THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURTDELHI - 1
ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

Present : Justice Vikas Kunvar Srivastava (Retd.)
(Presiding officer)
CGIT, Delhi-1

In ID. No.180/2017

The General Secretary, CPWD
Mazdoor Union,
C/o Room No. 95, Barrack No. 1/11,
Jam Nagar House, Shahjahan Road,
New Delhi-110011.

Claimant (Applicant) ……

Versus

The Director/ Horticulture (DR)
Horticulture Division-V, CPWD(Hort.)
B-412, IP Estate,
New Delhi-110002.

Management (Opposite party) …

Shri B.K. Prasad, A/R for the claimant (Applicant).
Shri Atul Bhardwaj, A/R for the management (Opposite party).

Case cited and relied distinguish

Sl No.		**Para No.**	**Page No.**
1.	*D.N. Banerjee V. P.R. Mukherjee (1952) 2SCC 619 AIR 1953 SC 58 (61)*	*31*	*31*
2.	*Central Provinces Transport Services Ltd V. Raghunath Gopal Patwardhan 1956 SCR 956*	*37*	*34*
3.	*Dhavangaihra Chemical Works Pvt. Ltd. V. State of Saurashtra, AIR 1957 SC 274*	*19(e)*	*23*
4.	*Central Provinces Transport Service Ltd V. Raghunath Gopal Pathwardhan (AIR 1957 SC 104,109)*	*31*	*31*
5.	*Bihar V. Kripa Shankar Jaiswal AIR 1961 SC 304*	*19(a), 38*	*20, 37*
6.	*Bombay Union of Journalists V. 'Hindu', Bombay 1962(3) SCR 893*	*35, 37*	*33, 34*

7.	*Bombay Union of Journalists V. The 'Hindu', Bombay AIR 1963 SC 318*	*31*	*31*
8.	*Workmen V. Dharam Pal Premchand (Saughandhi) (1965) 3SCR 394: AIR 1966 SC 182*	*36, 37*	*33, 34*
9.	*Workmen of Indian Express (P) Ltd. vs The Management (1969) 1 SCC 228*	*37*	*34*
10.	*Indian Express Newspaper (Pvt.) Ltd. Vs. Management of Indian Express Newspaper Private Ltd. AIR 1970 SC 737*	*36*	*33*
11.	*The Commissioner of Income Tax V. Sun Engineering Works (P) Ltd. (1992) 4 SCC 363*	*19(e)*	*23*
12.	*Steel Authority of India Ltd V. National Union Water Front Workersand others (2001) 7 SCC1*	*5(iv),19(a), 54*	*7, 20, 49*
13.	*J.H. Jadhav vs M/S. Forbes Gokak Ltd (2005) 3SCC 2002*	*36*	*33*
14.	*M/s Bharat Heavy Electrical Limited V. State of U.P. and others, 2003 Lab I.C. 2630*	*19(a), 19(e), 59*	*20, 23, 55*
15.	*Workmen V. Coal of India Ltd (2004) 3 SCC 54)*	*19(e)*	*23*
16.	*Workmen of Nilgiri Market Society V. State of Tamilnadu (2004) 3 SCC 514*	*19(e)*	*23*
17.	*Nil Giri Co-op. Marketing Society Ltd V. State of Tamilnadu 2004 last suit (SC) 142*	*63*	*58*
18.	*The Delhi High Court in WP NO. 13023 of 2005 workmen of MCD V. MCD*	*19(a)*	*20*
19.	*Haldia Refinary Canteen Employees Union V. India Oil Corporation Ltd. (2005) 5 SCC 51)*	*19(e)*	*23*
21.	*State of Karnataka and others V. K.G.S.D Canteen Employees Welfare Association & others (2006) 1 SCC 567*	*19(e)*	*23*
22.	*State of Karnataka V. Umadevi & others (2006) 4 SCC 1*	*19(e)*	*23*
23.	*Surender Prasad Tewari V. UP Rajya Krishi 3981 of 2006 by Supreme Court*	*19(e)*	*23*
24.	*International Airport Authority of India V. International Air Cargo workers and another (2009) 13 SCC 374*	*61*	*57*
25.	*Bengal Nagpur Cotton Mills, Rajnand Gao V. Bhart Lala and another (2011)(1) SCC 635*	*19(e), 41,64*	*23, 38, 60*

26.	*Devinder Singh V. Municipal Council Sanaur (2011) 6 SCC 584*	*26*	*28*
27.	*Union of India and another V. Arulmozhi Iniarasu (2011) 9 SCC 1*	*19(e)*	*23*
28.	*Balwant Rai Salija V. Air India Ltd. (2014) 9 SCC 407*	*19(e, 60, 62*	*23, 56, 58*
29.	*K.V. Anil Mithra vs. Sree Shankaracharya University of sanskrit and another (CA No.9067 of the 2014)*	*43,48, 51*	*40, 45, 47*
30.	*Bharat Sancharnigam Ltd V. Bhurumal 2014 SCC 177*	*50, 51*	*46, 47*
31.	*State of Uttarakhand V. Sureshwati 2021 (168) FLR 488 (SC)*	*41*	*38*
32.	*Kirloskar Brothers Ltd V. Ramcharan and others (Civil Appeal No. R446-R447 of 2022)*	*55*	*52*
33.	*Punjab Land Development and reclamation Corporation Ltd. Chandigarh V. Presiding Officer*	*44, 47*	*44, 45*

AWARD

1. The Central Government Industrial Tribunal cum Labour Court Delhi-1, received the Letter No. L-42011/50/2017 Dated 06.06.2017 from the Ministry of Labour, Government of India with Reference for adjudication of an Industrial Dispute between the employer the management of Division-V CPWD (Horticulture) New Delhi and their employee Sh. Sanjay Kumar in following terms: -

> *'Whether, Sh. Sanjay Kumar, S/o Sh. Ram Gopal Singh is entitled to be treated as direct employee of CPWD alongwith with all allowances and benefits equivalent to the regular counters parts as his employment in the category of Mali as contract labour is sham and bogus? If so, whether the workman is entitled to be treated as direct employee of CPWD w.e.f20.11.2010 and also reinstated w.e.f. 13.04.2016 with full back wages alongwith continuity of service? What other relief is he entitled to and what directions are necessary in this respect'.*

2. The Presiding Officer of the Central Government Industrial Tribunal cum Labour Court Delhi-1 (which shall hereinafter be called as the 'Tribunal' only) taken up the Reference as fresh on 27.08.2017 and ordered to register the same as Industrial Dispute 180/2017. Notice was issued to the opposite party. The Director Horticulture (DR) Horticulture Division V, New Delhi (which shall hereinafter be called as 'CPWD' only) for filing their written statement on 22.08.2017.

3. The claimant 'Labour Union' who raised the Present Industrial Dispute relating to the cause of workman Sh. Sanjay Kumar referred by the Ministry of Labour (shall herein after be called as the 'claimant' only). Put representation before the tribunal through it's Authorized Representative Sh. B.K. Prasad, the General Secretary, CPWD, Mazdoor Union, New Delhi from the very stage of registration of I.D. Case aforesaid (shall herein after be called as 'AR of the Workman' only). The CPWD has representation through Sh. Atul Bhardwaj their Authorized Representative, who shall hereinafter be called as 'AR of the management' only, wherever needed. The claimant Union raised the Industrial Dispute for the cause of Labour Sh. Sanjay Kumar (who shall be called as the 'concerned workman' only, wherever needed).

4. With the prior permission of the Tribunal the AR of the workman filed the statement of claim on 01.09.2017 providing copy thereof to the AR of the management who in turn filed the written statement in defence for CPWD on 30.10.2017. Though the tribunal provided opportunity to the AR of the concerned workman for filing rejoinder, if any, before framing of the issues, but no rejoinder is filed by the said AR. Consequently, the issues were framed on 31.01.2018 which are reproduced hereunder: -

(i) Whether the reference is not legally maintainable, in view of the preliminary objections?

(ii) In terms of reference?

FACTUAL MATRIX

5.(i) The Industrial Dispute referred by the Ministry of Labour for adjudication is with regard to the 'concerned Workman' (Sanjay Kumar) to whom the claimant (union) has pleaded in the statement of claim, employed and exploited through the fake contractor w.e.f. 20.11.2000. The workman is said to had performing his duty under the Deputy Director Division – V, CPWD Sub division-35 Pushpvihar, New Delhi. The workman is handicapped with 60% disability. He was performing duty on perennial nature of job as contract labour, though not permissible under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (which shall hereinafter be referred as CLRA Act only wherever is needed). It is alleged in the statement of claim by the claimant that the workman was not being paid even the minimum wages of unskilled workman though performing the work of semiskilled workman and entitled to the equal pay for equal work like the daily rated workmen who were directly working under the management CPWD.

5.(ii) That the regular Malis directly working under the CPWD were getting the wages in regular pay scale along with all allowances but the concerned workman was denied such benefits by the CPWD and it's contractor. The regular Malis were getting earned leave of 30 days and casual leaves of 8 days but the said workman is denied this facility also by CPWD and its contractor.

5.(iii) The employment of the concerned workman by the contractor is said to had been made against the provisions of the CLRA Act as such was illegal, unfair and a camouflage therefore he was entitled to be treated as direct employee of the management CPWD. The workman was removed from the service by the CPWD without following the provisions of Section-25F, 25G & 25H of the Industrial Dispute Act, 1947 (Shall here in after be called as the 'I.D. Act' only). When the matter of illegal termination from service was raised before the conciliation officer the CPWD by filling written statement justified the illegal termination of service protecting their contractor. The CPWD shown the Cause of Removal/Termination from the service by the contractor needful to save the workman from criminal prosecution on the complaint of a lady of the locality relating to eve teasing. The copy of the complaint by the complainant lady to the police station Saket, New Delhi is placed with the written statement. The copy of another letter by the complainant lady addressed to the concerned Police Station is also placed with the written statement to show her consent/ agreement not to prosecute the workman, if he is removed from the work place of his employment. The said letters are made Annexure by both the parties to the present industrial dispute case with their respective pleadings also. According to the claimant this shows that removal is done by the contractor on the behest of CPWD without holding any enquiry and also without serving one month's notice or compensation in lieu of the notice therefore, the same is illegal and unjustified and the workman is entitled to be reinstated with full back wages and continuity in service.

