IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 9465 OF 2022 (L-RES)

BETWEEN:

KARNATAKA GENERAL LABOUR UNION ®
M/S ITI LTD UNIT
A TRADE UNION REGISTERED UNDER
THE TRADE UNIONS ACT, 1926
AFFILIATED TO THE ALL INDIA CENTRAL
COUNCIL OF TRADE UNIONS (AICCTU)
HAVING ITS REGISTRED ADDRESS AT
NO.16/7, MUNI KADIRAPPA LAYOUT
GRAPHITE INDIA ROAD
HOODY, BANGALORE-560048
REPRESENTED BY ITS UNIT PRESIDENT

... PETITIONER

(BY SRI. CLIFTON D'ROZARIO., ADVOCATE OF
MANTHAN LAW)

AND:

1. GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
MINISTRY OF COMMUNICATIONS
SANCHAR BHAWAN
20, ASHOKA ROAD
NEW DELHI-110001.
REPRESENTED BY ITS SECRETARY

2. GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
SHRAM SHAKTI BHAWAN
RAFI MARG
NEW DELHI-110001.
REPRESENTED BY ITS SECRETARY

3. CHIEF LABOUR COMMISSIONER (C)
SHRAM SHAKTI BHAWAN
RAFI MARG
NEW DELHI-110001.

4. DEPUTY CHIEF LABOUR COMMISSIONER
SHRAM SADAN, 3RD CROSS, 3RD MAIN
TUMKUR ROAD
YESHWANTHPUR
BENGALURU-560022.

5. INDIAN TELEPHONES LIMITED
A CENTRAL PUBLIC SECTOR UNDERTAKING OF
THE UNION OF INDIA
REGISTERED AND CORPORATE OFFICE AT
ITI BHAWAN
DOORAVANINAGAR
BENGALURU-560016
REPRESENTED BY ITS CHIEF MANAGING DIRECTOR

6. INDIAN TELEPHONES LIMITED
BENGALURU PLANT
ITI BHAWAN
DOORAVANINAGAR
BENGALURU-560016
REPRESENTED BY THE UNIT HEAD

… RESPONDENTS

(BY SRI. H. SHANTHI BHUSHAN, DEPUTY SOLICITOR
GENERAL OF INDIA FOR R1 ADN R2;
SRI. BHOJEGOUDA T. KOLLER, AGA FOR R3 & R4;
R5 AND R6 ARE PLACED EX-PARTE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING THE 5TH RESPONDENT TO IMMEDIATELY UNDERTAKE THE RE-EMPLOYMENT OF ALL 80 WORKERS (AS PER ANNEXURE-A) IN ITS ESTBLISHMENT AT BENGALURU, WITHOUT PREUJUDICE TO THEIR CLAIMS FOR

REGULARIZATION, WITH PAYMENT OF WAGES W.E.F 01.12.2022 AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 02.02.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

O R D E R

1. The petitioner is before this Court seeking for the following reliefs:

a) Issue an appropriate writ, order or direction directing the 5th Respondent to immediately undertake the re-employment of all 80 workers (as per Annexure-A) in its establishment at Bengaluru, without prejudice to their claims for regularization, with payment of wages w.e.f. 01.12.2022

b) Issue an appropriate writ, order or direction to the 5th Respondent to continue with the guised contract workers in their respective posts till they are replaced by regularly selected candidates or until they succeed in their claims for regularization.

c) Issue an appropriate writ, order or direction to the 3rd Respondent to take immediate action and prosecute the 5th Respondent for violation of Sections 25Q, 25U and 31 as detailed in the complaint dated 02.12.2021 (placed as Annexure-Q)

d) Issue any other order or orders as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case including the costs of this writ petition, to meet the ends of justice.

FACTS:

2. The petitioner is a Trade Union registered under the Trade Unions Act, 1926, who claims to be a sole bargaining agent for the workers guised as contract workers employed with respondent No.5-Indian Telephone Limited. The petitioner claims that 5th respondent has refused employment to 80 workers since 1.12.2021 though they had been employed in the services of 5th respondent for a period of 3 to 38 years. The petitioner claims that the 5th respondent, a Government Company is a Central Public Sector undertaking functioning under the control of 1st respondent-Department of Telecommunications. 5th Respondent has 25 Marketing centres in India and at about 17 manufacturing locations manufacturing a range of Information and Communication Technology (ICT) products/solutions and Encryption Products. The petition has been filed challenging the illegal and untenable actions of respondent No.5 in refusing

employment to 80 workers since 1.12.2021 though they have been employed and in the services of respondent No.5 for 3 to 38 years. It is contended that the same is done so as to deny the legitimate rights of the workman.

3. It is alleged that 5th respondent has engaged in gross unfair labour practice by entering into sham contracts with various contractors who are mere name lenders to camouflage relationship of employer-employee with those workers. The petitioner-Union espoused the cause of 80 workmen on account of 5th respondent refusing employment to 80 workers since 1.12.2021.

CONTENTIONS OF THE PETITIONER-UNION:

4. Sri.Clifton Rizario, learned counsel for the petitioner-Union submits that,

4.1. Though these workmen have been guised as contract workers, they are in-fact permanent employees of the 5th respondent performing core work of engineers, quality assurance, quality test, lab assistants, data processing, finance, drivers, office assistants, etc. many of whom have been engaged in several defence projects.

4.2. Amongst various projects these workmen have been engaged in the Advanced Data Processing Research Institute (ADPRI) is a part of ISRO, engaged in the defence communication network Army Static Switched Communication Network - IV (ASCON-IV) with Indian Army with Assam Rifles for production of IP Encryptors used for satellite communication. Engaged in Network for Spectrum, Multi-Channel Encryption Unit; Production, installation and maintenance of Military Pulse Code Modulation for the Indian Army. All these works have been carried out by

the workmen on account of contracts entered into between the 5th respondent and those entities and the 5th respondent deputed the workmen to carrycut the aforesaid services.

4.3. Many of the workmen have also been deputed for outstation work on several sensitive projects with DRDO, UIDAI, Defence Department and have travelled to all parts of the country on the work of 5th respondent.

4.4. On the basis of above, he submits that the workmen perform core and perennial work, but have been deprived of their statutory rights and permanent status by an act of subterfuge resorted to by 5th respondent. The contractors under whom the workmen are supposed to be working are name lenders. The contractors have come and gone, but the workmen continued to render the same service under each of the contractors without any interruption.

4.5. There is no issue or trouble until the year 2020 when on account of the Covid-19 pandemic the workers came together as a collective to form a Union on account of they not being paid wages during the lockdown period from 23.03.2020 to 25.05.2020. One another reason why they came together was on account of illegal retrenchment of about 250 workers from 01.07.2020 by the 5th respondent Realising that the workmen's work was not being recognized by the 5th respondent and 5th respondent unilaterally, without any cause or reason, terminated the services of the workmen. When they sought for permanency by raising an industrial dispute, instead of granting permanency, respondent No.5 unilaterally reduced the wages of several workers from 01.07.2020 and in many cases paying less than minimum wages despite the clarification having been issued by the Central Government that all

employers have to make payment of the due salaries without deduction during the lockdown period whether the workmen worked or not.

