In The Hon'ble High Court Of Judicature At Allahabad,

Lucknow Bench, Lucknow

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Neutral Citation No. - 2024:AHC-LKO:72745

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A.F.R.

Court No. - 29

(1) Case :- WRIT - C No. - 1000315 of 2012

Petitioner :- Hindustan Aeronautics Ltd. Through Its General Manager

Respondent :- Hindustan Aeronautics Karmchari Sabha Throu Its G.S.And Ors.

Counsel for Petitioner :- P.K.Sinha

Counsel for Respondent :- C.S.C.,Avinash Pandey,Dhruv Mathur,Pranav Agarwal,Ravindra Kr.Yadav,Vasundhara Mathur,Virendra Misra

(2) Case :- WRIT - C No. - 1000491 of 2012

Petitioner :- Hindustan Aeronautics Karmchari Sabha

Respondent :- Presiding Officer Industrial Tribunal 2 U.P. Lucknow Andors.

Counsel for Petitioner :- Dhruv Mathur,Devendra Mohan Shukla

Counsel for Respondent :- C.S.C.,Illigible

Hon'ble Subhash Vidyarthi J.

1. Writ C No. 1000315 of 2012 has been filed by Hindustan Aeronautics Ltd. (hereinafter referred to as "HAL") seeking quashing of an award dated 09.08.2011 passed by the Presiding Officer, Industrial Tribunal (II), U.P., Lucknow in Award Case No. 52 of 2023, which has been published on 20.10.2011. By means of amendment, the petitioner has challenged validity of the reference made by the State Government on 22.07.2003 under Section 10(1)(d) of the Industrial Disputes Act,

1947 to the Industrial Tribunal (II), Lucknow for adjudication of the following questions:-

(i) Whether termination of services of 57 employees working in canteen of HAL, Lucknow, by the employer M/s Hindustan Aeronautics Ltd., Lucknow on 25.11.2000 and 23.12.2000, is proper and legal? If not, to what relief the employees are entitled.

(ii) Whether it would be proper and legal to treat the workmen as employees of HAL, Lucknow keeping in view their long continuous service? If yes, its effect.

2. WRIT - C No. - 1000491 of 2012 has been filed by Hindustan Aeronautics Karmchari Sabha (hereinafter referred to as "HAKS") challenging the validity of the award dated 19.10.2011 passed by the Industrial Tribunal to the extent it has disallowed the claim for payment of back wages for the period between retrenchment and reinstatement of the workmen and HAKS has sought a Writ of Mandamus commanding HAL to pay the entire back wages to the members / workmen for the aforesaid period.

3. As both the Writ Petitions challenge the same award and are based on the same set of facts, these are being decided by this common judgment.

4. Briefly stated, the facts pleaded in Writ C No. 1000315 of 2012 are that HAL is a Government Company registered under Section 617 of the Companies Act, 1956 (which is similarly worded as Section 2(45) of the Companies Act, 2013). It established a factory at Lucknow in the year 1971-72 for manufacturing accessories of aircrafts. A canteen was set up in the factory premises for providing eatables to the workmen at subsidized rates. The canteen was being operated by a contractor, who engaged workers to run the canteen. Initially, the contract to run the canteen was granted to one Sri. Chunni Lal Bhasin, who engaged manpower for running the canteen and paid wages to them. HAL reimbursed the contractor for the wages paid to the canteen employees.

5. On 24.04.1990, the Governor of U.P., in consultation with U.P. State Contract Labour Advisory Board, issued a Notification under Section 10(1) of Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the Contract Labour Act") prohibiting employment of contract labour in engineering industries situated in the State, except M/s Jay Vijay Metal Industries, Varanasi and BHEL, Haridwar. Vide letter dated 14.05.1990, HAL requested the U.P. Government for granting exemption from the applicability of the Contract Labour Act, in furtherance of which, the State Government issued a Notification dated 04.03.1991 whereby HAL, Lucknow and its Units at Kanpur and Korva (Sultanpur) were also included in the Notification dated 24.04.1990, thereby granting exemption to HAL from the provisions of the Contract Labour Act.

6. HAL claims that in view of the aforesaid exemption granted to it from the provisions of the Contract Labour Act, it was free to engage workers through contractors and, accordingly, workers in the canteen were also engaged by the contractor, who was given the contract to operate the canteen at subsidized rates. The contractors were free to engage persons of their choice and HAL had no say in it.