5.(iv) Annexing the photostate copies of one office order dated 25.05.2015 of the CPWD and a format to be filed in compliance with the said office order as Annexure 'B' & 'C' to the claim statement which are

with regard to the directions issued by the Superintendent Engineer CPWD on 25.05.2015 in compliance of the labour laws and model rules for workers employed by contractors and CPWD contractor's labour regulation respectively. The fact of a settlement dated 15.09.1986 between the Director General Works CPWD and its workmen through the General Secretary CPWD Mazdoor Union in which the parties to the settlement agreed that, before allotting maintenance work to the Contractors. Chief Engineers/Superintendent Engineers will hold discussions in future with the representative of CPWD Mazdoor Union, in pursuance of the memorandum of settlement dated 5.09.1986 entered in accordance with Section-12 of I.D. Act. The management CPWD did not obey the instructions of Director General Works CPWD which was widely circulated amongst all who were subject to the aforesaid settlement. The violation of Rule-25(v)(a) of the Central Rules 1971which provides that if the contract labour performs the same and similar kind of work as the workmen directly employed by the principal employer of the establishment the wages, holidays and hours of work as well as other conditions of service of the workman of the contractor shall be the same. The contractor neither had license for engagement of contract labours nor the management of CPWD being principal employer procured registration as required under the CLRA Act to engage contract labours through contractors. Therefore for the reason of the violation of the said Act the 'workman' may be treated as the direct employee of the management. For the same reason the contract was sham camouflage and illegal therefore the workman has to be treated as direct employees of the management of CPWD. The responsibility for payment of wages lies on the principal employer the CPWD management in case the contractor fails to make payment of wages within prescribe period or make short payment. Referring the celebrated Constitution Bench judgment of the

Apex Court in ***SAIL (Steel Authority of India Ltd and others V. National Waterfront Workers and others (2001 (7) SCC1)*** it is further stated that non grant of regularisation status of workman is illegal and unjustified therefore it is prayed from this tribunal to award and declare the contract of Sh. Sanjay Kumar (the concerned workman) illegal and camouflage and accordingly to award wages of regular Mali with effect from 20.11.2010 and also to award the reinstatement as Mali directly under the management of CPWD with effect from 13.04.2016 with full backwages in continuity of service alongwith all consequential benefits.

5.(v) The management CPWD has raised a material preliminary objection as to the non joinder of parties as the different contractors who might have been employers of the workman during the alleged period from 20.11.2000 are necessary party for the proper and fair adjudication of the case. The relationship of employer and employee and that of a master and servant was existing between the workman and his real employer the contractor. There has never been such relationships of employer and employee and master and servant in between the concerned workman and the answering management CPWD. The Contract involving the present workman and other labours of the contractor to whom the CPWD awarded the contract through the competent authority, was done inviting open tenders as per the provisions of Law. The present workman had never been appointed nor recruited directly in the employment of CPWD management. The present workman has never worked under the direct supervision and guidance of the CPWD official. The present workman being an employee of the contractor agency does not come within the definition of `workman' under clause (s) of Section 2 of the I.D. Act. The present industrial dispute is also suffering from the serious infirmity of non

espousal, any espousal list has not been provided which is an essential pre requirement of the case. None of the employee of the management CPWD had attended any meeting of the so called claimant union prior to raising the present Industrial Dispute before this tribunal. No prior notice of demand is served upon the management.

Evidence required and adduced by the parties before the Tribunal.

6. The concerned workman through the claimant union has a very definite case of his employment as contract labour through the fake contractor right from 20.11.2000. Before the conciliation officer the date of his alleged engagement as contract labour is stated in the 'Reference' by the Ministry of Labour Government of India, is 20.11.2010. The anomaly in alleged dates of employment is even not tried to be rectified and the vagueness is left as such. No documentary evidence in this regard is produced before the tribunal at the stage of evidence. Even no oral evidence of the workman or the claimant union is deposed that which one out of the two stated dates i.e. 20.11.2000 and 20.11.2010 is correct. The claimant union vide statement of claim prepared and filed (obviously entering the date 06.06.2015) before the conciliation officer, sought the reference of industrial dispute as to the termination of service of the workman done on 13.04.2016, states the date of entry in employment as contract labour 20.11.2000. The anomaly and discrepancy in the date of employment as contract labour in CPWD through the contractor makes the pleading in that regard uncertain, more inspecific, vague and superlative. Considering any date as the date of entry in employment other than that referred in the 'Reference' would be to go beyond the scope of 'Reference'. For the above reason the tribunal will have the only option then to adhere with the date of employment as contract labour in the CPWD through the contractor, stated in the

reference it self-i.e. 20.11.2010. The tribunal has to see whether the said date also could have been established by the evidence of the claimant who has burden of pleading and proving the fact of the employment of the workman as such in the CPWD with all certaining and unequivocally.

7. The burden of proof lies on the claimant union and the workman also to establish and prove the fact that he (concerned workman) as contract labour had become the regular employee of the principal employer in course of the time and that his engagement/employment through a contractor is a sham contract and mere camouflage. These are question of fact which has to be established by the contract labour on the basis of the requisite materials and evidence. This tribunal finds it necessary to advert to the evidence adduced and produced of the claimant which correspond to the relevant pleading.

8. The claimant has made some photostate papers as Annexure A1(in colly) termed as "some of the personal details of the workman" in the statement of claim filed before the tribunal, (marked as Exhibit WW1/1 in the evidence) are described herein below: -

8. (i) Photocopy of the passbook of Bank Account in the name of the workman (Sanjay Kumar) issued from the Punjab and Sind Bank, Pushpvihar Branch, New Delhi of which internal pages bear the account statement of debit and credit for the period commencing from 5/2015 upto 4/2016, has concern with the payment of wages.

8. (ii) photocopy of a Ration Card in the name of the concerned workman issued by the concerned Food Supply Officer of the locality of the place of dwelling of the workman (having no concern with the issue of employment and termination of the workman).

8. (iii) Photocopy of medical and disability certificate issued by the Neurosurgeon of "Dr. Ram Manohar Lohia Hospital'' Dated 14.12.2001 certifying the present workman permanently disabled to the extent of 60% by reason of Dysarthria and Right Hemiparesis.

8. (iv) photocopy of hand written write up, seems to be a prologue of the case under the Reference, addressed to unknown and unidentified addressee, undated in the name of Sanjay Kumar. Neither admitted and owned in evidence by the workman concerned nor proved placing original before the Tribunal in the course of oral examination.

8. (v) Two photostate documents one, the office order issued from the office of Superintending Engineer (C&M) Dated 25.05.2015 under the caption "compliance of labour laws and model Rules for workmen employed by the contractors and CPWD contractors' Labour regulation to be complied by the contractors (Annexure B Exhibit WW1/2) and two, the office order of the same date prescribing a format relating to compliance of Labour Laws and model Rules for workers employed by contractors and CPWD contractors' Labour regulation to be complied by the contractor issued to all Chief Engineers to submit the filled up format through the DGs of the respective sub region, the contract wise Labour records of work being executed in their zones duly verified by SEs and ARs Concerned: (Annexure C Exhibit WW1/3).

8. (V) (i) Exhibit WW1/2 (Annexure B) requires the Contract Labour under it's clauses 3&4 to have smart card of ESI, registration under Building and other construction worker Act,1996. On the other hand, under clause 5 of the office order (Annexure C Exhibit WW1/3), the contractor is required to maintain register of the workmen employed by the Contractor, Muster Roll, Register of Wages, Wages Slip,

Employment Card, Service Certificate, Register of Deductions and Register of Overtime etc.

8. (V) (ii) In view of the aforesaid office order placed by the claimant of workman is legally expected to have the said may be construed that a documents as stated in the office order Annexure B (Ex.WW1/2) and The Contractor who employed the said workman has to maintain and preserve the documents stated in the clause (3 & 4) of the Annexure B (Exhibit WW 1/2) aforesaid. The said documents which are necessary to establish the employment by the contractor with specific date of employment and the contractor who employed him are the documentary evidence legally and factually supposed to be in custody and possession of the concerned workman. There is no pleading to this effect in the statement of claim linking the contractor who employed the present workman. The contractor is the best person to be treated as the "cusodialegis" having custody and possession of the documents prescribed in Clause (5) of the office order. They certainly be required in evidence to prove and establish the employment of the workman with specific date of employment, wages paid, deduction made statutory of ESI, EPF and attendance on the work place etc. With a particular contractor.

8. (V) (iii) Neither the workman concerned has stated in oral evidence nor the claimant union has placed on record of the case and proved such facts by the relevant evidence as referred herein above, before the tribunal. Even neither the concerned contractor who employed the workman for the first time nor the contractor under whose service the concerned workman was removed from the service on 13.04.2016 is made party to the claim, with whom the documents maintained and

preserved under the law (prescribed in clause (5) of the Annexure B Exhibit WW1/2).

Effect of the Non Joinder of the contractor in the claim over the evidence.

8.(V)(iii) The non joinder of the contractor though he is a necessary party with regard to the status, rights and statutory benefits of the workman employed by him appears to have been done knowingly and willingly with an ulterior motive to save the claim, avoiding the evidence to come on record under this misconception that, as skipping to do so he may shift the burden of adducing evidence relevant to the issues of duration of service, over the tribunal itself and also upon the opposite party the CPWD. The burden to plead and prove lying upon the workman can not be shifted to prove the workman's employment with specific date of employment. The joinder of the contractor is also necessary to look into the fakeness of the contract between the contractor and the principal employer CPWD for the purpose of holding whether the same is sham, mere to camouflage and smoke screen the employment of contract labour in the category of work in CPWD if prohibited under the CLRA Act 1970 and the Central Rules 1971 framed there under.