4.6. In view thereof, the Union had to file proceedings under Minimum Wages Act and thereafter proceedings were filed before the Regional Labour Commissioner (Central) for declaration that the workmen were permanent regular workmen of the 5th respondent. At this stage, the officials of the 5th respondent threatened the members of the petitioner-Union and some of them were illegally terminated from service and refused back into employment.

4.7. The Regional Labour Commissioner taking note of the above, advised the 5th respondent on two occasions i.e. on 12.10.2021 and 16.11.2021 to maintain status-quo during the pendency of the conciliation proceedings and that no action to be taken for removal or otherwise of any of the

workman. At this stage, the 5th respondent refused to go by the advice of the Labour Commissioner/Conciliator, which resulted in the conciliation ending in failure. Even when the proceedings were pending conciliation on 01.12.2021 at 8.00 a.m., 5th respondent unilaterally and without notice stopped them from entering the 5th respondent - establishment and refused work on the ground that a new contractor had been employed to whom 270 workers had been brought to site.

4.8. One adhoc/temporary worker cannot be replaced by another adhoc temporary worker and as such action on part of 5th respondent is illegal. The entire reason why the aforesaid actions have occurred is on account of the workmen forming a Union which is not to the liking of the officials of the 5th respondent. These illegalities were brought to the attention

of respondent No.1-Department of Telecommunications.

4.9. On 14.12.2021 the Regional Labour Commissioner conducted a conciliation between the Union and the 5th respondent, when the Conciliator advised the Management to allow 50 workmen to resume work. The 5th respondent, however, refused to heed to the said advise and continued to deny employment to the workmen. Thereafter on the next date the 5th respondent did not attend the conciliation resulting in the conciliation being adjourned without the next date being fixed.

4.10. This fact being taken cognizance of by 3rd respondent - Chief Labour Commissioner (Central), New Delhi. The 3rd respondent advised the 5th respondent to take cognizance of the services rendered by the workmen and find a solution to amicably settle the dispute. Despite the Union communicating to the

management of their intention to meet and settle the issue by holding bilateral discussion, there is no response received from the 5th respondent.

4.11. It is in that background that the Union submitted a complaint seeking for prosecution of the management for violation of Section 25Q, 25U and 31 of Industrial Disputes Act, 1947 [‘I.D. Act’ for short] on 02.12.2021, 3rd respondent addressed a letter dated 19.01.2022 to the fourth respondent for action to be taken against 5th respondent for violation of Section 33 and 25U of the I.D.Act. However, 4th respondent has not taken any action except for holding conciliation meeting. 4th Respondent made several suggestions to the Union in the meeting held on 04.02.2022.

4.12. In the next meeting held on 08.02.2022 it was brought to the notice of the conciliator that several of the dues, including lockdown wages

and provident fund, had not been deposited, and a request was made for payment of the amounts.

4.13. The workmen with the support of various other organizations had a sit-in day and night since 01.12.2021. Though 5th respondent assured that they would find a resolution and a memorandum was submitted, no action was taken. In the conciliation meeting held on 21.02.2022, 5th respondent offered to immediately employ 15-20 of the employees and the rest in a phased manner when the Union requested the 5th respondent for taking back atleast 40 workers, which was also advised by the 4th respondent, but the same was not done. In further conciliation meetings held on 04.03.2022 and 16.03.2022, the management agreed to take back 20-25 workmen. On 17.03.2022 it was agreed that management would take back 35 workmen

immediately and rest as early as possible and were to meet on 19.03.2022 to arrive at the names of 35 persons. However, on 19.03.2022 there was no meeting held and it was informed that the meeting would be held on 25.03.2022. However, no meeting was held. A request was again made on 25.03.2022 and 29.03.2022 to implement the agreement arrived on 17.03.2022, no action was taken. It is in that background, that the Union without option drew the attention of the 4th respondent to the refusal of 5th respondent to implement the understanding. In that background on 1.4.2022 the 4th respondent issued a communication stating that the dispute has been settled with 5th respondent agreeing to take back 35 workmen immediately and the remaining in a phased manner. However, on 11.04.2022, the 5th respondent had contended that there is lack of cooperation from the workmen and the Union

for implementation of the agreement. Thereafter several communications followed for implementation of the settlement which continued to be ignored by 5th respondent. The upper management of the 5th respondent continued to ignore and not attend any of the meetings.

4.14. 5th respondent filed W.P. No.8895/2022 seeking for interim relief of stay of further conciliation proceedings which was granted despite a caveat having been filed.

4.15. 80 workmen have been working with the 5th respondent from 3-38 years guised as contract workers under sham contracts even though they have been working and discharging their functions at defence and national building projects. 80 workmen have been targeted and victimized for the sole reason that they formed Union and sought for payment of their just

dues, 5th respondent had not adhered to the settlement arrived at during the course of conciliation proceedings. The action of 5th respondent is violative of Article 21 of the Constitution, as also 19(1)(g), 19(1)(c) thereof. An agreement having been arrived at on 17.3.2022 during the conciliation proceedings, the same is binding on the parties and in this regard he refers to Section 2(p) of the I.D. Act which reads as under:

> ***2(p)*** *"**settlement**" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]*

4.16. By referring to and relying upon Section 18(3) of the I.D. Act, he submits that any settlement

arrived during the course of conciliation proceedings would be binding on all parties to the dispute and in breach thereof proceedings under Section 29 could be initiated as regards the unfair practice adopted by the employer, more particularly on account of the employer having violated Section 25-T and 25-U of the ID Act which are reproduced hereunder for easy reference:

> ***25T. Prohibition of unfair labour practice****.- No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.*
>
> ***25U. Penalty for committing unfair labour practices****.-Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.*

4.17. The 5th respondent has been delaying the matter, has been falsely contending that there could be settlement arrived at and involved the

petitioner-Union in conciliation proceedings which were a complete hogwash on account of 5th respondent not being truly interested in settlement but only delaying the matter. The 5th respondent has approbated and reprobated having agreed to take back 35 workmen, the same not being done, therefore, this court ought not to permit such kind of action.

4.18. The 5th respondent by refusing employment to the members of the petitioner Union has violated Section 33 of the I.D. Act, thereby victimized the workmen. Section 33 of I.D. Act is reproduced hereunder for easy reference:

> ***33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-*** *(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--*

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the

proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.--For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being [a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five

protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

4.19. The 5th respondent has continued to deprive the workmen of the salutary safeguards provided by the legislature against victimization. He

reiterates that 5th respondent has involved itself in unfair labour practice in terms of Section 2(ra) of the I.D. Act which is reproduced hereunder for easy reference:

> *2(ra) "unfair labour practice" means any of the practices specified in the Fifth Schedule.*

4.20. 5th respondent has violated Section 25T of the ID Act and 5th respondent has indulged in unfair labour practice in terms of Item (iv) and (v) of the V Schedule of I.D. Act which read as under:

> *4. To encourage or discourage membership in any trade union by discriminating against workman, that is to say-*
>
> *(a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;*
>
> *(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);*
>
> *(c) changing seniority rating of workmen because of trade union activities;*

(d) refusing to promote workmen to higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union:

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen-

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domes enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or

service of the workman, thereby leading to a disproportionate punishment.

4.21. The 5th respondent has not heeded to the advise of the conciliator. 5th respondent being an instrumentality of the State ought to be a model employer instead of being so, the 5th respondent is acting contrary to law.

4.22. The 5th respondent has replaced members of the petitioner-Union workers with contact workers which is not permissible after a long period of time. The members of the petitioner-Union have a legitimate expectation that their services are continued and would be regularized.

