under the ID Act and refer the same under Section 10(1)(d) of the said Act to the Industrial Tribunal, Bombay within four weeks from today. The Industrial Tribunal shall dispose of the reference within six months of the date of reference.
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> 41. In view of what is held above, WP No. 5259 of 1980 together with CA No. 235 of 1983, SLP (C) No. 15641 of 1983 and CA No. 242 of 1990 are dismissed with no order as to costs and CA No. 818 of 1992 is disposed of as above.
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> 42. Although we have dismissed WP No. 5259 of 1980 together with CA No. 235 of 1983, and SLP (C) No. 15641 of 1983, we direct the respondent managements to pay to each of the petitioners/appellants Rs one lakh as ex gratia payment within six weeks from today. As regards CA No. 242 of 1990 where an individual employee had

filed an application under Section 33-C(2) of the ID Act for bonus for the years 1977-78 to 1979-80, we direct that the bonus for the said years be paid to the appellant-employee as ex gratia payment within six weeks from today."

23. In Mukesh K. Tripathi's case (referred supra), the Hon'ble Apex Court held as follows:

"6. By reason of its award dated 28-5-1996, the Tribunal held that in view of the fact that the appellant was discharged after the completion of the apprenticeship period, he must be held to be a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

...

23. It may be true, as has been submitted by Ms Jaising, that S.K. Verma1 has not been expressly overruled in H.R. Adhyanthaya2 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.

PK,J

24. From a perusal of the award dated 28-5-1996 of the Tribunal, it does not appear that the appellant herein had adduced any evidence whatsoever as regards the nature of his duties so as to establish that he had performed any skilled, unskilled, manual, technical or operational duties. The offer of appointment dated 16-7- 1987 read with the Scheme clearly proved that he was appointed as an apprentice and not to do any skilled, unskilled, manual, technical or operational job. The onus was on the appellant to prove that he is a workman. He failed to prove the same. Furthermore, the duties and obligations of a Development Officer of the Corporation by no stretch of imagination can be held to be performed by an Apprentice.

25. Even assuming that the duties and obligations of a Development Officer, as noticed in paragraph 8 of S.K. Verma1 are applicable in the instant case, it would be evident that the appellant herein could nto have organised or developed the business of the Corporation without becoming a full-fledged officer of the Corporation. Only an officer of the Corporation duly appointed can perform the functions of recruiting agents and take steps for organising and developing the business of the Corporation. No area furthermore could be allotted to him for the purpose of recruiting active and reliable agents drawn from different communities and walks of life in view of the categorical findings of the Tribunal that he had been working as an apprentice. If organising and developing the business of the Corporation and to act as a friend, philosopher and guide of the agents working within his jurisdiction were the primary duties and obligations of a Development Officer, an apprentice evidently cannot perform the same."

24. Further, in the case of Chauharya Tripathi (referred supra), the Hon'ble Apex Court held as follows:

> "4. Before the Tribunal, a plea was advanced by LIC that the proceeding before it was not maintainable as the Development Officers could not be put in the compartment of workmen under the Act. Apart from the said issue of maintainability, justification was given as regard the punishment imposed by LIC. The Tribunal negatived the plea of maintainability and answered the other issues in favour of the Development Officers and resultantly, it directed restitution of pay scale and payment of the arrears that was due to them.
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> 15. In our considered opinion, the decision in R. Suresh3 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 PK,J there, yet to clarify the position, we must quote a few lines from Ambica Quarry Works v. State of Gujarat13: (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. Leathem14.)"

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. Suresh3 has been rendered in ignorance of the ratio laid down by the Constitution Bench in H.R. Adyanthaya6 and also the principle stated by the three-Judge Bench in Mukesh K. Tripathi2 that the decision in S.K. Verma4 is not a precedent, and hence, we are compelled to hold that the pronouncement in R. Suresh3 is per incuriam. We say so on the basis of the decisions rendered in A.R.Antulay v. R.S. Nayak15, Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court16, State of U.P. v. Synthetics and Chemicals Ltd.17 and Siddharam Satlingappa Mhetre v. State of Maharashtra18.

17. In view of the aforesaid analysis, we conclude and hold that the Development Officers working in LIC are not "workmen" under Section 2(s) of the Act and accordingly we do not find any flaw in the judgment rendered by the High Court.

18. Ex consequenti, the appeals, being sans merit, stand dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs."

25. It is clear from the above that in the cases of H.R. Adhyantaya, Mukesh K. Tripathi and Chauharya Tripathi (referred supra), the Hon'ble Apex Court did not deal with the issue of managerial position of the employees therein as a preliminary issue and the main subject matter

that fell for consideration was whether the employees therein fall within the meaning of workman or not. In the instant case, respondent No.1 dismissed the I.A. filed by the petitioner Company mainly holding that the contention of the petitioner Company that respondent No.2 herein is an exempted employee as per Seciton 73(1)(a) of the Telangana Shop and PK,J Establishments Act, 1988, is a mixed question of facts and law. As such, the said judgments are not applicable to the facts of the present case.