8.(V)(iv) The Management has taken plea of non joinder of parties specifically pleading the non impleadment of a particular contractor or contractors out from those anonymous and various contractors alleged to had employed the concerned workman as contract labour in the job allotted to them by the CPWD or somewhere else. The absence of the Contractor creates hinderance in proper adjudication of the issue pertaining to that specific contract whether sham and merely a camouflage. Though the plea of non joinder of necessary party was raised at the very initial stage by the CPWD in it's written statement of

defence as preliminary objection but neither the defect of non joinders is removed by the claimant nor rejoinder is filed by the claimant to meet out the said plea specifically taken by the management. The adverse inference must be drawn against the claimant if the evidence which might have been brought by the 'non party' (the contractor) if he/ they would have been made party to the claim, being best person and custodian to possess such evidence, could not be made available to the tribunal for it's consideration on relevant issues.

8.(V)(v) Annexure D to the statement of claim a photostate copy of the explanation submitted by the Assistant Superintendent (Garden) Garden Division V CPWD submitted before the Assistant Labour Commissioner New Delhi (the conciliation officer) in the matter of grievance raised by the workman concerned before him. The said Annexure D is admitted and proved in the evidence by the claimant before the tribunal (marked Exhibit WW1/4). The explanation confines the status of the concerned workman as 'Contract Labour' employed by the contractor Virendra Singh under the Contract No. 6600H/HD-5/2015-2016 alongwith 6 other labourers w.e.f. 01.01.2016. The explanation aforesaid is accompanied with 3 Sheets of extracts of an attendance register in respect of work site "playground Green belt Sector 1 to 5 Pushpavihar, New Delhi, maintained by the contractor for the periods 01.01.2016 to 31.01.2016, From 01.02.2016 to 29.02.2016 and From 01.03.2016 to 31.03.2016. The attendance sheets so proved and admitted by the claimant union on behalf of the workman establish the fact of concerned workman Sanjay Kumar's being last in the list of 7 contract labourers of the contractor Virendra Singh. As such the pleading before the conciliation officer submitted by the CPWD Annexure D (Exhibit WW1/4 is admitted in evidence by the workman and deserves to be taken as reliable evidence

also. More over to ascertain the date of commencement of service the date referred in the Reference, 20.11.2010 would be relevant and adhering thereto the tribunal is to decide and find out whether the claimant becomes successful in proving the date of entrance in service of the contractor as contract labour.

In Cross Examination of the claimant witness: -

9. The said witness Sanjay Kumar the workman though submitted his affidavit of statement in examination in chief and reiterated the averments made in the statement of claim but he seems not subjected to the cross examinations himself. Without seeking permission from the Presiding Officer the statement in cross examination of the Authorized Representative B.K. Prasad is recorded as it is obvious from the note at the bottom of the statement dated 08.08.2018 in cross examination of the witness Sanjay Kumar to the effect, "statement of Sh. B.K. Prasad, AR for the workman without oath". The workman was not subjected to the cross examination, further finds obvious reason that the Annexure A (Colly) to the statement of claim contains 'Disability Certificate' issued by the Neurosurgeon of Dr. Ram Manohar Lohia Hospital, New Delhi on 14.12.2011 annexed with the statement of claim by the workman. It is intended, to show his hospitalization since 04.01.1996 till 08.02.1996 with head injury. After discharge also his suffering persisted with the 'Dysarthria' and 'Right Hemiparesis' causing a disability assessed at 60% and likely to be permanent. The symptom of above disability as medically known, may affect speech that is slurred, slow and difficult to produce and/or understand. The Authorized Representative of the workman told the tribunal that he (Workman) is unable to speak in clear words. This resulted him not to face the oral examination therefore the Authorized Representative presented himself in his place. Such a manner

of oral examination in evidence is not permissible, unless otherwise ordered by the court in accordance with Sec.119 of the Indian Evidence Act 1872 which runs as under: -

> ***Witness unable to communicate verbally.*** *— A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence: Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.*

As such the portion of the statement in chief in affidavit, if not verified and could be testified with regards that's veracity cannot be relied as credible evidence.

10. However the claimant witness stated he had no Appointment Letter to show that he was engaged by CPWD. He admits in cross examination that no representation was made by him to the CPWD relating to the non issuance of Appointment Letter. Resiling from his pleading the witness denied the suggestion in cross examination by CPWD that he was engaged by a contractor and the contractor was paying his salary. The supervision of work by contractor is also denied to be true.

11. The claimant witness vaguely stated in cross examination that, he is not aware whether he submitted any application in CPWD at the time of his engagement. Contrary to the fact pleaded in the statement of claim he comes with a new case (not pleaded in the claim) in the cross

examination only that he was engaged by one Junior Engineer Rajender Singh (without his specific detail and description in the CPWD), likewise he further named one 'Jitender Kumar' as the JE who removed him from service. However, when suggested he vaguely replied that he is not aware that a Junior Engineer has power to appoint or terminate from the job he was doing.

12. The document of the CPWD not rebutted rather relied in evidence by the claimant union further shows that the concerned workman was earlier engaged as labour on work site of Andrews Ganj Park in maintenance work but by reason of complaints of people of the locality as to the quarellsom, and cantankerous behaviour he was withdrawn by the contractor there from and deployed in Pushpvihar as labourer in maintenance work. On 21.03.2016 a lady of house neighbouring to the work place, Quarter No. 11 A Type 2 Sector 4 Pushpvihar lodged a complaint in the Police Station Saket alleging her eve teasing. The complaint was later on withdrawn by the victim lady on the undertaking by the contractor to withdraw him from there. The complaint and withdrawal of complaint in writing are placed by the claimant as attachment of the written reply Annexure E (Colly) as received from the contractor Virendra Singh the Custodia Legis thereof and proved in evidence, by the Exhibit WW1/5.

13. The claimant in cross examination of the management witness has not asked question as to the officer/official of CPWD if any to control and superwise the workman of the working place.

14. The CPWD alongwith written statement has made photocopy of Book No. 84/DD/3.5.5/15-16 referring Contract No. 66/DD/3.5.5/2015-16 for the work Horticulture works in Sector-IV & V, Pushpvihar, New Delhi for 2015-16 for maintenance of playground and green belt in

entire garden. This contract is for the period 2016 to 2017. The name of contractor is entered 'Virendra Kumar'. The said document is proved in evidence by the management witness also which bears Exhibit marked as MW 1/1. This would not be out of place to mention at this moment that the aforesaid document has not been rebulted by way of filing rejoinder by the claimant. Even in cross examination of management witness, no Question is put before him by the workman's Authorized Representative (The General Secretary of the claimant union) thrashing it's genuineness and existence as well as whether the CPWD had rightly entered in the contract. The said proved document is coupled with copy of letters by Director (garden) bearing date 28.12.2015 and 01.01.2016 where by the contractor Virendra Kumar is called to fulfil the legal formalities of execution of the contract within 15 days.

15. There is no pleading in the statement of claim filed by the claimant for the workman to the effect that he was employed by the contractor for the CPWD in an activity which require full time work for the major portion of the working hours in a day or for longer period. It is also not pleaded that Gardening maintenance work in which the workman was employed as labour is the core activity of the CPWD and not incidental there to. The workman simply says the work in which he was employed by the contractor is perennial nature of the work in CPWD. Admittedly it is alleged in the claim statement that the workman was exploited by the contractor for a long since 20.11.2000 by employing him as contract labour in perennial nature of job, but grievance if any had never been raised prior to his removal from service in April 2016 before the appropriate Government (it's designated officer) either by himself or through the labour union. If the job is of Perennial Nature where employment of contract labour is prohibited under the

CLRA Act is a question of fact to be decided by the Appropriate Government. There is no such pleading or evidence on record of the case before the Tribunal that the appropriate Government had occasion to decide that question.

16. In oral evidence the management has produced Sh. Abid Husain Director Horticulture Division- V. Who proved his affidavit and the documents MW1/1 & MW1/2. He deposed on the basis of the official record. The witness aforesaid has deposed that the concerned workman was not being paid by the CPWD the wages of regular mali because he was in the employment of the contractor, who was doing work allotted to him by CPWD under the contract.

17. In statement in chief the affidavit of management witness in Para 7 asserts that neither the management have employed the concerned workman nor have paid him salary. In Para 9 it's said that the management had not engaged the workman hence question as to the payment of minimum wages does not arise. The workman never complained about the payment of wages by the contractor below the minimum wages rates to the CPWD. In Para 10, the witness deposed that it is wrong to say that there was the direct control and supervision of official of management of CPWD.

18. This would be remarkable here that the claimant did not expose and subject the management witness to any question so as to thrashout the above statement on oath relating the pay master or in whose supervision and control of which of the employee of CPWD over the workman was working likewise no question is asked to carve out from cross examination as to the manner of recruitment and number of vacancy of malis or other workmen in the CPWD as well as the nature of work taken by the contractor in the job given to him by the CPWD. As

such no material state of things could have been carved out from the management witness. The facts deposed in the affidavit (statement in examination in chief) of the management witness Abid Husian Dy. Director Horticulture in CPWD shall be reliable in answering the reference to the extent of not contradicted and uncontroverted statement of facts.

Arguments

19. The learned Authorized Representative of the workman to support his plea of the existence of employer employee relationship between the CPWD and the workman put vehemence on the rule 25 (v) (a) of the CLRA Rules 1971 which provides…..

