

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15359 of 2024****With****CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 1 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 15359 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE M. K. THAKKER**

Approved for Reporting	Yes	No
	Yes	

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CADILA PHARMACEUTICALS LIMITED

Versus

XYZ ([REDACTED]) & ORS.

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Appearance:

SENIOR ADVOCATE MR.K.M.PATEL with MR ANUJ K TRIVEDI(6251) for
the Petitioner(s) No. 1

MR. RAJESHKUMAR S MISHRA(9946) for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER**Date : 25/02/2025****ORAL JUDGMENT**

1. Rule returnable forthwith. Learned advocate Mr.Rajeshkumar Mishra waives service of Rule on behalf of respondent.
2. With the consent of the parties, instead of deciding the

application for vacating interim relief, filed under section 226(3) of the Constitution of India, the matter was heard finally.

3. Being aggrieved with the order passed by the learned Assistant Labour Commissioner in IDR/2024/AHM/ 0665 dated 21.03.2024 by which dispute was referred to the learned Labour Court, present petitioner has filed the petition under Article 226 of the Constitution of India, 1950.

4. Facts needed for the disposal of the present case is as under:

4.1. Respondent no.1 was appointed by the petitioner as a Personal Assistant pursuant to an agreement dated 24.11.2022 for a period of one year till 24.11.2023. As per agreement, the respondent was drawing a salary of \$7500 i.e approximately Rs.6,00,000/- per month. In April 2023, the respondent no.1 filed complaint before Police Station, Vastrapur, Ahmedabad leveling several allegations against the Office of petitioner company. On 15.04.2023, respondent no.1 tendered resignation and petitioner has issued the service certificate, no objection certificate and relieving letter on 15.04.2023. Respondent no.1 has also

paid an amount of Rs.77,25,000/- as a full and final settlement towards basic salary for entire contractual period. As per the employment agreement, the respondent has also issued the receipt on 16.04.2023, confirming the above amount. Thereafter, on 20.04.2023, respondent stated on affidavit that she received all dues and she did not have any grievance against the petitioner or its Officers. This affidavit was also communicated to various authorities. Thereafter, respondent filed the private complaint before learned Chief Judicial Magistrate, Ahmedabad Rural being a criminal Inquiry No. 301 of 2023, alleging an offence punishable under section 376, 354, 323, 504, 506 of IPC and relevant sections of human trafficking as well as under section 160(6)(A) and 160(7)(A) of the IPC against erring police for not registering the F.I.R. The said complaint initially came to be dismissed by learned Magistrate. However, this Court has directed the learned Magistrate to pass an order of investigation to competent Officer under section 156(3) of the Cr.P.C.

4.2. Pursuant to the order passed by this Court, investigation came to be carried out, and a summary

report came to be filed on 19.02.2024. Respondent no.1 thereafter raised an industrial dispute before the learned Assistant Labour Commissioner on 07.03.2024 and claimed that her services shall be reinstated with all consequence benefits. The present petitioner filed a reply on 20.03.2024, disputing the allegations and contending that there is no dispute exists or apprehended between the petitioner and the respondent and it was also claimed that respondent does not fall under the umbrella of workmen provided under section 2(s) of the Act,1947 as well as in view of the settlement arrived between the parties and the amount received, dispute does not exists. Learned Assistant Labour Commissioner before arriving to the conclusion that any industrial dispute exist or not, referred the same to the learned labour court which is subject matter of challenge before this Court.

5. Heard learned senior advocate Mr.K.M.Patel with learned advocate Mr.Anuj.K.Trivedi, learned advocate for the petitioner and learned advocate Mr. Rajeshkumar Mishra for the respondent no. 1 as well as learned AGP Ms.Surbhi Bhati for respondent no.2 and 3.