7. Hindustan Aeronautics Karmchari Sabha, Lucknow (hereinafter referred to as "the HAKS") had submitted an application to the Labour Commissioner, U.P., Kanpur claiming that the persons working in canteen should be paid wages equal to the wages being paid to unskilled workmen who are directly employed in the petitioner's factory. The aforesaid claim was registered as Case No. 18 of 1985 under Contract Labour Act and it was decided by means of an order dated 23.04.1989 wherein the Labour Commissioner held that the persons employed through contractor do not perform the same duties as are performed by the workmen directly employed in the factory, but still they are entitled to wages equivalent to the wages being paid to unskilled laborers employed directly. Other claims regarding changes in service conditions were rejected. HAL challenged the aforesaid order by filing Writ Petition No. 4553 of 1989, which was dismissed by means of a judgment and order dated

28.01.1994 passed by this Court. HAL challenged the aforesaid order by filing SLP No. 8768 of 1994, which too was dismissed by means of an order dated 11.07.1994.

8. The dispute started when Hindustan Aeronautics Employees Association, Lucknow (HAEA) demanded that instead of the facility of a subsidized canteen, HAL employees should be paid canteen allowance and this demand was accepted by HAL. Thereafter HAKS started opposing the grant of canteen allowance and replacement of subsidized canteen by market rate canteen.

9. On 22.06.2000 an agreement was entered into between Hindustan Aeronautics Employees Association, Lucknow (HAEA) and the Management of HAL, Accessories Division, Lucknow regarding revision of wage structure and other demands, before the Assistant Labour Commissioner wherein it was inter alia agreed that the establishment would discontinue the subsidized canteen facilities and switch over to a system of payment of Canteen Allowance. On 23.06.2000, the General Secretary HAEA made a demand for payment of canteen allowance in pursuance of the settlement dated 22.06.2000.

10. On 25.11.2000, the contract between HAL and the canteen operator Satish Sahni for running a subsidized canteen was terminated. On 27.11.2000 a fresh contract for running the canteen at market rates was entered into between HAL and the canteen contractor Sri. Satish Sahni.

11. The contractor retained only 22 contract workers for running the canteen under the new arrangement, under which the food items were required to be sold at market rates instead of subsidized rates.

12. On 25.11.2000 itself, HAL issued notices to the employees of the canteen contractor whose services had been terminated and stating that as the contractor did not fulfill his obligations, salary of the employees for the period 01.11.2000 to 25.11.2000, one month's salary in lieu of the notice, retrenchment allowance, gratuity and other dues were paid to the workmen along with the notice. However, the employees declined to receive the notices and the amounts.

13. HAL issued letters dated 25.11.2000 to the 63 canteen employees, whose services had been terminated, stating that they were being deployed on casual basis to perform other duties in the HAL and they were directed to report in the technical training center at 09:00 a.m. on 27.11.2000.

14. The employees sent similarly worded replies to the aforesaid letter, stating that the order for their redeployment was illegal, as they were regular employees of HAL and not of the contractor.

15. Hindustan Aeronautics Karmchari Sabha (HAKS) opposed the grant of canteen allowance alleging that it was a plan to close the canteen and it submitted a representation dated 23.11.2000 to this effect.

16. On 09.12.2000, HAL issued letters to all the concerned employees stating that the subsidised canteen was being restored as earlier and the employees should contact the canteen contractor and start working in the canteen. However, on the same date, the canteen contactor sent a letter stating that the office bearers of workers union had obstructed the working of the canteen, had turned all the persons out of the canteen and had locked up its door. The lock was opened on 11:45 hours but the canteen contactor and his employees were not permitted to enter the canteen. Hindustan Aeronautics Employees Association (HAEA) gave a letter dated 09.12.2000 demanding resumption of canteen allowance.

17. On 08/09.12.2000, a Manager of HAL submitted a shift report stating that some employees had tried to enter the factory premises at about 01:45 a.m. on 09.12.2000. The gate was locked and they were not allowed to enter the premises. They wanted to search one Sri R.P. Singh, who had reportedly scaled over the boundary wall of the administrative building carrying patrol in a jerry can in order to commit self immolation. Thereupon, search parties were sent all around the factory and Sri R.P. Singh was found out. He was under influence of liquor and was upset. He was sent home around 04:15 a.m. with security.