4.23. In support of the above contentions, learned counsel relies on the following decisions:

4.24. In the case of [1]***Tata Iron and Steel Co. Ltd. v. S.N. Modak*****,** more particularly para 5 and 8

[1] **[AIR 1966 SC 380]**

thereof which are reproduced hereunder for easy reference:

> ***5.*** *Reverting then to the question of construing Section 33 of the Act, we may refer to some general considerations at the outset. Broadly stated, Section 33 provides that the conditions of service, etc. should remain unchanged under certain circumstances during the pendency of industrial adjudication proceedings. It is unnecessary to refer to the previous history of this section. It has undergone many changes; but for the purpose of the present appeal, we need not refer to the said changes. We are concerned with Section 33 as it stands after its final amendment in 1956. Section 33 consists of five sub-sections. For the purpose of this appeal, it is necessary to read sub-sections (1) and (2) of Section 33:*
>
> *"(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—*
>
> *(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service application to them immediately before the commencement of such proceedings; or*
>
> *(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.*
>
> *(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may in accordance with the standing orders applicable to a workman concerned in such dispute—*

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

A reading of the above two sub-sections of Section 33 makes it clear that its provisions are intended to be applied during the pendency of any proceeding either in the nature of conciliation proceeding or in the nature of proceeding by way of reference made under Section 10. The pendency of the relevant proceeding is thus one of the conditions prescribed for the application of Section 33. Section 33(1) also shows that the provisions of the said sub-section protect workmen concerned in the main dispute which is pending conciliation or adjudication. The effect of sub-section (1) is that where the conditions precedent prescribed by it are satisfied, the employer is prohibited from taking any action in regard to matters specified by clauses (a) and (b) against employees concerned in such dispute without the previous express permission in writing of the authority before which the proceeding is pending. In other words, in cases falling under sub-section (1), before any action can be taken by the employer to which reference is made by clauses (a) and (b), he must obtain the express permission of the specified authority. Section 33(2) proceeds to lay down a similar provision and the conditions precedent prescribed by it are the same as those contained in Section 33(1). The proviso to Section 33(2) is important for our purpose. This proviso shows that where action is intended to be taken by an employer against any of his employees which falls within the scope of clause (b), he can do so, subject to the requirements of the proviso. If the employee is intended to be discharged or dismissed, an order can be

passed by the employer against him, provided he has paid such employee the wages for one month, and he has made an application to the authority before which the proceeding is pending for approval of the action taken by him. The requirements of the proviso have been frequently considered by Industrial Tribunals and have been the subject-matter of decisions of this Court as well. It is now well-settled that the requirements of the proviso have to be satisfied by the employer on the basis that they form part of the same transaction; and stated generally, the employer must either pay or offer the salary for one month to the employee before passing an order of his discharge or dismissal, and must apply to the specified authority for approval of his action at the same time, or within such reasonably short time thereafter as to form part of the same transaction.

It is also settled that if approval is granted, it takes effect from the date of the order passed by the employer for which approval was sought. If approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative, and the employee can legitimately claim to continue to be in the employment of the employer notwithstanding the order passed by him dismissing or discharging him. In other words, approval by the prescribed authority makes the order of discharge or dismissal effective; in the absence of approval, such an order is invalid and inoperative in law.

7. *It is quite clear that Section 33 imposes a ban on the employer exercising his common-law, statutory, or contractual right to terminate the services of his employees according to the contract or the provisions of law governing such service. In all cases where industrial disputes are pending between the employers and their employees, it was thought necessary that such dispute should be adjudicated upon by the Tribunal in a peaceful atmosphere, undisturbed by any subsequent cause for bitterness or unpleasantness. It was, however, realized that if the adjudication of such disputes takes long, the employers cannot be prevented absolutely from taking action which is the subject-matter of Section 33(1) and (2). The legislature, therefore, devised a formula for reconciling the need of the employer to have liberty to*

take action against his employees, and the necessity for keeping the atmosphere calm and peaceful pending adjudication of industrial disputes. In regard to actions covered by Section 33(1), previous permission has to be obtained by the employer, while in regard to actions falling under Section 33(2), he has to obtain subsequent approval, subject to the conditions which we have already considered. In that sense, it would be correct to say that the pendency of an industrial dispute is in the nature of a condition precedent for the applicability of Section 33(1) and (2). It would, prima facie, seem to follow that as soon as the said condition precedent ceases to exist, Section 33(1) and (2) should also cease to apply; and the learned Solicitor-General for the appellant has naturally laid considerable emphasis on this basic aspect of the matter.

4.25. Relying on the above, he submits that conditions of service are required to remain unchanged during any industrial adjudication process. Denial of work on the ground that the contract has been terminated would also come within the purview of Section 33 of the ID Act requiring necessary permission to be obtained from the industrial Adjudicator in terms of Section 33(1) and 33(2) of the ID Act.

4.26. In the case of ***Bhavnagar Municipality v. Alibhai Karimbhai[2],*** more particularly para 9

[2] *AIR 1977 SC 1229*

and 13 thereof which are reproduced hereunder for easy reference:

> *9. There is a clear prohibition in Section 33(1)(a) against altering conditions of service by the employer under the circumstances specified except with the written permission of the Tribunal or other authority therein described.*
>
> *13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject-matter being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute.*

4.27. Relying on the above, he submits that when a wage dispute is pending before the Tribunal, even as regards a temporary workman claiming to be a permanent workman, during the pendency of such dispute the temporarily workman was entitled to continue in service and no changes in the service conditions could be effected by the employer without obtaining permission in terms of Section 33(1) and 33(2) of ID Act.

4.28. In the case of ***The Management of SKF Bearings India Limited v. S.M. Ravi Kumar and Ors., 2006 Lab IC 1002)*** more particularly para 11 thereof which are reproduced hereunder for easy reference:

> *11. Regarding second question:*
>
> *The only other question that remains to be considered is, in the light of the judgment of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. ((2002) 2 SCC 244 : AIR 2002 SC 643) (supra), whether it could be held that the termination of the services of the workman was not in contravention of S. 33 of the Act? In our view,*

there is no merit in the contention advanced by Sri Murthy on this question. The Supreme Court at paragraph 15 of the judgment has laid down that the order made in contravention of S. 33(2) of the Act, without seeking the approval of the authority concerned would be void and inoperative in law. It is useful to refer to the observation made at paragraph 15 of the judgment which reads as follows:

"15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under S. 33-A, cannot be accepted. In our view, not making an application under S. 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to S. 33(2)(b). An employee who does not make an application under S. 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under S. 33-A notwithstanding the contravention of S. 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under S. 33-A or to raise another industrial dispute or to make a complaint under S. 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimisation, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

From the reading of the judgment, it is not possible to take the view that since the Supreme Court has laid down that the order made in contravention of Section 33 of the Act is void and inoperative, there is no contravention of Section 33 of the Act by the management as contended by Sri Murthy. The Supreme Court has only laid down that the effect of the contravention of Section 33 is void and inoperative. It only relieves the workman of the hardship of approaching the authorities under Section 33-A of the Act and therefore, no complaint need be filed under Section 31 of the Act. The order made in contravention of Section 33 of the Act being void and inoperative, the consequences of contravention must follow. So far as the rights of a workman to get into the original position which he was holding in the establishment of the management before termination and for other consequential benefits, the Supreme Court has laid down such an order being void and inoperative, the parties are entitled for relief even without a complaint filed under Section 33-A of the Act. That does not absolve the management of the consequence provided under Section 31 of the Act. Therefore, in the light of what is stated above, we are of the view that if ah order is made in contravention of Section 33 of the Act, it is open to the aggrieved workman to seek permission under Section 33-A of the Act to institute criminal proceedings.