> *Employed by the contractor/perform the same and similar kind of work as the workman directly employed by the Principal Employer of the Establishment, the wages rates, holidays hours of work and other conditions of service of the workman of the contractor shall be the same as applicable to the workman directly employed by the Principal employer of the establishment on the same or similar kind of work".*

19 (a). Reliance is further placed on by the AR of the workman the Apex Court judgment in SAIL (Supra) quoting it's Para 125 (5) (VI) which is reproduced here under: -

> *"if the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the service of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para no. 6 hereunder.*

To support his argument on the consequential relief of equal pay for equal work reliance is placed on the judgement of Apex Court in ***SAIL (Supra)*** and ***Surender Singh and others V. The Engineer in chief CPWD.*** On the issue of maintainability of claim for the want of prior demand notice to the establishment the judgement of Apex Court ***State of Bihar V. Kripa Shankar Jaiswal AIR 1961 SC 304 and of the Delhi High Court in WP NO. 13023 of 2005 workmen of MCD V. MCD*** and ***M/s Bharat Heavy Electrical Limited V. State of U.P. and others, 2003 Lab I.C. 2630*** are relied on.

19. (b) The learned A.R. for the CPWD management argued that the workman was not employed by the management but was engaged by the contractor who is licensed contractor under the CLRA Act and it was his choice and direction to recruit the person to whom he prefers. CPWD management though principal employer had no say or any kind of supervision or control on the employees employed by the contracts. The CPWD management beside it's core activity of public works of construction and maintenance of their building has to employ apart from regular workmen a number of contractors for performing some specific jobs for the purpose of which several contractor are usually involved in certain various projects. It is further argued that all the regular jobs under the core activity of the management are performed by the regular workmen and employees. It is denied that the job done by the concerned workman was perennial in nature.

19.(c) Apart of the core activity the management is entrusted by the Government with some other jobs which have no nexus with the core activities and required to give such jobs on contract. The CPWD management is concerned with such jobs entrusted to the contractors only to the extent of ascertaining the agreed number of workmen are

present and with the result achieved within the targetted time limit. The contractor who are licensed under the CLRA Act are eligible to participate in open tender process floated by the CPWD for nonperennial/permanent jobs to carry the same. After scruitiny one of them is scheted on the basis of lowest minimum cost tendered by him on a year to year contract basis. The contractor so selected is paid a lump sum amount to bring his workmen in such a number (contract labours) and his tools and equipment as the work demanded. The workmen so employed were under the control and supervision of the contractor.

19.(d) It is further argued that the notification prohibiting the category of work in which the concerned workman was engaged by the contractor as contract labour has not been issued at any point of time of such employment of the concerned workman by the Appropriate Government under Section-10 (1) of the CLRA Act. The work performed by the present workman as contractor's labour was not overlaping with the work of regular employees of the management CPWD. It is therefore vehemently argued that the contract between the principal employer management CPWD and the contractor was not a sham and camauflage. He submitted that simply by enactment of CLRA Act if the contract labour was engaged in connection with the work entrusted to the contractor by the principal employer it does not culminate in any master servant relationship between the principal employed and the contract labour.

19(e). Both the parties have also submitted their respective written argument in addition to the oral arguments. After providing the Authorized Representatives a lengthy hearing and going through their respective written Arguments. I proceed to analyse the facts and issues

involved in the case for reaching at a conclusive answer to the reference point wise and categorically.

- The Authorized Representative of the CPWD relied on the judgement of Apex Court in State of ***Karnataka V. Umadevi 2 others (2006) 4 SCC1, Surender Prasad Tewari V. UP Rajya Krishi 3981 of 2006 by Supreme Court , Workmen V. Coal of India Ltd (2004) 3 SCC 54), Haldia Refinary Canteen Employees Union V. India Oil Corporation Ltd.(2005) 5 SCC 51), Balwant Rai Salija (2014) 9 SCC 407, Dhavangaihra Chemical Works Pvt. Ltd. V. State of Saurashtra, AIR 1957 SC 274, Bengal Nagpur Cotton Mills V. Bharat Lal (2011)1 SCC 635, Workmen of Nilgiri Market Society V. State of Tamilnadu (2004) 3 SCC 514, State of Karnataka V. Umadevi & others (2006) 4 SCC 1, Union of India and another V. Arulmozhi Iniarasu (2011) 9 SCC 1, State of Karnataka and others V. K.G.S.D Canteen Employees Welfare Association & others (2006) 1 SCC 567, The Commissioner of Income Tax V. Sun Engineering Works (P) Ltd. (1992) 4 SCC 363, Bharat Heavy Electricals Ltd V. Mahendra Prasad Jakhmola & others.***

Direct Employee and the Contract Labour: -

20. In the reference, claim statement, evidence and the argument of the workman's Authorized Representative the words "Direct Employee" are emphatically used to treat his status as the Employee of the CPWD, though employed/by the contractor. Literally a person who works as an employee of an establishment and is paid salary by it, rather than being employed through an agency is said to be direct employee. When the employment in which an employer has the authority to appointment and of Termination, has direct day to day supervision of the worker, pay the wages is said to have direct employee. The company or the

establishment issues advertisement prescribing eligibility criteria for the appointment of suitable candidate in the vacancy, in already created and sanctioned posts, such recruited candidate on having been appointed is called Direct Employee of the establishment. To the contrary the 'Contract Labour' refers to that employed person, hired to work in a company/establishment through a contractor for a specific job and definite time. These contract workers are not directly recruited by the company/establishment but through a contractor. In respect of such contract labour the company/establishment is addressed as the Principal Employee. Since the work done by the contract labour is of temporary nature, their employment is not fixed with a particular contractor. Once the contractor's agreement cases with the principal employer they have to lose their job.

21. The contention that the concerned workman be treated as a Direct workman of CPWD finds no force from the documentary and oral evidence of the workman. The management witness of CPWD reiterating the status of the workman as contract labour employed by the contractor 'Virendra Kumar' a non party to the claim. Filed by the workman. The workman filed an affidavit before the tribunal as statement in examination in chief with regard to the geninity. The pleading and evidence by the Management witness of the CPWD with regard to the genuinity of the Contract, producing copy of the papers extract from the registration Book of having the details of the contract between the CPWD and the contractor Virendra Kumar is not controverted by the workman by filing rejoinder against the written statement of the CPWD and confronting the said witness in cross examination on the above documentary evidence and fact. So as to thrash on the credibility of the documents. Likewise the attendance

register filed as Annexure with the claim statement and in evidence also prove the workman having worked from the paid 01.01.2016 to 31.01.2016 (31 days) 01.02.2016 to 29.02.2016 (29 days) and 01.03.2016 to 31.03.2016 (31days) a total period of working 91 days only). No other evidence is available on record to prove and establish the continuity in service, since 20.11.2000 or even from the date 20.11.2010 stated in the reference.

22. In view of the fact pleaded by the claimant and that proved by him in the course of evidence adduced before the Tribunal the workman Sanjay Kumar is primafaci established a 'contract labour' employed by the Contractor Virendra Kumar in the period commencing from 01.01.2016 upto the date of his removal from contractual service by the contractor on 13.04.2016.

Whether the contract labour 'Sanjay Kumar' is workman as defined in the I.D. Act and can raise an Industrial Dispute before the Tribunal.

23. The 'workman' is defined under Sec.2(s) of the I.D. Act which runs 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-

(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, 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.

In view of the definition of 'workman' in I.D. Act the Industrial Tribunal is required to see whether the person concerned is 'workman'. For this purpose, it is to be find out that whether the Test of Employment for doing the work as specified in the definition is satisfied by the concerned person. In the present case the Sanjay Kumar the contract labour is employed by the contractor for doing the work of maintenance of Garden/playground belonging beloved by CPWD (Master Employer) under a contract with it, undoubtedly he is a 'workman' as defined in the I.D.Act with regard to the CPWD if any industrial dispute arises.

24. A definition of 'workman' similar to that given in Section 2 (s) of the I.D.Act in incorporated in the CLRA Act, Section 2 (i) of which runs as under

2(1)(i) "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

(A) who is employed mainly in a managerial or administrative capacity; or

(B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by' reason of the powers vested in him? functions mainly of a managerial nature; or

(C) who is an out worker, that is to say, a person to whom any articles and materials are given out by or on behalf of' the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the .trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

Admittedly the contract labour Sanjay Kumar comes within the ambit of words 'Any person employed to do manual work by the contractor in connection with the work entrusted to him by the establishment CPWD. The said contract labours so employed does not fall in any excepted categories of the employees as excluded in the above definition. Further in Section 2 (1)(b) of the CLRA Act, by……..effect a 'contract labour' shall also be treated a 'workman', the said Section 2(1)(b) is quoted here under:-

2(1)(b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work-of:-an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

25. While this tribunal has opined on the basis of facts and evidence laid before it 'Sanjay Kumar' for the cause of whom the claimant labour union sought the present 'Reference' is a "contract labour", the next question arises as to whether he is a 'workman' as defined in the I.D. Act and is entitled to raise in the circumstances of the claim an "Industrial Dispute" as to his termination from employment by the contractor? It would be pertinent to look into the amended provision of Section 2(a) (ii) (substituted vide Act No. 24 of 2010) which runs as under:-

Section 2(a)(ii): - *in relation to any industrial dispute, including the state public sector undertaking, subsidiary 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.

26. By virtue of the aforesaid proviso appended with Section 2(a)(ii) Dispute between the contractor and his contract labour employed in any industrial establishment also comes within the ambit of industrial dispute if related to terminate, remove or discharge of the contract labour relating to work of manual labour in the present case the dispute is admitted and proved by the claimant and not controverted by the CPWD. In the above context concerned person Sanjay Kumar, as held by the Apex Court in **Devinder Singh V. Municipal Council Sanaur (2011) 6 SCC 584** held, a contract labour falls within the definition 'workman'.

27. The contractor (employer of the workman) is in business of doing the work entrusted to him, deploying his contract labours in the premises of the principal employer CPWD, which comes within the definition of Industry as defined in SCC 2(j) of the I.D. Act.