18. HAKS boycotted the canteen and demanded restoration of canteen allowance and at the same time, insisted that the persons employed by the canteen contractor should not be retrenched.

19. On 23.12.2000, the canteen contractor issued a notice stating that the contract between him and HAL had come to an end and the services of all the persons working in the canteen also stood terminated. Dues of the employees were being paid by HAL.

20. On 23.12.2000, HAL sent letters to the canteen workers stating that the period of canteen contract expired on 23.12.2000 and the services of the canteen workers stood terminated. Arrears of salary, one month's salary in lieu of notice, retrenchment allowance, gratuity and other dues were paid to the employees along with this notice. This information was sent to the Government of India also through a letter dated 23.12.2000.

21. Some employees challenged the retrenchment notice by filing Writ Petition No. 122 (S/S) of 2001, in which an interim order dated 10.01.2001 was passed staying operation of the retrenchment notice. However, the writ petition was dismissed by means of a judgment and order dated 30.10.2001 on the ground of availability of alternative remedy under the Industrial Disputes Act. Thereafter HAKS gave an application to the Deputy Labour Commissioner challenging termination of services of canteen employees, which resulted in a reference being made by the State Government vide order dated 23.03.2003.

22. The reference was decided by the Industrial Tribunal II, U.P., Lucknow by means of the impugned award dated 09.08.2011 passed by the Presiding Officer, Industrial Tribunal (II), U.P., Lucknow in Award Case No. 52 of 2023, which has been published on 20.10.2011. The Tribunal has held that the canteen employees had sought parity in wages with the wages payable to unskilled workmen of HAL, which was accepted by the deputy Labour Commissioner, Kanpur and the challenge to the aforesaid order made by HAL remained unsuccessful up to the Hon'ble Supreme Court. The contract between HAL and the

contractor contained provisions beneficial to the workmen and it also provided that in case the canteen contractor fails to make any payment to the workmen, HAL will pay the amount to them and will recover the same from the contractor. The contract also provided that the contractor shall pay increments in wages to the workmen in furtherance of Government Orders and orders of Deputy Labour Commissioner and HAL will reimburse the contractor. The Tribunal concluded that all the aforesaid facts establish that in fact the 66 canteen workers, regarding whom the reference was made, were the employees of the principal employer – HAL and the contract between HAL and the canteen contractor was merely a paper agreement and it was sham. The Tribunal declared the retrenchment orders dated 25.11.2000 passed in respect of 4 workmen and the retrenchment orders dated 23.12.2000 passed in respect of rest of them to be illegal.

23. The Tribunal further directed HAL to pass appropriate orders regarding regularization of services of the workmen within three months from the publication of the award. However, the Tribunal rejected the claim of payment of back wages on the ground that there was no pleading that the workmen remained unemployed during the relevant period.

24. Submissions of Sri P.K. Sinha, the learned Counsel for HAL and Sri Dhruv Mathur and Sri Pranav Agarwal, the learned counsel for HAKS, were heard on various dates from 18.04.2024 till 06.05.2024 and the judgment was reserved. The learned Counsel for HAL had filed detailed written submissions before commencement of oral submissions. The learned Counsel for HAKS has filed a written brief of his submissions in the month of October 2024.

25. Notices of both the Writ Petitions were issued to the canteen contractor Sri. Satish Sahni. The office has put up a report in Writ C No. 1000491 of 2012 that the notice was served, but he has not put in appearance before this Court.

26. Sri P. K. Sinha, the learned counsel for HAL submitted that the reference order wrongly mentions HAL to be the employer of the

canteen workers. In fact HAL is the principal employer of the workmen of the canteen whereas their employer is the canteen contractor. HAL is authorised to engage contract workers vide Notification dated 04.03.1991 and it is registered under the Contract Labour Act. He further submitted that HAL cannot be treated as both an employer and a principal employer in view of the judgment in the case of **Steel Authority of India Ltd. Vs. Union of India**: (2006) 12 SCC 233.