4.29. Relying on the above, he submits that once an application is made under Section 33(2)(b) of ID Act and the same is withdrawn, the employer cannot terminate the services and as such, any order of termination or otherwise varying service conditions in contravention of Section 33 of ID Act is void and inoperative.

4.30. In the case of ***General Manager, Security Paper Mill, Hoshangabad vs. R.S. Sharma and Ors. AIR 1986 SC 954*** more particularly para 5 thereof which are reproduced hereunder for easy reference:

> *5. The expression 'settlement' is defined in Section 2(p) of the Industrial Disputes Act, 1947. It means a settlement arrived at in the course of conciliation proceeding and also includes a written agreement between employer and workmen arrived at otherwise than in conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer. A distinction is made in the Industrial Disputes Act, 1947 between a settlement arrived at in the course of conciliation proceeding and a settlement arrived at by agreement between the employer and workmen otherwise than in conciliation proceeding both as regards the procedure to be followed in the two cases and as regards the persons on whom they are binding. Section 12 of the Industrial Disputes Act, 1947 lays down the duties of Conciliation Officer. Under sub-section (1) of Section 12 where any industrial dispute exists or is apprehended, the Conciliation Officer is required to hold conciliation proceedings in the prescribed manner. By sub-section (2) thereof he is charged with the duty of promptly investigating the dispute and all matters affecting the merits and the right settlement thereof for the purpose of bringing about the settlement of the dispute and he is required to do all necessary things as he thinks fit*

for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceeding the Conciliation Officer shall send a report thereof to the appropriate Government or an officer authorised in that behalf by the appropriate Government together with a Memorandum of Settlement signed by the parties. Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the settlement sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in clause (i) is an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in clause (i) is comprised of workmen, all persons who were employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part. Law thus attaches importance and sanctity to a settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above. But in the case of a settlement not arrived at in the course of the conciliation proceeding it has to be in writing and signed by the parties in the prescribed

manner and a copy thereof should be sent to the officer authorised by the appropriate Government in this behalf and to the Conciliation Officer. Such a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement as provided in Section 18(1) of the Industrial Disputes Act, 1947. Such a settlement is not binding on the other workmen who are not parties to the settlement.

4.31. Relying on the above he submits that law gives preference to a settlement arrived at during the conciliation since there is an assumption that it is just and fair one. Thus, any settlement arrived at before a Conciliation Officer as recorded by the conciliation officer would have to be given effect to.

4.32. In the case of ***ITC Ltd. Workers Welfare Association and Ors. Vs. The Management of ITC Ltd and Ors. AIR 2002 SC 937*** more particularly para 17 and 23 thereof which are reproduced hereunder for easy reference:

17. Admittedly, the settlement arrived at in the instant case was in the course of the conciliation proceedings and

> *therefore it carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.*
>
> *23. What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of the conciliation proceedings. The settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum.*

4.33. Placing reliance on the above, he submits that when a settlement is arrived at in conciliation, it is binding on all parties to the dispute as well as other workmen working in the establishment, no one can seek to wriggle out of a settlement arrived at during conciliation on the ground that it does not suit such person.

4.34. In the case of ***Chitradurga District Mazdoor Sangh Vs. Bhadra Sahakari Sakkare***

Karkhane Niyamita : ILR 2004 Kar 536 more particularly para 32, 36 and 38 thereof which are reproduced hereunder for easy reference:

> *32. In the instant case, as noticed above, the first respondent sugar factory has employed large number of personnel to carry out its industrial activities as well as managerial functions. It is trite, the first respondent being a "State" cannot be permitted to practice anything in breach of Article 14 postulates : fairness in action, reasonableness and non-arbitrariness. In this background, grievance brought before the Court by the petitioner Trade Union espousing the cause of its workmen should be appreciated.*
>
> *36. Perhaps realising the seriousness of the violation of the terms of settlement committed by the management, Sri Murthy would contend that the settlement Annexure-A is not a settlement entered into between the parties under any statute and therefore, such a settlement could not be enforced under Article 226 of the Constitution of India. This contention of Sri Murthy is required to be noticed only to be rejected. Article 14 postulates pervade entire state actions and inactions and wherever the Court finds that these postulates are breached, it would step in and correct the wrongs done.*
>
> *38. In our considered opinion, this is a fit case where the Court should apply the doctrine of promissory estoppel. We find all ingredients to apply doctrine of promissory estoppel. Admittedly, under Annexure-A the management has made the promise to workmen. On the basis of this promise, the workmen acted and altered their position to their peril. Therefore, the management cannot be permitted to approbate and reprobate in order to thwart legitimate rights of workmen flowing from the solemn promise made by the management, which has been reduced into writing before the Minister of Sugar. There is*

no necessity for us to go into the question whether the settlement Armexure-A could be regarded as a settlement arrived between the parties in the process of conciliation envisaged under the Industrial Disputes Act, 1947 or any other statute in view of our finding that the first respondent is a "state". We, however, also find some force in the contention of Sri Jayakumar Patil that in the premise of important powers conferred on the Government by Sections 29, 29-G, 53-A and 54, the power to conciliate between the management of the sugar factory and its employees could not be denied to the Minister of Sugar. Be that as it may, even assuming that it is not a settlement in the course of conciliation under the Industrial Disputes Act but it is only a settlement arrived at between the parties in exercise of the executive power of the first respondent sugar factory, nevertheless, its action is required to be tested on the touchstone of the postulates of Article 14 and if it is so tested, the inaction of the management of the sugar factory should be condemned as the one tainted with irrationality and is totally unfair. The management must be rigorously held to the promise made by it and it must scrupulously perform its promise on pain of invalidation of an action in violation of it Every activity of a State has a public element in it and must, therefore, be informed with reason and fairness, if the management promises to do certain thing as a responsible person but fails or refuses to do so, its action is liable to be tested for its validity on the touchstone of reasonableness and fairness.

4.35. Relying on the above, he submits that the principles of promissory estoppel would also apply to a settlement arrived at before a conciliation officer. The Management cannot be permitted to approbate and reprobate once a

settlement is arrived at before a conciliation officer whereunder it was agreed that the employer would take back the workman in a phased manner, the same was required to given effect to.