2(j):- *"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.*

In view of the provision referred hereinabove the contract labour Sanjay Kumar would be treated as workmen in relation to industrial dispute if any.

The Dispute

28. The service of the concerned workman is explained by the CPWD to have been terminated by the contractor for the reason of an incident of 'eve teasing' complained against him by a lady of the neighbouring house of the locality where the workplace (the Garden) situated. The termination of the service of a workman is definded as 'Retrenchment' under Section 2(oo) of the I.D. Act where runs as under 2(oo):-

2(oo) - "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or.

(c) termination of the service of a workman on the ground of continued ill-health.

29. It is not the case of the CPWD that the termination of the service of the workman falls under any of the exception of the Sec.2(oo) therefore it would not be wrong to say that the workman Sanjay Kumar is retrenched from the service on 13.04.2016 may come within the ambit of 'Industrial Dispute' and accordingly contract labour can raise such Dispute before the Tribunal in the manner prescribed under the I.D. Act if the same could be transformed in to "Industrial Dispute" in accordance with law.

30. 'Industrial Dispute' is defined in Section(k) of the I.D. Act which runs as under:-

> *"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.*

In view of the above provision when the contract labour employed by the contractor for the work interested by the CPWD, is his employee and had complaint against his employer (the contractor) with regard to his removal (termination) from such contractual employment and other terms and conditions of labour, he has an actionable Industrial Dispute not only against the contractor but also the principle employer CPWD.

Individual Dispute and Industrial Dispute

31. Though the Section 2(k) of the I.D. Act is incorporated in such language to cover widely a dispute between the employer and a single workman the Supreme ***Court in Central Provinces Transport Service Ltd V. Raghunath Gopal Pathwardhan (AIR 1957 SC 104,109)*** has held that the scheme of the I.D. Act appears to contemplate that the

machinery provided under the Act should be in motion to settle only such disputes as involve the right of the workmen as a class and not a dispute touching the individual rights of a workman. In ***D.N. Banerjee V. P.R. Mukherjee (1952) 2SCC 619 AIR 1953 SC 58 (61)*** the Apex Court further held that the Dispute must be such as would affect large group of workmen and employer ranged on opposite sides. The 'Dispute' or 'Difference' must be real and not imaginary or ideological. As it is specified in the definition itself the Dispute must relate to employment, non-employment or conditions of labour. In ***D.N. Banerjee's Case (Supra)*** *and* ***"Bombay Union of Journalists V. The 'Hindu', Bombay AIR 1963 SC 318*** held, the applicability of the I.D. Act to an 'Individual Dispute', as distinguished from a 'Dispute' involving a group of workmen in excluded, unless the workmen as a body, or a considerable Section of them make common cause with the Individual Workman.

32. Here in the present case there is neither pleading nor evidence on record to show that the Dispute as after raised relating to the regularisation and equal wages ….. etc. the termination of employment of the concerned workman is common with other workmen working as contract labour likely circumstanced and employed through the contractor in the park/playground of the CPWD. The admitted case of claimant union is the cause of "sole contract labour" (The Workman Sanjay Kumar) undoubtedly the Dispute raised for and on behalf of the workman concerned is 'Individual Dispute' with his contractor in nature. Even the claimant union has viewer raised voice against the illegal employment through the contractor in CPWD after the CLRA Act came into force for and on behalf of its member the workmen.

33. When the reference is received, the Tribunal commenced the proceeding in respect of the Dispute then the management CPWD raised

two preliminary objection first, the Disputes an Individual Dispute and Second the reference is not maintainable for the want of espousal by the union or by a body of appreciable number of the workmen of the establishment. By virtue of the judicial verdicts the said preliminary objection are therefore being decided with the final disposal of the reference.

Individual Dispute when become Industrial Dispute

34. The 'Individual Dispute' with regard to the termination of employment of a Single Contract labour by the contractor who had to perform the work entrusted by CPWD, is raised by the Claimant Union (CPWD Majdoor Union) through it's General Secretary (the A.R of the workmen) before the conciliation officer and sought reference of the dispute to this Industrial Tribunal. In the present case there is no pleading in the statement of claim filed by the claimant union that the claimant labour union whether registered or unregistered and recognized labour union for CPWD. Whether the concerned workman is member of the claimant union, or of any other labour union of the same establishment or member of any of the labour union, the list of members workmen is also not placed on record of the case. No resolution passed by the executive body of the union or body of workmen in considerable number of member of the establishment (CPWD) is placed on record. Even no evidence oral or documentary in this regard is adduced before the Tribunal. Moreover there is a complete lack of pleading and evidence both as to whether the claimant union themselves is directly and subsequently interested in the dispute.

35. In ***Bombay Union of Journalists V. 'Hindu', Bombay 1962(3) SCR 893*** the Apex Court in clear terms laid down the test of an industrial dispute whether at the date of the reference the dispute was

taken up and supported by a union, or by an appreciable number of workmen. There being no doubt if the union having taken up the cause of the workman concerned before the reference, but it is not to established by evidence on record of the case before the tribunal that the workmen made representation to it and/or the executive body of the union made any resolution authorising the office bearers of the union to initiate proceeding before the conciliation officer, in accordance of which the General Secretary initiated the proceeding before the conciliation officer. In these circumstances it is not possible to appreciate how the claimant union made the espousal of the dispute which was individual to convert into an Industrial Dispute.

36. In ***J.H. Jadhav vs M/S. Forbes Gokak Ltd (2005) 3SCC 2002*** relying on it's earlier decision in ***Workmen V. Dharam Pal Premchand (Saughandhi) (1965) 3SCR 394: AIR 1966 SC 182***. The Apex Court held, '*Locus Classicus*' is decision of Apex Court, where it was held, for the purpose of Sec.2(k) it must be shown that:-

> *The definition of "Industrial Dispute" in Section 2(k) of the Act shows that an Industrial Dispute means any dispute or difference between an employer and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the condition of labour, of any person. The definition has been the subject matter of several decisions of this Court and the law is well settled. The locus classicus is the decision in Workmen of* ***M/s. Dharampal Premchand(Saughandhi) Vs. M/s. Dharampal Premchand (Saughandhi)(Supra)*** *where it was held that for the purposes of Section 2(k) it must be shown that (1) the dispute is connected with*

the employment or non employment of a workman. (2) the dispute between a single workman and his employer was sponsored or espoused by the Union of workmen or by a number of workmen. The phrase "the union" merely indicates the Union to which the employee belongs even though it may be a Union of a minority of the workmen. (3) the establishment had no union on its own and some of the employees had joined the Union of another establishment belonging to the same industry. In such a case it would be open to that Union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such Union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in Dharam Pal's case is to be found in the Workmen of ***Indian Express Newspaper (Pvt.) Ltd. Vs. Management of Indian Express Newspaper Private Ltd. AIR 1970 SC 737*** *where an 'outside' union was held to be sufficiently representative to espouse the cause.*

37. In ***Workmen of Indian Express (P) Ltd. vs The Management (1969) 1 SCC 228*** in Para-7 the Apex Court held relying upon it's decision in ***Central Provinces Transport Services Ltd V. Raghunath Gopal Patwardhan 1956 SCR 956*** noted that

The next question is whether the cause of a workman in a particular establishment in an industry can be sponsored by a union which is not of workmen of that establishment but is one of which membership is open to workmen of other establishments is that industry. In Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan (1956 SCR 956), this court noted that decided cases in India disclosed three views as to the

meaning of an industrial dispute: (1) a dispute between an employer and a single workman cannot be an industrial dispute, (2) it can be an industrial dispute, and (3) it cannot per se be an industrial dispute but may become one if taken up by a trade union or a number of workmen. After discussing the scope of industrial dispute as defined in Section 2(k) of the Act it observed that the preponderance of judicial opinion was clearly in favour of the last of the three views and that there was considerable reason behind it. In the Newspapers Ltd. v. The State Industrial Tribunal, U.P. (1957 SCR 754), the third respondent was employed as a lino typist by the appellant company. On an allegation of incompetence, he was dismissed from service. His case was not taken up by any union of workers of the appellant company, nor by any of the unions of workmen employed in similar or allied trades. But the U.P. Working Journalists Union, Lucknow, with which the third respondent had no concern, took the matter to the Conciliation Board. On a reference being made to the Industrial Tribunal by the Government the legality of that reference was challenged by the appellant company on the ground that the said dispute could not be treated as an industrial dispute under the U.P. Industrial Disputes Act, 1947, which defined by Section 2 an industrial dispute as having the same meaning assigned to it in Section 2(k) of the Central Act. This court upheld the contention observing that the notification referring the said dispute proceeded on an assumption that a dispute existed between the employer and "his workmen", that Tajammul Hussain, the workman concerned, could not be described as "workman" nor could the U.P. Working Journalists Union be called "his workman" nor was there any evidence to show that a dispute had

got transformed into an industrial dispute. The question whether the union sponsoring a dispute must be the union of workmen in the establishment in which the workman concerned is employed or not had not so far arisen. It seems such a question arose for the first time in the case of ***Bombay Union of Journalists v. The Hindu, Bombay (supra)****. The decision in that case laid down - (1) that the Industrial Disputes Act excluded its application to an individual dispute as distinguished from a dispute involving a group of workmen unless such a dispute is made a common cause by a body or a considerable section of workmen and (2) the members of a union who are not workmen of the employer against whom the dispute is sought to be raised cannot by their support convert an individual dispute into an industrial dispute. Persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. The court held that the dispute there being prima facie an individual dispute it was necessary in order to convert it into an industrial dispute that it should be taken up by a union of the employees or by an appreciable number of employees of Hindu, Bombay. The Bombay Union of Journalists not being a union of the employees of the Hindu, Bombay, but a union of all employees in the industry of journalism in Bombay, its support of the cause of the workman concerned would not convert the individual dispute into an industrial dispute. The members of such a union cannot be said to be persons substantially and directly interested in the dispute between the workman concerned and his employer, the Hindu Bombay. But in* ***Workmen v. M/s. Dharampal Premchand****, this court, after reviewing the previous decisions, distinguished*

the case of Hindu, Bombay and held that notwithstanding the width of the words used in Section 2(k) of the Act a dispute raised by an individual workman cannot become an industrial dispute, unless it is supported either by his union or in the absence of a union by a number of workmen, that a union may validly raise a dispute though it may be a minority union of the workmen employed in an establishment, that if there was no union of workmen in an establishment a group of employees can raise the dispute which becomes an industrial dispute even though it is a dispute relating to an individual workman and lastly that where the workmen of an establishment have no union of their own and some or all of then have joined a union of another establishment belonging to the same industry, if such a union takes up the cause of the workman working in an establishment which has no union of its own, the dispute would become an industrial dispute if such a union can claim a representative character in a way that its support would make the dispute an industrial dispute.