27. The learned counsel for HAL has secondly submitted that after the judgment in **Steel Authority of India Ltd.** (Supra), it has been declared that the appropriate government for HAL is the Central Government. It is further submitted by him that the Hon'ble Supreme Court in the case of **ITC Limited & Others vs. State of Karnataka & Others**: (1995) Supp SCC 476, has held that "*once the Centre takes over an industry under Entry 52 of List I and passes an Act to regulate the legislation, the State Legislature ceases to have any jurisdiction to legislate in that field and if it does so, that legislation would be ultra vires the powers of the State Legislature.*"

28. Further, placing reliance on the judgment of the Apex Court in **Bangalore Water Supply vs. A Rajappa & Others**: (1978) 2 SCC 213, Sri. Sinha has submitted that the employees and management of manufacturing process are also covered under the term industry and thus will also be under control of the Central Government and the State Government will have no control at all since HAL is a "controlled industry".

29. The third submission of the learned counsel for HAL is that under U. P. Industrial Disputes Act (hereinafter referred to as 'the State Act'), the industrial disputes of the workmen and the employer regarding any industry carried on by or under authority of the Central Government or by a Railway Company or such controlled industry as may be specified in this behalf by the Central Government, are excluded from the purview of consideration of industrial disputes by the Industrial Tribunal created under Section 4-B of the State Act. As

such, the industrial disputes in regard to the workmen of an industry specified as a 'controlled industry' under Schedule I of Industries (Development and Regulation) Act, 1951 and Section 2 (ee) of Industrial Disputes Act, 1947, cannot be adjudicated by a Tribunal created under Section 4-B of the State Act, 1947 until and unless a specific amendment is made in the State Act empowering the Tribunals to adjudicate the industrial disputes of industries carried on by or under authority of the Central Government and the reference to the U.P. Industrial Tribunal was incompetent.

30. The learned counsel for HAL has further submitted that the appropriate government can refer the industrial disputes by exercise of power under Section 10(1)(d) or under the third Proviso appended to Section 10(1)(d). The consequence of exercising power under both the provisions is altogether different. Under Section 10(1)(d) the industrial disputes have to be referred necessarily to Central Government Industrial Tribunal (CGIT) constituted under Section 7-A of the Central Act for the reason that word 'Tribunal' as mentioned in Section 10(1)(d) refers to the Tribunals constituted under Section 7-A of the Central Act. On the other hand, once the appropriate government elects to exercise power under the third Proviso appended to Section 10(1)(d), the 'Tribunal' defined in third proviso is a 'Tribunal' constituted by the State Government which is altogether a different Tribunal manned by different Presiding Officer (P.O.) appointed by the State Government. As such, the reference of U.P. Industrial Tribunal is bad.

31. Relying upon the decisions in the cases of **Bhavnagar University versus Palitana Sugar Mill Pvt. Ltd. &Ors**: (2003) 2 SCC 111 and **J. N. Ganatra versus Morvi Municipality**: (1996) 9 SCC 495, the learned Counsel for HAL has submitted that once the authority chooses to exercise power under any specific provision, the power should be exercised in the manner as provided in the statute and in no other manner.

32. Fifthly, the learned counsel has submitted that the terms of reference order on its close reading clearly reveal that it has taken away HAL's status of 'Principal Employer' under The Contract Labour Act, 1970 and the Rules framed there under without giving an opportunity to HAL to challenge the change of its status from 'Principal Employer' to 'Employer' and, as such, the reference is illegal and liable to be set aside. Further, the Hon'ble Supreme Court in **Steel Authority of India Ltd.** (Supra) has held that the Contract Labour Act, 1970 is a complete Code in itself and the relationship between the employer and employees is essentially a question of fact, determination of which is under the exclusive domain of the appropriate government and not the labour court or the writ court. The Hon'ble Supreme Court has held that if a relief of absorption is claimed, the workman shall necessarily approach the Industrial Tribunal and establish that contract is sham, ruse & camouflage. Thus, for adjudicating upon the issue regarding the validity of contract whether the same is sham or not, a reference has to be necessarily drawn by the appropriate government for referring the matter for adjudication under Section 10(1) (d) of the Central Act which has not been done in the case at hand.

33. Sri. Sinha has submitted that the adjudication of the contract between HAL and the canteen contractor being sham has been made by the Tribunal without any reference and it is in violation of law laid down by the Hon'ble Supreme Court in **TISCO Limited vs. State of Jharkhand**: (2014) 1 SCC 536 wherein the Apex Court held that the Tribunal acquires jurisdiction only on the basis of a reference made to it and the Tribunal has to confine itself within the subject matter of reference.