5.1. Learned senior advocate Mr.K.M.Patel has submitted

that an order referring the alleged dispute, learned labour Court has passed, after a year of the resignation of the respondent no.1, after accepting an exorbitant amount of Rs.77,25,002/- towards her pending dues i.e balance salary for the entire contract period of one year and also had tendering the affidavit to that effect. Learned Assistant Labour Commissioner, without even asserting the fact that whether dispute exists or not, mechanically refers the question as to whether industrial dispute can be said to have arisen without arriving to a *prima facie* satisfaction, existence of dispute and therefore, order of reference requires to be set aside. It is further submitted by the learned Senior advocate Mr.K.M.Patel that reference order has been passed without considering the delay in raising the claims and without determining as to whether the dispute exist or not. It is submitted by the learned Senior advocate Mr.K.M.Patel for the petitioner that each dispute can be referred to the learned labour court only if learned Assistant Labour Commissioner is satisfied that there is an existence or apprehension of industrial dispute. It is further submitted by the learned Senior advocate Mr.K.M.Patel that respondent no.1 is a

foreign national and was highly trained professional person and was paid over Rs.6,25,000/- per month and other benefits, including accommodation, insurance, income tax paid by the petitioner company, emoluments, and allowances. It is submitted by learned Senior advocate Mr.K.M.Patel that by no stretch of imagination, respondent no.1 can be said to be workmen under section 2(s) of the Act.

5.2. It is further submitted by the learned Senior advocate Mr.K.M.Patel that the reference was made which is abuse of process of law and to harass the petitioner company as statement which was claimed after expiry of contract period of one year and after receiving the settlement amount of Rs.77,25,000/- which is over and above her salary for entire contract period of one year. Learned senior advocate Mr.K.M.Patel has relied on following decisions and prayed that order of reference passed by the learned Assistant Labour Commissioner be set aside as there is no dispute exist or apprehended between petitioner and respondent:

(i) AIR 1989 SC 1565 Telco Convoy Drivers Mazdoor Sangh & Anr. Vs. State of Bihar & Ors.

5.3. As against the same, learned advocate Mr.Mishra appearing for respondent no.1 has submitted that present petition is not maintainable as terms referred by the Officer of Commissioner of labour dated 20.04.2024 is yet to be adjudicated. It is submitted that the proceedings before the learned labour court has already started and petitioner company sought time to file written statement. Accordingly, the matter was adjourned and by adopting the delay tactics instead of filing the written statement before the learned labour court petition was filed before this Court challenging the order of reference and this Court has granted the stay vide order dated 28.10.2024. It is further submitted learned advocate Mr.Mishra that resignation on which the reliance was placed by the learned senior advocate Mr.Patel for the petitioner was taken forcefully in the police station and therefore, learned Authority has rightly referred the dispute to the learned labour court. Learned advocate Mr.Mishra has further submitted that whether the respondent is falling under the definition of 2(s) or not is mixed question of law and fact and therefore, learned Assistant Labour Commissioner has rightly referred the dispute to decide

that whether the respondent is workmen and dispute exists or not? It is further submitted by learned advocate Mr.Mishra that learned Commissioner is having the powers to pass administrative orders without going into the merits of the matter and therefore no error has been committed by the learned Commissioner in referring the dispute to the learned labour Court. Submitting the same, learned advocate Mr.Mishra has requested to dismiss the petition and confirm the order of reference. Reliance is placed on the judgment of the Apex Court ***Bloomberg Television Production Services India Pvt. Ltd. & Ors. Vs Zee Entertainment Enterprises Ltd. Reported in (2025) 1 SCC 741.***

5.4. The above decision relied by the learned advocate for the respondent is pertaining to vacating of ex-parte ad-interim relief, however, as this Court has finally decided this matter therefore, the said judgment would have no relevance in the present case.

5.5. Learned AGP Ms.Surbhi Bhati appearing for respondent no.2 and 3 supported the order and submitted that learned Commissioner has rightly referred the dispute to decide preliminary question that, whether the

respondent is workman within the meaning of industrial disputes or not along with the relief of reinstatement claimed by the respondent. Learned AGP Ms.Surbhi Bhati has relied on the decision rendered by this court in the case of ***Arjunbhai Amritbhai Nayak versus State of Gujarat reported in 2000 4 GLR 3015*** and submitted that while entertaining the complaint under section 2A of the Act, 1947, jurisdiction is very limited and learned Commissioner would not have any power to adjudicate any dispute or issue arising between the parties. It is further submitted that by learned AGP Ms.Surbhi Bhati that learned Commissioner cannot go to the merits at the stage of referring the dispute under section 10(1) of the Act 1947. Therefore, no error has been committed by the learned Commissioner while referring the dispute.