26. Coming to the judgments relied on by the learned counsel appearing for respondent No.2.

27. In D.P. Maheswari's case (referred supra), at paragraph No.1, the Hon'ble Apex Court held as follows:

> "It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still stage at the stage of decision on a preliminary objection. There was a time when it was though prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner or preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 PK,J is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this

Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

28. In T. Prem Sagar's case (referred supra), the findings and observations of the Hon'ble Apex Court are extracted hereunder:

"9. That takes us to the exemptions prescribed by Section 4. We are concerned in the present case with the exemption prescribed by Section 4(1)(a). The said proviso lays down that nothing contained in this Act shall apply to persons employed in any establishment in a position of management. One of the points in dispute between the parties is when a peson can be said to be employed in the position of management? If the appellant is such a person, then, of course, Section 41 would not apply to him and the view taken by the Division Bench would be right.

...

16. That takes us to the question as to whether the High Court was right in holding that the Commissioner's order suffered from such an infirmity. Two points were urged in the writ proceedings by the respondent when it challenged the validity of the Commissioner's order. The first contention was that the appellant is not an employee of the respondent and does not fall under Section 2(12) which defines a person employed for the simple reason that he comes under the class of persons including in the definition of the word "employer". The argument was that the appellant being in a position of management, was really holding the status of a manager in a limited sense and was thus an employer. In support of this argument, it was pointed out that several provisions of the Act were not applicable to the appellant, and so, it would be futile to describe him as a person employed by the respondent. In fact, the argument was that the salary paid to the appellant cannot be said to be wages, and so, Section 29 itself was inapplicable to him. It is unnecessary to consider whether the salary paid to the appellant amounts to wages or not, because, in our opinion, the argument that the appellant was in the position of an employer is so clearly unsustainable that it is hardly necessary to examine it in detail. Even so, it may incidentally be observed that the definition of wages prescribed by Section 2(18) is wide enough to take in the case of the appellant's salary.

18. That takes us to the question as to whether the appellant is an employee whose case falls under the category of exempted cases provided for by Section 4(1)(a). Section 4(1)(a) refers to persons employed in any establishment in a position of management, and so, the question is when can a person be said to have been employed by the respondent in a position of management. It is difficult to lay down exhaustively all the tests which can be reasonable applied in deciding this question. Several considerations would naturally be relevant in PK,J dealing with this problem. It may be enquired whether the person had a power to operate on the bank account or could he make payments to third parties and enter into agreements with them on

behalf of the employer, when he entitled to represent the employer to the world at large in regard to the dealings of the employer with strangers, did he have authority to supervise the work of the clerks employed in the establishment, did he have control and charge of the correspondence, could he make commitments on behalf of the employer, could he grant leave to the members of the staff and hold disciplinary proceedings against them, has he power to appoint members of the staff or punish them; these and similar other tests may he usefully applied in determining the question about the status of an employee in relation to the requirements of Section 4(1)(a). The salary drawn by the employee may have no significance and may not be material though it may be treated theoretically as a relevant factor, vide Chandra (T.P.) v. Commissioner for Workmen's Compensation, Madras6 and The Salem Sri Ramaswami Bank Ltd., Salem v. The Additional Commissioner for Workmen's Compensation, Chepauk, Madras7. At this stage, it is necessary to examine how the Commissioner of Labour approached this question. He began the discussion of this problem by referring to the two Madras decisions just cited by us and said that as decided by the Madras High Court, it would be necessary to find out whether the appellant was a position of management "because he was in charge of correspondence of the branch, was supervising the work of the clerks employed in the Branch, was operating on the bank account, was making payments, was entering into agreements with third parties on behalf of the Company and was granting leave to the staff of the Branch". Thus, it would be seen that in addressing himself to the question raised for his decision, the Commissioner applied tests to which no exception can be taken. Having set out the tests which had to be applied, he considered the evidence led by the parties before him and he recorded his conclusions clearly and categorically in his order. He held that the appellant had no power of appointment of labour, had no power to take disciplinary action against them, had no power to grant leave to persons subordinate to him, had no discretion in the matter of incurring expenditure of his own accord as the expenditure had to be sanctioned by the General Manager; had no power of attorney to enter into agreements with third parties on behalf of the Company; his work was subject to the overall supervision of the Operations Manager; he had no power to bind the Company by his acts; he could not operate upon the Company's bank account; he could not lay down policy for the Company and that he had to obtain the approval of the Operations Manager on almost all matters. Having discussed the whole of the evidence and recorded definite findings, the Commissioner no doubt observed in the course of his order that "it cannot, therefore, be said that the respondent was exercising managerial powers in relation to the Head Office of the Company where he was employed," and in that connection, he added that one of the questions which had to be considered by him was whether the powers exercised by the appellant were managerial with reference to the Head Office of the Company. It is on thse two statements which the Commissioner made in the course of his order that the Division Bench has rested its decision and has PK,J recorded its finding that the order passed by the Commissioner of labour is on its face patently and manifestly erroneous."

29. In view of the peculiar facts and circumstances of the case, this Court opines that the issue of whether respondent No.2 holds a managerial position or not cannot be decided as a preliminary issue for the reason that the matter clearly involves mixed questions of facts and law. As held by the Hon'ble Apex Court in D.P. Maheshwari's case (referred supra), such an issue may not be dealt with as a preliminary issue. Hence, this Court is of the view that respondent No.1 has rightly observed the need to conduct a detailed enquiry, followed by a cross examination, so as to elicit the reality in the submissions. Therefore, this Court does not find any error in the order of the Tribunal warranting interference with the same and thus, the writ petition is liable to be dismissed.

30. Accordingly, the Writ Petition is dismissed.

Miscellaneous applications, if any, pending in this writ petition shall stand closed. No costs.

_____ PULLA KARTHIK, J Date: 14.06.2024 GSP