34. The learned Counsel for HAL has also submitted that no fresh notice was issued after changing the reference from Section 4(k) of the State Act to Section 10(1)(d) of the Central Act, rather proceedings were continued in pursuance of the Notice issued under Section 4(k) of the State Act which culminated into the Award and thus the entire adjudication of Reference under Section 10(1)(d) of the Central Act is illegal and without jurisdiction. He has submitted that even if the

power under Section 39 of Central Act has been delegated to be exercised by the Government of U.P., after **Air India Statutory Corpn. v. United Labour Union**: (1997) 9 SCC 377, a notice under Section 10(1)(d) of the Central Act ought to have been issued for conducting the proceedings of adjudication under the Central Act.

35. The learned counsel for HAL has also contended that the impugned Award arbitrarily creates difference between the appropriate governments before and after the year 1986 when the amendment in the definition of appropriate government under the Contract Labour Act was made. He has submitted that so far as HAL is concerned, the Central Government has always been the 'appropriate government' before or even after the said amendment in the definition of appropriate government in the Contract Labour Act. He has placed reliance on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 3639 of 2002 where it has categorically been held that HAL is an undertaking of Central Government and it is only the Central Government which exercises control over the same.

36. Learned counsel for HAL has invited this Court's attention to sub-para- VI of the contract where although it is written that the contractor will be the employer of the workers working in the canteen yet in the same para, it has also been written that until the contractor files its own standing order, the standing orders of HAL shall apply to the contract workmen and the contractor will have to work in accordance with the Model Standing Order. He has submitted that the Model Standing Order as mentioned in Clause-VI of the contract, meant the model standing order under Standing Order 1946 and not the company's certified standing order. He has submitted that the finding of the Tribunal that the Contract Labours were in fact employees of petitioner and contractor was only a device to avoid statutory liabilities, is wrong.

37. The next contention on behalf of learned counsel for HAL is that the provision of payment of Employees Provident Fund (EPF) under Employees' Provident Funds and Miscellaneous Provisions Act, 1952

(hereinafter referred to as EPF Act, 1952) and Employees' State Insurance Act, 1948 (hereinafter referred to as ESI Act, 1948) has been included in terms of the contract since it is a statutory requirement in terms of Section 21 of the Contract Labour Act. Under this Section, it is responsibility of the 'principal employer' to ensure that the workmen are being afforded all the benefits of the statutory enactments. Where the contractor does not pay his workmen in compliance with the provision of Section 21(4) of the Contract Labour Act, it becomes the responsibility of the principal employer to pay the same to the contract workmen and thereafter deduct the same amount from the bills of the contractor. Such payment made by the principal employer to the contract workmen does not create any relationship of employer and employee between the HAL and the contract workmen. In regard to the filing of P.F. and E.S.I. in HAL Code, the learned Counsel for HAL has submitted that the P.F. and E.S.I. were being deposited by the contractor and HAL only used to countersign the deposit vouchers to ensure that the contractor was making the statutory deposits in respect of the Contract Labours under Section 21(4) of the Contract Labour Act. Such deposition does not establish any relationship of master and servant between the parties.

38. In regard to the finding of the Tribunal pertaining to engagement of the workmen by a new contractor after every term of contract comes to an end by giving them new appointment letters, the learned counsel for HAL has submitted that the appointment letters were issued by the canteen contractor without any involvement of HAL.

39. In regard to the finding recorded by the Industrial Tribunal that every workman ought to have been given retrenchment compensation, the learned counsel has submitted that the obligation was of the contractor and not of HAL. The contract workmen of the erstwhile contractors never raised any claim for retrenchment compensation & gratuity from the outgoing contractor. However, when the subsidized canteen was abolished and the contractor requested HAL to pay his entire liability, HAL discharged the said liability on behalf of the contractor by using the 'retention money' of the erstwhile contractors. HAL has

not paid the amount as employer of the contract employees and it has discharged the obligation as the principal employer. In the retrenchment notice it had been specifically averred that HAL was making such payments because the contractor had not discharged its obligations.