6. Having heard the learned advocates for the respective parties and perusing the records as well as the terms of the reference which is impugned before this Court is required to be referred which is reproduce hereinbelow:

“(1) Whether it (the applicant) falls under the definition of the employee as per Section 2(S) of Industrial Disputes Act, 1947 or not ?

(2) As per the application of the applicant, whether the right (of the

applicant) is been established as per the Industrial Disputes Act or not ?

(3) Whether the Industrial Dispute is been established regarding the said matter or not ?

(4) Whether the applicant be reinstated in the service at his original place along with the back wages of unattended days by considering his continue service or not ? ”

7. To decide the moot question of the Court that whether the learned Assistant Commissioner is justified in referring the dispute in above terms, relevant provisions of the I.D.Act, 1947 are required to be referred, which are reproduced hereinbelow:

12. Duties of conciliation officers.—*(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.*

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government 2 [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, 3 [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: [Provided that, 2 [subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

10. Reference of disputes to Boards, Courts or Tribunals.—*(1) 1 [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,—*

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[(c) refer the dispute or any matter appearing to be connected with,

or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

[Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

[Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]

[(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the

dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.]

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, 6 [Labour Court, Tribunal or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

[(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or

National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.]

(3) Where an industrial dispute has been referred to a Board, 1 [Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

[(4) Where in an order referring an industrial dispute to 2 [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, 3 [the Labour Court or the Tribunal or the National Tribunal, as the case may be], shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a 4 [Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]

[(6) Where any reference has been made under sub-section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate

upon any matter which is under adjudication before the National Tribunal, and accordingly,—

(a) if the matter under adjudication before the National Tribunal is pending a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

[Explanation.—In this sub-section, “Labour Court” or “Tribunal” includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.]

[(8) No proceedings before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate

Government.]

Section 2(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

[(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;]

8. The definition of industrial dispute opens with an employee’s very general words of wide applications. The definition is in three parts, (i) there must be a dispute or difference (ii) the dispute or difference must be between

the employers and employers or between the employers and workmen or between workmen and workmen, (iii) the dispute or difference must be connected with the employment or with the conditions of labour, of any persons. The first part refers to the factum of real dispute, the second part to the parties to the dispute and third part to the subject matter of that dispute. That subject matter may relate to any of two matters (i) employment or non employment and (ii) terms of employment of condition of labour of any person, these necessarily import a limitation. A person in respect of whom the employer-employee relation never existed or can never possibly exist cannot be be subject matter of dispute.

- 8.1. Section 12 defines the duties of the Conciliation Officers. The section provides that he is required to investigate and ascertain the facts, apply objectives standards of facts found and he has to determine whether there is a *prima facie* case and the existence or apprehension of the industrial dispute is there or not. The Conciliation Officer has to send his report to the appropriate government under section 12(4) and that

report must set forth the steps taken by the officer to ascertain the facts and circumstance relating to the dispute and for bringing about a settlement thereof together with full statement of such facts and circumstance and the reasons on account of which his opinion a settlement could not be arrived at. The object of requiring the Conciliation Officer to make such full and detailed report is to upraise the government of all the relevant facts including the reasons of failure of conciliation so that government may be in the possession of the relevant material on which it can decide what course to adopt under section 12(5).

- 8.2. Section 10 empowers the appropriate government to make reference to any one of the authorities name in the section with a view to setting in motion the machinery for adjudication of industrial dispute. Section 10 is fountain source of the powers of the appropriate government to make reference to achieve the object of the Act, 1947. This section empowers the appropriate government to make reference to an industrial dispute to the Labour Court if the dispute is in respect of the matter specified in II Schedule or to an industrial tribunal if it is a matter

specified in the II Schedule or III Schedule. The jurisdiction of the Labour Court and Industrial Tribunal is therefore, limited to determination of dispute which falls the respective define areas and therefore, the dispute which can be referred for adjudication has to be, of necessity, an industrial dispute which would clothe the appropriate government with power to make the reference and learned Labour Court to adjudicate it.