4.36. In the case of ***Management of Agnigundala Lead Project, Hindustan Zinc, Ltd. v. Hindustan Zinc Workers' Union,: 1989 (58) FLR 204*** more particularly paras 3 and 4 thereof which are reproduced hereunder for easy reference:

> *3. Before us Sri K. Sreenivasa Murthy, learned counsel for the management, contended that the so-called settlement, dated 25 March 1983, was no settlement of the dispute arrived at in the course of the conciliation proceedings within the meaning of S. 12(3) of the Act. It was also submitted that it did not amount to a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceedings so as to bind the parties to the agreement in terms of Sub-secs. (1) and (3) of S. 18 of the Act. It was the submission of the learned counsel that what was recorded on 25 March 1983, was only the minutes of discussions, not a settlement; those who signed that document were not officers who could enter into any settlement; and that the settlement not having been in the form prescribed in rule 58 of the Industrial Disputes (Central) Rules, it was not binding on the management. He had also a contention that in view of the failure report*

submitted by the Conciliation Officer on 18 March 1983, the settlement, dated 25 March 1983, could not be deemed to be a settlement under S. 12(3) of the Act. The decisions of the Supreme Court in Workmen of Delhi Cloth and General Mills, Ltd. v. Delhi Cloth and General Mills, Ltd. (1971 — I L.L.J. 99], Jhagrakhan Collieries (Private), Ltd. v. Central Government Industrial Tribunal-cum-Labour Court, Jabalpur [1974 — II L.L.N. 511] and Brooke Bond India, Ltd. v. Their workmen [1981-II L.L N. 286], and a decision of the Bombay High Court in Air India v. Nergesh Meerza [1981-II L.L.N. 57???], were cited before us. We have carefully gone through these decisions, and are of the opinion that the facts and circumstances leading to the decision in those cases are quite different from those present in the instant case. This is a clear case where the management is guilty of dishonouring its commitments under a settlement, whether it is called the "understanding" or the "minutes of discussions." The management took full advantage of the terms of the settlement, in implementation of which the workmen on their part called off the strike. The settlement was signed by responsible officers holding high ranks in the company and it is too much for us to swallow the contention of the management that the officers who represented the management at the conciliation proceedings on 25 March, 1983 had acted either without authorisation or in excess of the authorisation given to them. Are we to believe that the Chairman and the management were not apprised of the terms of the agreement pursuant to which the strike was called off by the union? We have absolutely no hesitation in rejecting the contention that it was without due authorisation that the management's representatives agreed to the terms of settlement, or that the Chairman and the management were not aware of the terms of the agreement. The truth, on the other hand, is that after having trapped the union into an agreement and after having taken advantage of that agreement, the management acted vindictively and dishonestly against the terms of agreement on the pretext that the settlement was not binding on the management. Moreover, on 9 September 1985, the Industrial Tribunal has passed an award stating that the agreement, dated 25 March 1983, was a settlement binding on the management. The award of the Tribunal, not having been appealed against, has

become final. This arrogant and arbitrary attitude of the management is not certainly praiseworthy, and is not conducive for the promotion and maintenance of industrial peace and harmony. The union and the management are not equal in withstanding prolonged litigation; and other things being equal, to further the ends of justice, the Court should normally lean towards the weak, namely, the workmen. Both the Industrial Tribunal and the learned Single Judge have, on careful consideration of the facts and the circumstances of the case, entered the findings that the agreement, dated 25 March 1983, was a settlement within the meaning of S. 2(p) of the Act, and that it is binding on the management. The direction given by the learned Single Judge is without prejudice to the right of the first respondent-management to pass a fresh order within two weeks from the date of the receipt of the copy of the judgment in terms of the settlement arrived at on 25 March 1983.

4. We have not been shown any authority to the effect that a settlement arrived at, whether in the course of a conciliation proceeding or otherwise, subsequent to the submission of the failure report by the Conciliation Officer, is not binding on the parties. It is precisely for this reason the learned Single Judge upheld the finding of the Industrial Tribunal that in view of the settlement arrived at on 25 March 1983, though it was after the Conciliation Officer submitted the failure report on 18 March 1983, there was, as on 3 May 1984, only a settlement to be implemented, not a dispute surviving to be referred by the Central Government to the Tribunal for adjudication. The order and award, dated 9 September 1985, passed by the Tribunal that the reference was not valid and was liable to be rejected and terminated were accordingly upheld by the learned Single Judge.

4.37. Relying on the above, he submits that once a settlement is arrived at, the dispute no longer

survives and therefore, it is the settlement which is required to be given effect to.

4.38. In the case of ***State of Bihar vs. Kripa Shankar Jaiswal: AIR 1961 SC 304*** more particularly para 8 thereof which is reproduced hereunder for easy reference:

> ***8.*** *It was argued that because the report had not been sent to the Government within fourteen days of the commencement of the conciliation proceedings, the settlement arrived at was invalid and was not binding. This contention must be repelled because any contravention of Section 12(6) may be a breach of duty on the part of the Conciliation Officer; that does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act. It was so held by this Court in Andheri Marol Kurla Bus Service v. State of Bombay [AIR 1959 SC 841] . It cannot be said, therefore, that the settlement which was arrived at on March 18, 1954, was not a legal settlement and that a breach of it would not attract the penal provisions of Section 29 of the Act.*

4.39. Relying on the above, he submits that irrespective of whether settlement is arrived at in the conciliation and the same has been sent

by the conciliation officer to the government or not, the settlement arrived at would be binding on the employer and the workmen, the lapses on part of the conciliation officer cannot set-aside the settlement arrived at.

4.40. In the case of ***State of Krishnarajendra Mills Workerks' Union.vs. Commissioner and Concillation Officer: 1967 (2) Mys. L.J.174*** more particularly para 4, 5 and 6 thereof which are reproduced hereunder for easy reference:

> *4. Mr. Rangaswamy. Iyengar, the learned Counsel for respondent No. 2 has raised a preliminary objection. His submission is that the writ petitions for writs of certiorari and mandamus are not tenable, firstly, because the impugned settlement is an administrative act of the Conciliation Officer and secondly because no writ of the kind prayed for can be issued against a Mill or any of the Labour Unions which are parties to these writ petitions. In support of his contention, he has drawn our attention to three decisions, viz., Royal Calcutta Golf Club Mazdoor Union v. State of West Bengal ([A.I.R. 1956 Cal. 550.]), Employees in the Caltex (India) Ltd. v. Commissioner of Labour ([(1959) 1 L.L.J. 520.]) and Workmen of Standard Furniture and Co. v. District Labour Officer ([(1966) 1 L.L.J. 236.]). What has*

been laid down in these decisions is that no writ of certiorari can be issued against a Conciliation Officer acting under Section 12 of the Act; his functions thereunder are neither judicial nor quasi-judicial in character and that the fact that such officer has signed the agreement does not make it an order or decision susceptible to correction by the High Court. Reference was also made to a decision of this Court in Suryanarayana v. H.M.T. Ltd. ([(1967) 1 L.L.J. 49.]) This decision summarizes 3the legal position and we, therefore, reproduce the relevant headnote:

"A Writ of Certiorari can be issued to correct a judicial or quasi-judicial order ..... It is now well settled that before a Writ of Certiorari could be issued, the Court must be satisfied that the authority which has made the impugned order had a duty to act judicially in making the order."

5. These decisions support the preliminary objection raised by the learned Advocate for respondent No. 2. Mr. Subba Rao, however, contends that the impugned settlement which has been brought about through the conciliator is in the nature of a quasi-judicial act and it is therefore within the competence of this Court to strike down the settlement if the other requirements of law are not satisfied. In order to examine this contention, it is necessary to refer to the first three sub-sections of Section 12 of the Act, which deal with the duties of conciliation officers. Those provisions read:

"12. (1) Where an 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 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 together with a memorandum of the settle ment signed by the parties to the dispute."