40. The learned Counsel for HAL has submitted that after substitution of subsidized canteen by a market rate canteen, the canteen business was reduced drastically and the canteen contractor decided to retain only 22 employees. HAL offered employed to the remaining canteen employees on compassionate basis, but this offer was not accepted by those employees. The offer of redeployment cannot be treated as creating the relationship of master and servant between HAL and the canteen employees.

41. The learned counsel for HAL has submitted that HAL did not make payment of wages to the canteen employees. As per the terms of the contract, HAL used to pay subsidy amount against the bills of the contractor. The determination made in Award passed by the U.P. Labour Commissioner under Rule 25(2) (5) (b) of the Contract Labour Rules, 1975 is only a computation of what wages had to be paid to the Contract Labours. In the aforementioned award the contractor was also a party and HAL was made party as a 'Principal Employer'. This was done so that in case of failure of the contractor to pay such wages, liability to pay the same may be fastened on to HAL under Section 21 of The Contract Labour Act, 1970. Therefore, in accordance with the award, the contractor had to pay the wages to his labours which has to be ensured under Section 21(4) of the Contract Labour Act by HAL and thus, the said determination of U.P. Labour Commissioner in the award passed by him does in no manner create relationship of master and servant between HAL and the canteen employees.

42. The learned counsel for HAL has further submitted that the new contractor often engaged the employees of old contractor who were well acquainted with their work, but this was in the contractor's

discretion and HAL had never directed the contractor to engage any specific workmen of the erstwhile contractor.

43. Relying upon the judgment in the case of **Indian Petrochemicals Corpn. Ltd. v. Shramik Sena**: (1999) 6 SCC 439 and **Balvant Rai Saluja vs. Air India**: (2014) 9 SCC 407, the learned Counsel for HAL has submitted that the contract workmen of the statutory canteen are entitled to get benefit under Factories Act only and not for all other purpose under Industrial Disputes Act. The Contract Labours working in statutory canteen have to be treated only as employees of the canteen and would get benefits under Factories Act, 1948 only so long as the canteen is in operation but when the canteen was changed from a subsidized canteen to market rate canteen and the work-load was been reduced significantly, retrenchment of the canteen employees was the only viable option left for the canteen contractor and HAL has only paid dues to them on the instructions in writing given by the contractor.

44. The learned counsel for HAL has further submitted that the management was made to change the system of subsidized canteen to market rate canteen in view of the pressing demand of the employees of HAL and as a consequence thereto, a tripartite settlement was arrived at in which in place of subsidized canteen, the management agreed to pay 'Canteen Allowance' to the members of HAEA and to run the canteen at market rates. The said settlement was made by accepting the long standing demands of HAEA, as it was apprehended that if the demand was not accepted, industrial unrest could have escalated.

45. Per contra, Sri Dhruv Mathur, the learned counsel for the respondent - Hindustan Aeronautics Karmchari Sabha (HAKS), has submitted that the State Industrial Tribunal has jurisdiction to adjudicate on the dispute in question since the third proviso to Section 10 of the Central Act provides 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". The dispute in question was referred to Industrial Tribunal constituted by the State Government in exercise of discretion vested in the Government by the third Proviso to Section 10 of the Central Act.

46. Learned Counsel for HAKS further submitted that even otherwise, the Industrial Tribunal that has passed the impugned award has been constituted by the State Govt. under Section 7-A of the Industrial Disputes Act, 1947 (the Central Act), as is evident from the information received from the office of the Industrial Tribunal, Lucknow under the Right to Information Act, 2005. In this regard, he has placed reliance on a judgment dated 01.04.2024 passed by a coordinate bench of this Court in Writ C No. 1002796/2003 and connected Writ C No. 1001632/2015 titled **Hindustan Aeronautics Ltd. Versus State of U. P. & Others**, in which this Court has held that all Tribunals constituted by the State Govt., including the Tribunal in question, are functioning in terms of Section 7-A of the Central Act. In view of the aforesaid law, the submission of HAL that the reference of the industrial dispute in question could not have been made to a Tribunal constituted by the State Government, is misconceived and deserves to be rejected.