9. It transpires form the above terms that formation of the opinion which is the preliminary stage in discharge of the functions under section 10(1) and is condition precedent to the exercise of power by the appropriate government is lacking. The appropriate government in the opinion of this court has to form the opinion that any industrial dispute exist or is apprehended. The power to make reference for adjudication would arise as soon as it forms such opinion and that opinion is naturally formed before order of reference is made. In the instant case, the order of reference was made without arriving to the subjective satisfaction regarding existence of the dispute. The second defect in the order of reference is that existence of jurial relationship is required to be examined which

decided the jurisdiction of the learned court. In the scheme of the act, the employer-employee relationship between management and the worker concerned is *sine qua non* for holding that workman of the employer from whom they claimed relief. Making a reference presupposes an accepted position by the government that their exists relationship of employer and the workman which can alone can give rise to an industrial dispute. The act clearly implies that there must exist a relationship of employer and employee to the parties to the *lis*. There is no doubt that the employee is a workman or not involves a mix question of law and facts which can be concluded on scrutinizing evidence which is not permissible at the stage of making reference however, *prima facie* opinion is must before making order of reference. In absence of such, the government precluded from forming an opinion as to existence or apprehension of industrial dispute. An order of reference cannot be made mechanically without forming an opinion and for that formation of such necessary opinion the appropriate government must be satisfied that a person whose dispute is being referred for adjudication is “workman”. If the dispute is not between

the employer and his workman, it is not an 'industrial dispute' and in that event government may refuse to refer the dispute.

10. The material placed before the government by the respondent which is in nature of employment agreement dated 14.10.2022, the salary slip of February-April, 2023, formal resignation dated 15.04.2023, experience certificate and the copy of full and final settlement dated 16.04.2023. Relying on the above document, terms were framed and the dispute was referred before the learned Industrial Court. It appears that appropriate government has acted as post office and without applying its mind the order of reference is passed. This Court is agreed with the submission of the learned AGP Ms.Surbhi Bhati and the decision relied in the case of **Arjunbhai Amritbhai Nayak** (supra) wherein, it is held that the learned Commissioner would not have power to adjudicate the dispute while referring the dispute under section 10(1) of the Act, 1947. However, this Court is of the view that only condition which exercise of that power to satisfy is that there should be existence and apprehension of industrial dispute.

11. This Court has referred the decision rendered by the Apex court in the case of ***Rahman Industries (P) Limited versus State of UP reported 2016 12 SCC 420*** wherein it is held that in the scheme of Industrial Dispute Act 1947, it is not as if the government has to act as a post office by referring each and every petitions received by him. The government is well within its jurisdiction to see whether there exist a dispute worth referring for adjudication. No doubt, the government is not entitled to enter finding on merits of the case and decline reference but the government has to satisfy itself, after applying its mind to the relevant factors and satisfy itself to the existence of dispute before taking a decision to refer the same for adjudication.
12. It transpires from the above order that appropriate government without satisfying, it, said on facts and circumstances brought to its notice that an industrial dispute exist or apprehended, passed an order making a reference under section 10 of the Act. It is held by the Apex Court in the case of ***Sultan Singh versus State of Haryana reported in 1996 2SCC 66*** that an order issued under section 10 of the Act is an administrative

order and the government is entitled to go into the questions whether industrial disputes exist or is apprehended, and it will be only a subjective satisfaction on the basis of material on record and being an administrative order no *lis* is involved. The law on the point was briefly summarised (page 42 orange page) in the case of ***Secretary, Indian Tea Association versus Ajit Kumar Bharat and others reported in 2000 3 SCC 93***, the Apex Court has held as under:

“10.Before making a reference under Section 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

11.In the present appeal we find that the State Government rightly approached the question whether respondent No, 1 was a workman. Unless this condition is satisfied no reference can be made.

12.From the order of the State Government we find that while deciding the question whether respondent No. 1 was a workman, it took into consideration the salary and allowances of respondent No, 1 drawn at the relevant time and also the nature of work. Respondent No. 1 who has appeared in person did not dispute the salary and allowances etc. as indicated in the order of the Government but urged that his responsibilities were neither supervisory nor managerial in nature. Mr. Gupta, learned senior counsel appearing for the appellant has drawn our attention to the circular dated 30th March 1994 issued by the appellant-association. This circular indicates duties of respondent No. 1 who was

functioning as a Joint Secretary at the relevant time and we find Ms duties were to deal with ail legal matters and proceedings, labour and land laws and publications (Labour legislations Labour welfare). We also find from the records that respondent No. 1 had power to sanction expen-ses incurred in litigation by the appellant. On the above materials on record the State Government rightly formed the opinion that respondent No. 1 was not a workman.”