38. The decisions of the Apex Court is state of Bihar v. Kripuashower Jaiswal (supra) referred in support of his argument by the AR of the workmen does not relate with the transformation of individual dispute into one industrial dispute hence, not applicable on the circumstance of the present case.

39. The General Secretary of the claimant union who filed the statement of claim has not produced himself as witness to prove the fact of espousal of the Individual Dispute of the single workman as against the CPWD by placing and proving the minutes of the meeting of executives of the union and the resolution authorising him to initiate the proceeding, therefore the claimant union remained unsuccessful in establishing it having representative character for espousal of the Dispute

so as to transform the same from Individual Dispute to Industrial Dispute.

40. In view of the above discussion the claimant Labour Union 'CPWD Mazdoor Union' is not found to have espoused the Dispute of the concerned workman so as to transform the same to an Industrial Dispute under Section 2 (k) Industrial Dispute Act.

Termination of the Employment of the 'Workman' concerned if Retrenchment under the I.D. Act.

41. In the present case though the 'concerned workman' is said to have been in employment as contract labour since 20.11.2000 and in the reference made to this tribunal for adjudication is stated 20.11.2010 but the claimant labour union neither placed any documentary evidence or oral witness to prove the concerned workman's entry in employment as contract labour of a contractor on any of the two aforesaid dates. However, the tribunal adheres itself with the date stated in the 'reference' so as to restrain itself from traversing beyond the scope of the reference, no evidence is brought on record to prove the date of initial entry in employment 20.11.2010 as stated in the reference. In the judgments of Apex Court in ***"State of Uttarakhand V. Sureshwati 2021 (168) FLR 488 (SC) and Bengar Nagpur Cotton Mills, Rajnandgaon V. Bharat Lala and others (2011) 1 SCC 635*** it is held that "onus is upon the workman to establish his relation with the employer on the basis of number of days he has served lies heavily upon the workman".

42. In the preceding Paras of this award, relating to 'Evidences' by the claimant this tribunal has already recorded it's view on the basis of three sheets of attendance register (Annexed in Colly) which are proved in the oral evidence of the workman and the non rebuttal of the fact of

commencement of the concerned workman's employment under the contractor 'Virendra Kumar' pleaded in the written statement of the management (CPWD) with details of his contract having been in employment from 01.01.2016 to 30.04.2016 only. In the context of the above pleaded and proved facts by the parties to the Industrial Dispute case it would be pertinent to look the provision relating to the Termination of Service of a workman which is termed under the I.D. Act as Retrenchment defined in Section 2 (oo): -

Section 2 (oo): - *"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-*

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or.

(c) termination of the service of a workman on the ground of continued ill-health.

42. It is not admitted by the Management (CPWD) that the concerned workman is directly employed by him but the admitted case of the

parties is that the employment of the concerned workman was ceased off by removal (termination) from service on 13.04.2016.

43. In ***K.V. Anil Mithra & Another V. Sree Sankaracharya University of Sanskrit & Another*** the Apex Court in Para 22,23,24 &25 held as under: -

> ***22:-*** *The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947. It may be relevant to quote Section 25B and clause (a) and (b) of Section 25F of the Act 1947 which are reproduced as under:— 25B. Definition of continuous service.- For the purposes of this Chapter (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to*

any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer— (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than— (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than— (i) ninety -five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case. Explanation. —For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which— (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment; (ii) he has been on leave with full wages, earned in the previous years; (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.] 25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than

one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

23:- *The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.*

24:- *The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947.*

25:- *This can be noticed from the term 'retrenchment' as defined under Section 2 (oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.*

44. A constitution Bench of the Supreme Court in ***'Punjab Land Development and reclamation Corporation Ltd. Chandigarh V. Presiding Officer'*** Lab Labour Court Chandigarh and others 3 SCC 682, the Apex Court Held: -

14: - *The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in Section 2(oo) of the Act, it means termination by the employer of*

the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. In other words, the question has to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.

45. On the basis of case laws cited herein above, undoubtedly, from proved fact, the service of the workman had been terminated, it will be termed to be a retrenchment under Section 2 (oo) of the I.D. Act because it does not fall under any of those excepted situation under the said Section. He was contract labour employed by the contractor 'Virendra Kumar' to whom the work of maintenance of one playground/Green belt (Garden of 'Pushpvihar' was given under the contract between contractor and the CPWD for the period 2016-2017 for one year commencing form the date of contract.

46. It has already been viewed by this tribunal that the concerned workman was a workman as defined in Section 2 (s) of the I.D Act, as such workman his service was terminated by the contractor who employed him may amount retrenchment as defined in Section 2 (oo). In the particular circumstance of the present case the CPWD being the principal employer, in the absence of the 'contractor' by reason of his non impleadment in the case though necessary party, explained on his behalf on the basis of explanation sought from him to submit before the conciliation officer prior to the reference is made by the Appropriate Government to this tribunal, that the concerned workman on the police complaint lodged by an women of neighbouring House in the locality of

the workplace (Pushpvihar Playground & Garden) dated 21.03.2016, against him of eve teasing, removed from the work of maintenance and employment also from the work running there to perform the work given to the contractor by the CPWD and the work was kept continuing with rest of the contract labour to perform within targetted time.

47. The tribunal shall not go to investigate and find out against the incident of the concerned workman or to probe why his service was terminated while adjudicating the dispute under the I.D.Act, for the simple reason it would be have effect, if done so, to go beyond the scope of reference. Moreover the Apex Court in ***Punjab Land Development and Reclamation Corporation (supra)*** case in para 14 (quoted in the preceding para) has cleared, that termination for any reason whatsoever under section 2(oo) may be in contextual meaning of a case termination of any reason otherwise than as a punishment inflected by way of disciplinary action.

48. In Para 30 of the ***K.V. Anil Mithra vs. Sree Shankaracharya University of sanskrit and another (CA No.9067 of the 2014)*** *decided on 27th October 2021* the Apex Court has observed. In every retrenchment the employer is not under any obligation with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act but in a case where the workman has been in continuous service for more than 240 days in the proceeding 12 months before the alleged date of termination as contemplated under Section 25 B, the employer is under an obligation to comply with the twin condition referred to under clauses (a) and (b) of Section 25F of the Act 1947.

49. In the facts and circumstances found proved on evidence, it can not be said that the concerned workman had completed 240 days in service as contract labour within 12 months preceding the alleged date of

his termination from service by the contractor. Moreover, he had not successfully stood on his case of having been in service of various contractors as contract labour right from 20.11.2000, and more particularly since 20.11.2010 (the date of entry in employment as contract labour) referred in the reference made to this tribunal by the appropriate government). None of contractors under whom the concerned workman alleges to have worked as contract labour for doing the work of CPWD or any other establishment is named, detailed and described in material and specific terms and is/are not impleaded in the claim statement before the tribunal. Nothing has been pleaded and proved beyond and contrary to the admitted and established fact proved on evidence also that the workman concerned has not even worked for 240 days in 12 months preceding his termination on 13.04.2016.

50. In the above context the finding of the Apex Court in the case of ***Bharat Sancharnigam Ltd V. Bhurumal 2014 (7) SCC 177*** are relevant on the question of appropriate relief, the workman may be entitled with regard to the non compliance of Section 25F of the I.D. Act, they are quoted here under:-

25(F) Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*

(b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]*

51. The facts of present case of termination of service of the workman who was a contract labour when measured on the touch stone of the rationals laid down by the Apex Court in ***K.V. Anil Mithra vs. Sree Shankaracharya University of sanskrit and another (Supra) and the Bharat Sarcharnigam Ltd (Supra)*** the workman concerned is not entitled to the retrenchment compensation and reinstatement in service with back wages from the CPWD Management.

Whether should be treated and declared direct and regular Mali of the CPWD.

52. The Ministry of Labour Government of India formulated the first question for adjudication by this Tribunal is to the effect that whether 'Sanjay Kumar' the concerned workman is entitled to be treated as direct employee of CPWD alongwith all allowances and benefit equivalent to their counter parts as his employment in the category of Mali as contract labour is sham and bogus? Obviously from the facts pleaded in the claim statement the entry in service of Mali in the Pushpvihar playground and green belt garden which is one of the premises of CPWD is through the contractor. Admittedly he is not directly recruited and appointed by the CPWD through it's process under the prescribed Service Rules and manner of selection for appointment. In evidence also the claimant

witness has proved his entry in service through the contractor as contract labour.