6. The entire argument of the learned Advocate is based on what is contained in sub-section (2) of this section. It is submitted that since it is the duty of the conciliation officer to consider whether the settlement arrived at is fair and amicable, his function would be quasi-judicial in nature and would not at all be administrative, as contended by the learned Advocates for the respondents. Analysing sub-section (2), we find that the first duty of the conciliation officer for the purpose of bringing about a settlement is to act expeditiously without loss of time. This indeed is not an act entirely within his discretion and is purely administrative in character. When he decides to act, he has to find out what the dispute between the parties is. This has to be

done by ascertaining from the parties to the dispute what their contentions are. The next function that he has to discharge relates to the further ascertainment of the merits and the right settlement. The last important duty that he has to discharge is that of inducing the parties to come to a fair and amicable settlement of the dispute, it is well established that an authority discharging the quasi-judicial function has, besides finding out what the subject matter of the dispute is, to hear the parties, consider the evidence placed before him, arrive at a decision and record his reasons in support of such decision. In the present case, there is no doubt that there is dispute between the two contending parties. The vital point for consideration is whether at all any legal obligation is cast on the conciliator to hear both the parties and record evidence in support of their mutual contentions. The hearing if any is for the purpose of ascertaining what are the points of dispute between the parties and for the purpose of knowing what are the matters which affect the rights and merits of the parties. On his own, there is no decision on the merits of the dispute which the conciliation officer is required to arrive at. Patently his task is one of discussion, of advice and of persuasion so that the matters in dispute are clarified to the parties themselves and by thrashing out the various points of dispute in their presence, they are enabled to come to a settlement which is fair and amicable Mr. Subba Rao's contention, however, is that the words "as he thinks fit" occurring in subsection (2) should go with the last portion of the expression "fair and amicable settlement of the dispute". We are unable to agree with such a construction. Obviously, the words "as he thinks fit"

necessarily go with the previous clause "may do all such things." In other words the words "as he thinks fit" which vest a discretion in him, regulate the manner in which he should conduct himself in bringing about a fair and amicable settlement between the parties. It was then urged that when the dearness allowance was Rs. 110 per month in the months of September to December 1966, a settlement reducing the same to Rs. 90 would neither be fair nor amicable. In considering what is fair and what is amicable, we have necessarily to take into account the various factors under which the disputes are raised and the circumstances under which the parties take the assistance of the conciliator in arriving at a settlement. Ex. 'C' which embodies the terms of the impugned settlement refers to the previous history of the disputes between the parties. It also refers to the fact that the Mills had been losing heavily during the last few years and that the total loss from 1961–62 to 1965–66 was to the tune of Rs. 53,11,632. Mention is made of other Textile Mills in Bombay, Ahmedabad and Coimbatore having already been closed and of the apprehension of the closure of the other Mills. It is stated that there was large accumulaton of cloth stocks causing great financial strain on the Company and there was vehement demand at the Annual General Meeting of the Company held on November 5, 1960 for closing down the Mills and taking steps for the liquidation of the Company. If against this background the two parties agreed to a partial reduction of their dearness allowance, it cannot be said that it was a settlement which no reasonable person could have acceded to. If the Labour Unions which are parties to the settlement consider after taking all factors into

consideration that half a bread is better than no loaf, it would be difficult for this Court particularly sitting on the writ side to say that the settlement was either unfair or not amicable.

4.41. Placing reliance on the above, he submits that a settlement arrived at in a conciliation is not even amenable to the writ jurisdiction, no certiorari can be issued. There is an obligation on part of the conciliation officer to try and resolve the matter and bring about a settlement. So long as a settlement is legal, any suggestion made by the conciliation officer in furtherance of the settlement would also have to be considered. The conciliation officer is required to act in a manner as thinks fit and just to bring about a settlement.

4.42. In the case of ***State of Workmen of Hindustan Machine Tools Ltd vs. C.N. Nanjappa and Ors.: W.P.No.769 of 1970 decided on 26.06.1972*** more particularly

para 7 thereof which are reproduced hereunder for easy reference:

> *7. We shall now consider the first prayer of the Employees' Association, namely issue of a writ of Certiorari quashing the impugned settlement. In Sri Krishnarajendra Mills Workers' Union vs. Assistant Labour Commissioner and Conciliation Officer (1967(2) Mys.L.J.174) the facts were very similar. There, the Management and one of the several trade unions had entered into a settlement in the course of the conciliation proceedings. A rival union of workmen moved this court in a Writ Petition to quash that settlement. While declining to issue a certiorari, this court held that a settlement brought about through the Conciliation Officer, was an administrative act, and not a judicial act and was not therefore liable to be struck down by certiorari.*

4.43. Relying on the above, learned counsel submits that a settlement arrived at by one Union with the employer cannot even be challenged by another Union.

4.44. Thus, on the basis of the above, learned counsel submits that the petition is required to be allowed.

SUBMISSION OF RESPONDENTS:

5. Ms.Varsha Ithinahalli, learned counsel had entered appearance for respondents No.5 and 6 on 10.05.2022. After hearing both the parties this Court was of the opinion that the matter could be referred to mediation and as such Ms.Laila Olapalli, a recognized mediator was appointed to mediate the dispute. Subsequently, the matter was adjourned on several occasions. On 22.09.2022, both the counsel had submitted that mediation was scheduled on 23.9.2022 and sought for an adjournment. On 20.10.2022, 3.11.2022, 21.11.2022, the matter was adjourned pending mediation. On 6.12.2022 it was reported that the parties have been unable to arrive at an amicable resolution and as such the matter was taken for arguments.

6. On.12.01.2023, Sri.Cliffton Roasario, learned counsel for the Union had submitted that despite the matter being pending, 5th respondent was engaging further contract workers without making work available to the members of the petitioner-Union, when

Ms.Varsha, counsel for respondents No.5 and 6 sought for an accommodation to file her statement of objections. She was also directed to place on record any contracts entered into with other contractors along with objections.

7. On 23.01.2023, learned Senior counsel instructed by Ms.Varsha sought for a short accommodation to obtain instructions and make submissions.

8. Instead of doing so, on 31.01.2023 Ms. Varsha filed a memo seeking permission to retire from the matter by stating that she has handed over 'no objection vakalatnama' to respondents No.5 and 6 and also returned papers.

9. Sri.Shishir, learned counsel submitted that he has received vakalatnama for respondents No.5 and 6 and sought for an adjournment. Hence, Ms.Varsha was discharged from the matter.

10. Taking note of the fact that respondents have been delaying the matter and taking further note of the fact that serious allegations were made that

respondents No.5 and 6 were engaging contract workers during the pendency of the matter and despite directions having been issued to place on record the contracts entered into. Neither objections have been filed nor documents have been placed on record. Taking note of the manner in which the vakalatnama was changed in the last moment, the request of Sri.Shishir was refused, more so, when he has not even filed vakalat and arguments of Sri.Cliffton Rosario, learned counsel for the petitioner was heard.

SUBMISSIONS OF RESPONDENT Nos.1 AND 2:

11. On behalf of the Deputy Solicitor General, short accommodation was sought for, hence the matter was adjourned to 1.02.2023, when again short accommodation was sought for, matter was adjourned to 2.02.2023. On 2.02.2023, a memo has been filed by Sri.Shanthi Bhushan, learned DSGI appearing for respondents No.1 and 2 stating that

they would not be contesting the matter. Said memo reads as under:

MEMO

The Counsel for the Respondent No.1 submits as follows.