13. The decision by the Apex Court, in the case of **Ram Avtar Sharma versus State of Haryana reported 1985 3 SCC 189** if referred, wherein para 6 it is held as under:

“6.The view that while exercising power under Sec. 10(1), the Government performs administrative function can be supported by an alternative line of reasoning, Assuming that making or refusing to make a reference under Sec. 10(1) is a quasi judicial function, there is bound to be a conflict of jurisdiction if the reference is ultimately made.A quasi- judicial function is to some extent an adjudicatory function in a list between two contending parties The Government as an umpire, assuming that it is performing a quasi-judicial function when it proceeds to make a reference, would imply that the quasi-judicial determination of lis prima facie show that one who raised the dispute has established merits of the dispute. The inference necessarily follows from the assumption that the function performed under Sec. 11)(1) is a quasi-judicial function. Now by exercising power under Sec. 10, a reference is made to a Tribunal for adjudication and the Tribunal comes to the conclusion that there was no merit in the dispute, Prima facie a conflict of jurisdiction may emerge. Therefore the view that while exercising power under Sec. 10(1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is

beyond the pale of controversy.”

14. In view of above, this Court is of the view that impugned order making reference to the learned labour Court to decide that whether industrial disputes exist or not, respondent is a workmen or not is without arriving to the subjective satisfaction by the learned commissioner. Therefore, matter is required to be remanded back to the learned Assistant Labour Commissioner with direction that learned Assistant Labour Commissioner shall form *prima facie* opinion as to whether an industrial dispute exist or apprehended and on arriving to the subjective satisfaction, appropriate order be passed.
15. So far as the contention raised by the learned advocate Mr.Mishra for the respondent with regard to the maintainability of the present petition is concerned, this Court has referred the decision render by the Apex Court in the case of ***National Engineering Industries Limited versus State of Rajasthan and others reported in 2000 1SC 371***, wherein the Apex Court has held as under:

“24.It will be thus seen that High Court has jurisdiction to entertain a writ petition when mere is allegation that there is no industrial dispute and none apprehended which could be subject matter of

reference for adjudication to the Industrial Tribunal under Section 10 of the Act, Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment,

as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter, A settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. Recognized union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings is binding on the members of the workers' union as laid down by section 18(3) (d) of the Act . It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of Unions that are signatories to such settlement under section 12(3) of the Act Act is based on the principle of collective bargaining for resolving Industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of P. Virudhanchalam & Ors. v. Management of Lotus Mills & Anr., [1998] 1 SCC650. In all these negotiations based on collective bargaining individual workman necessarily records to the background Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

16. Learned Commissioner has relied on the decision render in **Special Civil Application No. 1414 of 1996** dated 24 March 2004, which was challenged further before the division bench. However, due to lapse of time the learned

division bench has disposed of the LPA No.2663 of 2004 by making following observations:

“It is agreed between the parties that by lapse of time and subsequent events, the appeal has become infructuous. It is accordingly dismissed.

As the appeal is dismissed, Civil Application No.10323of 2004 stands disposed of.”

17. In view of above discussion, this Court is of the view that reference in the present form is clearly defective. It does not suggest of application of mind with regard to the forming a *prima facie* opinion as to whether there is industrial dispute between employer- workman concerned exists or was apprehended. Therefore, impugned order of reference passed by the learned Assistant Labour Commissioner in IDR/2024/AHM/0665 dated 21.03.2024 is hereby set aside and the reference is remanded back to the appropriate government to pass fresh orders after arriving to the subjective satisfaction regarding the existence of the industrial dispute.
18. Resultantly, this petition is allowed in above terms. Rule made absolute to that extent.

Order in Civil Application:

In view of the order passed in the main petition, civil application is disposed of.

ARCHANA S. PILLAI

(M. K. THAKKER,J)