53. According to CPWD the present matter pertains only one workman out of the seven who were engaged by the contractor in the work of maintenance in the playground/Green Belt (garden) owned and occupied by the CPWD since 01.01.2015. The concerned workman employed on contract basis by the contractor under the contract with CPWD and was working at various places since the aforesaid date. The claimant union contended that the job which this workman performed and attended to was perennial in nature as well as squarely covered under Section-10 of the CLRA Act therefore the CPWD is not supposed to employ contract labour in their establishment for the work of maintenance of garden. The work carried on by the CPWD in their Garden is permanent and perennial in nature. It is further argued that the concerned workman involved in the reference became the regular and direct employee of the CPWD and entitled to get the status of the regular worker with all consequential benefits and privileges. The claimant union has also argued that the CPWD management has it's own direct and regular employees who do the same and similar nature of work as that done by the concerned workman. However, this workman was being paid less wages than the direct worker doing similar nature of work, therefore the concerned workman was entitled to same wages equal wages as paid to the direct workers. It is further argued that the work of the present workman was supervised, controlled and administrated by the CPWD management itself. The contractor employed by the management was proxy only. The so called contract between the CPWD management and the contractor was sham and more camauflage to deprive the concerned workman of benefits available to permanent

workmen in the same category of work in the CPWD management. Therefore, the workman involved in the reference was entitled to be declared as direct and permanent workman of the CPWD management right from the date of his joining i.e. 20.11.2010 (as referred in the reference) and entitled to be reinstatement w.e.f. 13.04.2016 (the date of removal) as such with continuity in service with all consequential benefits attached to the post of permanent workman directly employed by the management.

54. The CLRA Act provides for the abolition of contract labour by the Central Government in Appropriate cases under Section 10 of the Act. Neither the act nor the rules framed by the Central Government (or by any other appropriate government) provide that upon abolition of the contract labour, the labours would be directly absorbed in the establishment which is principal employer. The SAIL Vardict constitution Bench Judgment of the Supreme Court, in ***Steel Authority of India Ltd V. National Union Water Front Workers and others (2001) 7 SCC1*** is an authority on this point. The relevant paras are being quoted here under :

> *"65. The contentions of the learned counsel for the parties, exhaustively set out above, can conveniently be dealt with under the following two issues :*
> *A. Whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification, is implied in Section 10 of the CLRA Act; and*
> *B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour, emerges.*
> *108 The next issue that remains to be dealt with is:*
> *B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges.*

120. We have also perused all the Rule and Forms prescribed thereunder. It is clear that at various stages there is involvement of the principal employer. On exhaustive consideration of the provisions of the CLRA Act we have held above that neither they contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the Act on issuing notification under Section 10(1) of the CLRA Act, a fortiorari much less can such a relationship be found to exist from the Rules and the Forms made thereunder.

125. The upshot of the above discussion is outlined thus: (1) (a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression appropriate Government as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government,

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2) (a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government : (1) after consulting with the Central

Advisory Board or the State Advisory Board, as the case may be, and;

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the afore-said requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;

(4) We over-rule the judgment of this court in Air Indias case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air Indias case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been

interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

55. Hon'ble Apex Court in the case of ***Kirloskar Brothers Ltd V. Ramcharan and others (Civil Appeal No. R446-R447 of 2022)*** beside on 5th December 2022 in Para 4.1 as held that there is no provision under section 10 of the CLRA Act that the workers/employees by the contractor automatically become the employees of the appellant and the employees of the contractor shall be entitled for automatic absorption and\are they become the employees of the principal employer considering the SAIL Verdict (Supra) framed two Questions for consideration.

A whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification is employed in Section 10 CLRA Act, and

B whether a contractor engaging contract labour in connection with the word entrusted to him by a principal employer, the relationship of master and servant between him (The Principal) and the contract labour emerges.

56. The Apex Court gone through the entire Para-125 of the SAIL Verdict summarized in Para-4.5 as follows:-

> *Thus, as observed and held by this court, neither Section-10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption Government under sub-section (1) of Section-10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section-10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an Industrial Dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade*

compliance with various beneficial legislations so as to deprive the workers of the benefits thereunder.

57. In the present matter before the Tribunal the case of the claimant union does not pertains to any notification issued by the Central Government (Appropriate Government) under Section-10 (1) of the CRLA Act prohibiting employment of contract labour in the category of work in the CPWD, in which the concerned workman was engaged. It is not pleaded anywhere in the statement of claim submitted before the tribunal by the claimant union. Even no averment to the effect that whether the work performed by the workman concerned if and how perennial in nature, whether it is done through the regular workmen in the establishment and whether it is sufficient to employ considerable number of the full time workmen and whether the work was incidental to and necessary for the Industry Section-10 of the CLRA Act being relating to the issue is extracted here under: -

"Section-10" ***Prohibition of employment of contract labour***.- *(1)Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. (2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-*

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

58. In the present case neither any notification under Section-10(1) of CLRA Act has been issued prohibiting the contract labour nor there are pleading as to which kind of alleged wrongs or short coming by reason of which and/or even findings to the effect that the contract is Sham and bogus and/or camouflage. More over the alleged fact of supervision and control by the principal employer is not proved on evidences adduced before the tribunal by the workman so far as the contractor who engaged the workman in concerned was proved the pay master for the payment of salary and had also not been negatived by any documentary or oral evidence.

59. In ***Bharat Heavy Electricals Ltd V. Mahendra Prasad Jakhmola (Supra)*** the Industrial Dispute referred to the Industrial Tribunal was to the following effect: -

Whether termination of services of workman Sh. Mahendra Prasad Jakhmola, helper by the employer, with effect from 13.11.2001 is justified and/or as per law? If not, what benefit/relief the concerned workman is entitled for and with what other a relief?

The labour court by an award dated 01.11.2009 held referring to a notification dated 24.04.1990 under the CLRA Act that the workmen will not be deployed to do the work mentioned in the notification. It was also held on the basis of admission by the employers representative that the supervision, superintendence and administrative control of the workman was with the principal employer.

60. The present case admittedly does not involve any notification under Section 10(1) for the abolition of contract labour and prohibition in any category of work with regard to the CPWD. The Apex Court in the case of BHEL(Supra) gone through the entire pleading and evidences laid by the workman and observed that, 'it is clear that the labour court has arrived at a conclusion which no reasonable person could possibly arrived and it could had said that 'undisputedly', the labour that was employed through contractor were performing identical duties as regular employees and that, therefore, without any evidence, it can be said that they were under the control, Management and Guidance of BHEL, secondly, when it said that alleged contracts that were awarded in favour of contractors and how many labours, in what type of work etc. where asked for not furnished, is also directly contrary to evidence laid on behalf of the BHEL in which such documents were specifically provided.

Lastly considering the earlier decisions of the Apx Court in ***Balwant Rai Saluju V. Air India Ltd (2014) Supra*** Para-65 (which is referred herein below in succeeding paras) held there is nothing on facts to show that the contract labour that is engaged, even *dehors* a provisional notification, is in the facts of this case sham. The appeal in the case before Hon'ble Apex Court is allowed. Setting aside the labour court awards.

61. Explaining the expression "Control and Supervision" the Apex Court in the case of ***International Airport Authority of India V. International Air Cargo workers and another (2009) 13 SCC 374*** in Para 38 & 39 of the judgement laid down the tests to find out that in fact there is a direct employment. It has further been observed in Para 38 & 39 as under:-

> ***"38"*** *The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*
>
> ***"39"*** *The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but this is secondary control. The primary control is with the contractor.*

62. Further in the case of ***Balwant Rai Saluja and another V. Air India Ltd. and others (Supra)*** the above cited view of the law has been relied in Para 65 as under:-

> ***"65"*** *The Vodafone case (supra), further made reference to a decision of the US Supreme Court in United States v. Best foods [141 L Ed 2d 43: 524 US 51 (1998)]. In that case, the US Supreme Court explained that as a general principle of corporate law a parent corporation is not liable for the acts of its subsidiary. The US Supreme Court went on to explain that corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, only if it is shown that the corporal form is misused to accomplish certain wrongful purposes, and further that the parent company is directly a participant in the wrong complained of. Mere ownership, parental control, management, etc. of a subsidiary was held not to be sufficient to pierce the status of their relationship and, to hold parent company liable.*

63. In ***Nil Giri Co-op. Marketing Society Ltd V. State of Tamilnadu 2004 last suit (SC) 142*** the Apex Court has observed as under.

> *It is submitted by the Respondents- Unions that, the documents executed between petitioner and the Contractors are bogus, sham, concocted, fraudulent and inadmissible in evidence. The same have been prepared to avoid the statutory liability to give permanency benefits to these workmen and to deprive them of their legitimate rights of equal work equal pay at par with the permanent employees of the petitioner. They submitted that, many alleged contractors have come and gone in last 20 years but the concerned workmen involved in the Reference have been continued in service. Had these concerned workmen been the*

employees of somebody else, their service would have been terminated at the time of changing the contractor and or terminating the earlier alleged contracts with the contractors.

The learned counsel for the Unions contended that though the notification dated 9th December, 1976 may have been abolished, however the notification dated 30th January, 1996 is very much in existence. The said notification is in respect of the Petitioner Company. The said notification covers the workers in this petition who are working in the establishment of the Petitioner. Though, the members of the Respondents are covered by the notification dated 30th January,1996, however, in breach of this notification, the petitioner continues to employ contract labour including the workmen concerned with this petition. Out of the 37 employees, 21 are working as a valve operator, 13 are working in housekeeping in plant area and 3 are working as helpers (Maintenance), all of which as per the 1996 notification are prohibited jobs. The employment of contract labour in specified jobs was prohibited as per the notification w.e.f. 01st March, 1996, yet the Petitioner continues to treat the workmen concerned as contract labour. The learned counsel for the Respondents submitted that nowhere in the evidence, the petitioner has denied that the workmen concerned are not squarely covered by the notification dt. 30th January, 1996.

64. In the General Manager(OST), ***Bengal Nagpur Cotton Mills, Rajnand Gao V. Bhart Lala and another (2011)(1) SCC 635*** it was held that the well recognised test of 'control and supervision' is explained in Para 12 as follows:-

The expression "Control and Supervision" in the context of contract labour was explained by this court in International Airport Authority of India V. International Air Cargo Workers' union thus: (SCC p. 388, paras 38-39.