The Counsel for the respondent No.1 in support of his contentions is herewith producing the instructions received from the respondent No.1. The same may be taken on record. Hence the memo in the interest of justice.

OBJECTIONS FILED BY RESPONDENTS No.5 & 6:

12. After the request of Shri Shishir was refused, since he had not filed a vaklathnama the matter came to be adjourned on several occasions however, there is no representation on part of the 5th respondent. The 5th Respondent has apparently chosen not to contest the matter, there being enough and more opportunity available to be present and address arguments. It is rather shocking that an instrumentality of the state has taken such a stand and position, which is completely unbecoming.

13. It is on that background that I'am constrained to refer to the Objections Filed by Respondents no. 5 and 6 to ascertain the nature of defense set up by them and consider the same on merits, lest it be contended that despite the statement of objections being on record the same has not been considered by this court and the same used as a trick and stratagem to delay the proceedings further.

14. It is pertinent to note that after hearing the matter on 1.02.2023 and 2.02.2023 and even thereafter none has entered appearance for respondents No.5 and 6 nor any documents placed on record. The passing of the order was also delayed to give an opportunity to the 5th and 6th Respondent to appear and make their submissions, which was also not done.

15. Thus, there are no oral arguments on part of the respondents to be considered. However, objection statement has been filed on 23.01.2023. In the said

objection statement, the respondents have raised the following contentions:

15.1. There is no employer and employee relationship between the workman and Respondent No.5. The members of the petitioner-Union are employees of the contractor of 5th respondent and there is no contractual relationship between the Union and the 5th respondent and as such there cannot be any allegation that 5th respondent has acted contrary to that required of a model employer.

15.2. There exist no right in law to seek employment, later on re-employment by a contract worker, there are alternative remedies available to the workman seeking for the regularization of their employment before the respondent No.4 and unless the said alternate remedy is availed of, the present petition is not maintainable.

15.3. Essentially what has been sought for is re-employment of the 80 workers being

members of the petition-Union which cannot be adjudicated by this Court in exercise of writ jurisdiction.

15.4. It is stated that there is no binding settlement which has been arrived at, the so-called interim arrangement which has been arrived at is not binding. Furthermore, the same is under challenge in WP 8895/2022. The Union has also sought for prosecution of respondent No.5 which is also not permissible, since there is no employer- employee relationship.

15.5. The petitioner has suppressed the fact that the workers are on the Rolls of the contractor and not of the 5th respondent. The contractor not being made a party, the present proceedings is not maintainable. Even as regards the settlement it was for the workman to have enrolled themselves with a contractor, they not having enrolled the question of 5th respondent assigning any work to them would not arise.

Though the 5th respondent has bonafide participated in the mediation proceedings, it is only on account of the actions by the petitioner-Union that no settlement could occur.

15.6. The petitioner-Union is not a recognized Union. It has been set up only to harass 5th respondent. The recognized Union not being a party to the proceedings, the present proceedings are not maintainable.

15.7. The 5th Respondent has been engaging contract workers for several decades. The responsibility of making payment and complying with the labor laws is that of the contractor, there is no particular obligation on part of the 5th respondent.

15.8. In the year 2020, a fresh tender was called for and M/s Poojayaya Security Services was awarded the contract for a period of one year from 1.7.2020 which was extended upto

30.11.2021 to cater to manpower requirement of the 5th respondent.

15.9. After the said contract expired, another tender was floated and M/s Sai communications was awarded a contract. As on 15.1.2022 the said M/s Sai Communication employed 149 contract workers, deployed with respondent No.5 of which 22 were women.

15.10. The members of the petitioner-Union who were earlier employed with M/s Pojayaya Security Services did not apply for employment through online window with M/s Sai Communication and they not being on the roles of M/s Sai Communication were not offered employment.

15.11. The conduct of the members of the petitioner-Union is not proper inasmuch as without doing what was required, they staged dharna in front of the 5th respondent's building alleging that they have formed the Union and there are to be considered for the regularization.

15.12. By the time some of the workers had already filed application for regularization before the Labour Commissioner (Central), in file No.8(19)/2020 and 8(31)/2021-B2. Subsequent to the dharna the Regional Labour Commissioner summoned the parties for conciliation, when 5th respondent opposed the conciliation proceedings on the ground that there is no employer-employee relationship. 5th Respondent had categorically stated if the workmen wanted employment, they should follow the due process of recruitment by registering with the contractor and contractor could consider making available employment to them. Despite the same, the workman did not do the needful and 5th respondent continued its stand that there being no employer-employee relationship, conciliation proceedings were not maintainable.

15.13. The petitioner-Union in order to put pressure on 5th respondent held a protest march which created a law and order situation.

15.14. Insofar as the conciliation proceedings in case No.8(19)/2020 and 8(31)/2021, same ended in a failure and a failure report was submitted. The petitioner-Union has been causing public nuisance to the respondent making various allegations against the respondents in social media and otherwise, they ought not to be heard in the matter and there is no equity in their favour.

15.15. The offer of respondent No.5 to take in 35 contract workmen was recorded at the intervention of the conciliator and since none of those 35 contract workers registered on the online portal with M/s Sai Communications nor was a Dharana called off. 5th respondent brought to the notice of the 1st respondent when the petitioner contended that they were

unable to register on the portal. The conciliator directed the respondent to complete the registration by 12.00 noon and produce a list at 2.30 pm which 5th respondent was not agreeable and as such did not sign the minutes.

15.16. On 13.4.2022 the petitioner-Union workers engaged in violent activities by breaking the barrier assaulting the security guard and barging into the plant requiring the 5th respondent to avail the police help to bring the situation under control.

15.17. The petitioner abusing the conciliation proceedings 5th respondent filed a Writ Petition No. 8895/2022 challenging the conciliation proceedings and this court had granted an order of stay.

15.18. It is in the meanwhile, that the present writ petition has been filed. It is stated that the petition is an abuse of the process of court and as such it is required to be dismissed.

REJOINDER BY THE PETITIONER-UNION:

16. Insofar as the objections filed by 5th and 6th respondents, a rejoinder has been filed by the petitioner wherein it is contended that,

16.1. The workmen had been working for 3 to 38 years under different contractors. Even though in the mediation proceedings the 5th and 6th respondents had given an undertaking not to employ new persons, they have continued to employ new contract workers for the same work as that discharged by the workers of the petitioner-Union.

16.2. The dispute raised in the No.8(19)/2020 and 8(31)/2021 is for regularization of the workman. During the pendency of the said matter 5th respondent refused employment to 80 workmen and despite the order of the Deputy Chief Labour Commissioner, they were not taken back for employment.

16.3. Despite 5th respondent agreeing to take 35 workmen immediately and 45 workers thereafter, neither of those two promises have been complied with. The workmen having worked between 3 to 38 years, it is the 5th respondent who is acting in a gross and unfair manner and making use of contractors who are mere name lenders to camouflage the relationship of employer and the employee.

16.4. The members of the petitioner had worked under various contractors discharging the very same roles for the last 3 to 38 years and as such, the appointment of contractors being sham transaction there is utter disregard on part of the 5th respondent to labour laws.

16.5. There is no restriction on number of Unions which could be formed, be that as it may, it is contended that the recognized union does not have a provision to provide membership for workmen guised as contract workers and it is

for that reason that there being nobody to espouse their cause, a new Union in the name of the petitioner was formed.

16.6. M/s Sai Communication who is a contractor has categorically stated that if 5th respondent has no objection, it would provide employment for 80 contractor workers, it is only on account of 5th respondent making the whole matter an ego issue and being upset with the workmen raising their demands that same has not happened. One causal/contract/adhoc/ temporary worker cannot be replaced by another causal /contract/adhoc/temporary worker.

16.7. Admittedly, the protests which were held by the workmen were only to agitate their rights which had been trampled upon by the 5th respondent, as such the 5th respondent cannot have any grievance as regards the same. If the 5th respondent provided the employment there would be no requirement for any agitation. All

the action has been necessitated on account of the 5th respondent using unfair labour practices.

16.8. There being various other issues it is contended that all these unpleasant situation could have been avoided by 5th respondent acting in a proper manner.

17. Heard Sri.Cliffton D.Rozario, learned counsel for the petitioner, Sri.H.Shanthi Bhusnan, Deputy Solicitor General of India for respondents No.1 and 2, Sri.Bhojegowda T.Koller, learned AGA for respondents No.3 and 4. Perused papers including the objection statements filed by respondent No.5.

18. On the basis of the submissions and the pleadings on record, the points that would arise for consideration are:

1. Whether the present writ petition is maintainable and whether the writ petition is barred on account of availability of an alternate remedy?

2. Whether there is a violation by 5th respondent of Section 25Q, 25U and 31 of the Industrial Disputes Act?

3. Whether the settlement (interim or otherwise) entered into during the course of the conciliation proceedings is binding on the parties?

4. Whether the members of the petitioner-Union are entitled to be continued in their respective post till they are replaced by regularly preselected candidates and not replaced by other contract workers?

5. What order?

19. <u>ANSWER TO POINT NO.1:</u> Whether the present writ petition is maintainable and whether the writ petition is barred on account of availability of an alternate remedy?

19.1. The workers have already filed application for regularization before the Labour Commissioner (Central) in No.8(19)/2020 and 8(31)/2021. Said proceedings having been filed before the present writ petition is filed, the relief that the petitioners are seeking for in prayer (a) and (b) extracted above are virtually amounting to the said proceedings being allowed at the interlocutory stage by this Court. When the

aspect of regularization is pending, the question of petitioners and Union and or the workmen seeking for a direction to the employer who undertake reemployment of all 80 workers without prejudice to their claims for regularization with payment of wages cannot be considered by this Court. If at all the petitioners and or the workmen can move such application as interlocutory application in the said proceedings to be considered by the said authority, this Court cannot parallelly exercise its power or jurisdiction in such matters.

19.2. Hence, I answer Point No.1 by holding that the writ petition insofar as prayers (a) and (b) is concerned is barred on account of alternative remedy already exercised. Insofar as the limited direction sought for in prayer (c) to respondent No.3 to take action against 5th respondent on account of 5th respondent not

having taken such action from 2.12.2021, this Court would have jurisdiction.

20. <u>ANSWER TO POINT NO.2:</u> Whether there is a violation by 5th respondent of Section 25Q, 25U/25-O and 31 of the Industrial Disputes Act?

20.1. A complaint having been filed before the 3rd respondent on 2.12.2021 alleging that there are certain violations committed by the 5th respondent and that the 5th respondent is required to be prosecuted for under Section 25Q, 25U and 31 of I.D. Act, I am of the considered opinion that it would not be proper for this Court to express its opinion on any such violation. What could only be considered by this Court is a direction to be issued to 3rd respondent to consider the complaint and pass necessary orders deciding whether to prosecute 5th respondent or not on the basis of the material placed before it. This Court has not

expressed any opinion on the same, it is for the 3rd respondent to decide the same on merits.

21. **ANSWER TO POINT NO.3: Whether the settlement (interim or otherwise) entered into during the course of the conciliation proceedings is binding on the parties?**

21.1. During the conciliation meetings, on 4.03.2022 and 16.03.2022 the 5th respondent had agreed to take back 20 to 25 workmen and on 17.03.2022, had agreed to take back 35 workmen immediately and balance as early as possible. Despite the said agreement, the 5th respondent has not taken back such number of workmen. The contention of 5th respondent in its statement of objection is that the members of the petitioner-Union did not register themselves for recruitment and therefore, the contractor could not consider them to be employed with 5th respondent. This aspect was not brought about in the discussion that

were held on 4.03.2022, 16.03.2022 and 17.03.2022.

21.2. The very purpose of conciliation under the I.D. Act is to try and resolve the disputes between the employer and the workmen so as to maintain a conducive atmosphere and further to see to it that the relationship between the employer and the workmen is not strained, that is also the very purport of various decisions relied upon by Sri.Cliffton D.Rosario, Learned counsel for the petitioner.

21.3. Whenever there is any undertaking given either by the employer or the workmen, the same is required to be adhered to by the respective party. The employer having agreed to do so cannot later contend that the Conciliation Officer has pressurized the employer or otherwise. Such a contention if allowed to be taken by any participant in a conciliation proceeding would render the entire conciliation

process a formality without any scope of resolution of the disputes.

21.4. A conciliation officer would be well within its rights to pursue a party to arrive at a settlement, of course agreeing to the settlement or not would be at the sole discretion of the party. In the present case, though discussions were held and recommendation was made by the conciliation officer for taking back certain number of workers by the 5th respondent, the decision in that regard was made by the 5th respondent. It is therefore required that the 5th respondent adhere to the decision taken during the conciliation proceedings and not deter from it. The settlement whether it is interim or otherwise would have to be adhered to by both the parties so as to enable further progress.

21.5. Needless to say that if any agreement arrived at during the conciliation if not adhered to, then

the conciliation process would probably not go on and/or fail. Conciliation is a process and not a one time agreement. Over a period of several sittings with the Conciliation Officer there would necessarily have to be some give and take from all the parties and it is only thereafter that the settlement could be arrived at. A settlement and or a compromise by its very nature would require each of the parties giving up something to get something. Neither of the parties can stick to their stand and say that they will not give up anything in such a process.

21.6. If the 5th respondent had complied with the agreement though interim arrived at, the settlement talks would have proceeded and probably ended up with final settlement. If the interim settlement is not enforceable, then as observed above, the entire conciliation proceedings would be rendered an empty formality. As such, I am of the considered

opinion that the settlement arrived at though interim by the workmen and the 5th respondent would be binding on both the parties.

22. **ANSWER TO POINT NO.4: Whether the members of the petitioner-Union are entitled to be continued in their respective post till they are replaced by regularly preselected candidates and not replaced by other contract workers?**

22.1. In view of answer to Point No.1, the petitioner already having exercised alternative remedy, this Court cannot decide on the said aspect. Same is required to be decided in Dispute No. No.8(19)/2020 and 8(31)/2021. As such, this Court has not expressed any opinion on the above point.

23. **ANSWER TO POINT NO.5: What order?**

23.1. The writ petition is partly allowed.

23.2. The petitioner and 5th respondent are once again referred to conciliation. The Conciliation Officer to try and conciliate the difference between the members and 5th respondent.

23.3. The 3rd respondent is directed to pass necessary orders on the complaint dated 2.12.2021 at Annexure-Q filed by the petitioner within a period of eight weeks from date of receipt of a copy of this order.

Sd/-
JUDGE

PRS
List No.: 1 Sl No.: 91