*"**38.** if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*

***39.** The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/ allotted/ sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned / allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns / sends the worker to work under the principal employer, the worker to works under the supervision and control of the principal employer but that is secondary control."*

65. From this judgment it is clear that when it is proved in a case that the contractor pays the workman their wages secondly the principal employer cannot be said to control and supervise the work of the employees merely because he directs the workman of the contractor 'what to do' after the contractor assigns/allots the employee to the

principal employer. Precisely it explains the supervision and control of the principal employer that is secondary in nature as such control is exercised only after such workman has been assigned to the principal employer do a particular work. In the proved and admitted circumstances of the case in hand the contractor retained control and supervision over the workman to whom he employed to the work entrusted to him by the principal employer under the contract between them.

66. In the case of entering into contract between principal employer and the contractor to whom the work is allotted by the principal contract employer to be done through the 'contract labours' employed by him for a category of work under the said contract the Industrial adjudicator may have the occasion to decide whether it is sham and camouflage, only when the concerned contractor (s) are impleaded in the claim before it. The description and details of such contractor must be specifically pleaded in the claim with his impledment. The burden of pleading in this regard lies on the claimant union and the workman heavily. If would have been is done, then only the tribunal could have find itself in a position to force the management to produce the relevant document relating to the concerned 'contract' alleged to be sham and camouflage on the facts of the case. To declare illegal, void, sham and camouflage a non existent contract before it, the tribunal is not competent to give an omnibus finding for all contracts which had been or existing between the principal employer and the contractor irrespective of pre require conditions under Section 10 of the CLRA Act. The claim of the present case is almost speculative and uncertain with regard to which of the contractors and for which period they entered into the contract with CPWD for which category of work to be done. The pleading is vague and uncertain basing the claim before the tribunal on the misconception

of an omnibus prohibition of works to be done through the ‘contract labours’ for all kinds and categories of work in the establishment, simply for the only reason of the enactment of CLRA Act 1970 and Rules of 1971 framed thereunder. The present case is not relating to any contract between the principal employer (CPWD Management) and the concerned contractor whose contract labour was employed to do the work allotted to the contractor under such contract despite prohibition notification, if any issued by the Central Government, prohibiting contract labour in a particular category of works or categories of work in the establishment CPWD. Except the enactment of the CLRA Act no other ground for declaring the ‘contract’ Sham, is pleaded and proved in the claim before the Tribunal viz the availability of vacant post in CPWD, the non recruitment of regular and direct workmen by it and to save the expenses and statutory wages payable to the workers on their regular recruitment, entering into the contract with contractor to perform the ‘core activity’ of the establishment through contract labours, description and number of similarly circumstanced contract labours in the claim etc. It is not denied that payment in the bank account of the workman and other 6 contract labours like him were not made by the contractor. The allegation of paying below the minimum wages though pleaded but without evidence of person/authority who was paying so, whether the principal employer or the contractor. When the CPWD with all certainty asserted in it’s written statement that the master payer was the ‘contractor’ and no complaint of paying less than minimum wages received by the management at any point of time, the same is neither rebulted through the rejoinder nor proved in evidence by the workman.

67. There is no ground legally or factually pleaded and/or proved by the claimant and workman to whereupon the contract may be declared and adjudicated by this Tribunal to be sham and mere camouflage.

68. The number of contract labours employed the CPWD or the contractor to do the work entrusted by the CPWD is necessary to describe with complete detail in the claim statement so as to attract the applicably of the CLRA Act order the subject matter of the present case. The section 1 (4) & (5) of the CLRA Act provides:-

> *"**1.(4)** It applies-*
>
> *(a) to every establishment in which twenty or more workmen, art employed or were employed on any day of the preceding twelve months as contract labour.*
>
> *(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.*
>
> *Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.*
>
> ***1.(5)** (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.*
>
> *(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.*

Explanation.-*For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-*

(i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year".

69. The facts and circumstances proved and admitted in evidence by the parties to the 'dispute' establish that the contractor who was entrusted by the CPWD the job work of maintenance of Garden/Playground of Pushpvihar had employed a total number of 7 contract labours including the concerned workman Sanjay Kumar in the proved period of his employment commencing from 01.01.2016 upto the date of his termination 13.04.2016. It is not pleaded and proved whether CPWD had also employed the contract labour in addition to those employed by the contractor 'Virendra Kumar' and if yes, then how many contract labours. As such in the present case the subject matter does not find applicability of the CLRA Act.

1. Admittedly, there is no notification of prohibition under Section 10 (1) of the CLRA Act issued by the Appropriate Government (the Central Government) in respect of the management (CPWD) prohibiting employment of contract labour in any process, operation or other work in CPWD.
2. Maintenance of Garden is not a 'work' which may be treated as the core activity of the management (CPWD), moreover, the appropriate government has not declared the same as the work of

perennial nature. The said work comes witness the ambit to the other works entrusted to the CPWD by the government.

3. The ‘work’ of maintenance of playground/green belt in Pushpvihar was the subject matter of contract between the CPWD and the contractor.
4. The contractor to whom the CPWD entrusted the said work under a contract was selected in due course of inviting open tenders and after scrutiny of the lowest bid the successful contractor was asked to fulfill the tenders of executions of the contract.
5. For the year 2016-2017 the contractor so selected was ‘Virendra Kumar’ as pleaded in written statement by the management which remained unrebulted by the claimant by way of rejoinder to the written statement or proved otherwise in the evidence of the claimant.
6. The said contractor as pleaded and proved by the management employed 7 contract labour to perform the work under contract including ‘Sanjay Kumar’ on 01.01.2016.
7. Sanjay Kumar is the concerned contract labour for whose Single cause the claimant union sought the reference from the appropriate government and submitted the statement of claim in this tribunal (the industrial adjudication).
8. Sanjay Kumar the contract labour is proved to have been employed by the contractor on 01.01.2016 and admittedly terminated from employment as such on 13.04.2016 by the contractor. The claimant remained unsuccessful in establishing the master servant relationship the concerned workman and the management CPWD.
9. The claimant remained unsuccessful in proving the employment of Sanjay Kumar as contract labour employed by various contractors since 20.11.2006 or more specifically since 20.11.2010.

10. Admittedly during the period commencing from 01.01.2016 upto 13.04.2016 the concerned contract labour ‘Sanjay Kumar’ imparted manual labour on his employment by the contractor in the garden/playground Pushpvihar belonging to the management (CPWD) as such he comes within the ambit of ‘workman’ as defined I.D. Act and also under the CLRA Act.
11. The work of ‘Concerned Workmen’ alongwith other 6 contract labours was controlled and supervised by the contractor himself and not by any officer/official of the CPWD. The contractor who employed him was also ‘pay master’.
12. None of the contractors alleged by the claimant to have employed the concerned workman as contract labour for doing the work in CPWD premises are impleaded named, detailed and described in the statement of claim. There is no specific description of them in the body of the claim statement also.
13. The concerned workman is admittedly and proved not have been recruited directly by the CPWD.
14. No ground other than the enactment of CLRA Act is taken by the claimant to declare the contract of employing contract labours entered between the CPWD and the contractor is proved.
15. No hours of work in a day and the amount of wages paid to the concerned workman in plead and proved by the claimant. If is also not pleaded and proved that the regular employees of CPWD were employed to do the same work with the contract labour in a consolidated and integrated way on the workplace.
16. Neither the length of duration of employment as contract labour in the premises owned by CPWD is proved nor the control and supervision of work of the contract labours by the CPWD is proved by the claimant.

17. The espousal of claim of the single workman is not proved by the claimant union. Even the claimant General Secretary of the union could have proved his representative character for the cause of the single workman but the same is not done.
18. The concerned workman is not proved the member of claimant union nor of any other union of the same establishment or of any other labour union.
19. The claim of the concerned workman arose as individual dispute and remained as such without having bears transformed legally into an 'industrial dispute'.
20. Longevity of service could not be proved at least for 240 days in a year preceding the date of termination 13.04.2016. The concerned workman is not entitled to the retrenchment compensation from CPWD as workman of the principal employer.
21. Contractor(s) are not made party, therefore relief of compensation against the anonymous non parties can not be granted against them behind the back and against the unknown person.
22. For the reason of not seeking declaration against any specific and particular contractor/contractors, relief becomes inspecific, abstract and general against non existent contracts on record of the case. It can not be possible to declare such abstract contractors sham, bogus and camouflage.
23. Claim is found baseless. The concerned workman Sanjay Kumar S/o Sh. Ram Gopal Singh R/o E-42, Kondli, Delhi, shall not be treated as direct employee of the management to be regularized in the services of regular Mali in the establishment of CPWD. He being not regularly recruited and appointed in substantive and existing vacancy not entitled to the pay scale and other facility and benefits like the regular and direct counterpart of the management

(CPWD). He remained unsuccessful in establishing master servant relationship between him and the management CPWD. He was employed and removed from service by the contractor therefore he cannot be reinstated on the post of mali in the service of CPWD. There is no automatic absorption and regularization of contract labour in the concept in CLRA Act, of the service of the principal employer herein the present case the CPWD simply by reasons of enactment of CLRA Act, 1970, unless a notification of prohibition of employment of contract labours is issued by the appropriate government (the Central Government) u/s 10(1) of the CLRA Act in the category of work having been done by the concerned workman. Admittedly such notification is not issued in respect of the work in question relating to CPWD establishment.

70. The tribunal has not found any occassion and reason to declaree any contract sham and camouflage, entered in between the contractor and the establishment CPWD for the want of specification of impugned contract in the claim and the relief sought therein.

Order

The reference is answered aforesaid terms claim being baseless is rejected. An award is, accordingly passed. It be sent to the appropriate Government of Publication.

Justice Vikas Kunvar Srivastava (Retd.)
Presiding Officer
February 08, 2023

Vanshika Saini