47. The learned counsel for HAKS further submitted that where the Central Government is the appropriate government, Section 39 of the Central Act empowers it to delegate its powers to the State Government. In exercise of this power, the Central Government has delegated its powers to the State Governments vide Notification dated 03.07.1998 in relation to the undertakings, cooperation autonomous bodies running under the Central Government which were specified in the Schedule annexed with the Notification dated 03.07.1998. In the schedule of the said Notification the name of HAL is placed at serial no.40. Therefore, the State Government is exercising such delegated power in respect of HAL and accordingly, it has made the reference under Section 10(1)(d) of the Industrial Disputes Act 1947 to the Industrial Tribunal constituted by it.

48. The next submission made by the learned counsel for HAKS is that the mention of Section 4 (k) in the notice dated 08.08.2003 is merely a typographical error as the said notice also clearly mentions that it has been issued in furtherance of Letter No. 849-54 which clearly indicates that the proceedings were initiated in furtherance of Section 10 of the Central Act.

49. Sri. Dhruv Mathur has submitted that in view of the law laid down by the Hon'ble Supreme Court in **Gujarat Electricity Board v/s Hind Mazdoor Sabha**:(1995) 5 SCC 27, in which it was held that where an Industrial Establishment seeks the protection of being registered under the Contract Labour Act for engaging labour through contractors, it shall be open for the Industrial Adjudicator to first inquire as to whether the arrangement with the contractor is sham or not and once the adjudicator comes to the conclusion that the arrangement between the Industrial Establishment and the Contractor is sham, it shall have the jurisdiction to adjudicate on the correctness of the retrenchment of the workmen.

50. The Learned Counsel for HAKS further submitted that as per the General Clauses Act, any amendment being brought about must also follow the same procedure which was followed while making the original decision or order. The decision dated 09.01.2001 exempting certain establishments from the prohibition of engaging contract labour, was made after due consultation with the State Contract Labour Board as provided under Section 10 (1) of the Contract Labour Act. HAL was added to the said list by making amendment to the list without consultation with U.P. State Contract Labour Advisory Board. Therefore, the exemption granted to HAL is bad in law.

51. Lastly, the learned counsel for HAKS submits that HAL is an 'Industrial Establishment' as defined under Section 25-L(a) of the Central Act and is governed by the provisions of Chapter V-B (Sections 25-K to 25-S) of the Central Act. Section 25-N which is a part of Chapter V-B provides that a prior permission of the appropriate government has to be obtained by an industrial establishment to which

the said chapter applies, prior to retrenching workmen employed in it. The said permission had neither been sought nor granted to HAL and on this count alone, the retrenchment of the workmen in question is bad as the same has not been made in accordance with law.

52. In respect to the question of back wages of the workers, Sri. Dhruv Mathur has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Others**: (2013) 10 SCC 324 wherein it has been held that the employee who is desirous of getting back wages is required to plead or at least make a statement before the Adjudicating Authority that he/she was not gainfully employed or was employed on lesser wages. The burden then shifts on the employer to lead cogent evidence to prove that the said employee was employed somewhere else and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the present case, all the retrenched workmen were not gainfully employed and were unemployed and since HAL had failed to establish that they were gainfully employed, they are entitled to full back wages from the date of their respective retrenchment orders dated till the date of their reinstatement in service.

53. The following questions arise for consideration of this Court from the submissions of the learned Counsel for the parties as well as from a perusal of the record of the case: -

A. Which Government is the 'appropriate Government' in respect of HAL?

B. Whether the State Government was competent to refer the dispute between the parties for adjudication to the Tribunal?

C. Whether the State Government could have referred the dispute to an Industrial Tribunal constituted under Section 4-B of the U. P. Industrial Disputes Act or the dispute ought to have been referred to a Tribunal constituted under Section 7-A of the Industrial Disputes Act (Central)?

D. Whether the question regarding the contract between HAL and the canteen operator being sham or not, was included in the scope of reference? If not, its effect.

E. Whether the Industrial Tribunal has jurisdiction to examine the plea of the contract between HAL and the canteen contractor being sham or void?

F. Whether the finding recorded by the Tribunal that the contract between HAL and the canteen operator was sham, is sustainable in law?

G. Whether the concerned employees are entitled for reinstatement, regularization of services and payment of back-wages?

H. Whether the impugned award is sustainable in law?

Analysis

Question A - Which Government is the 'appropriate Government' in respect of HAL?

54. Section 2 of the Contract Labour Act provides as follows: -

> ***2. Definitions***.—*(1) In this Act, unless the context otherwise requires,—*
>
> *(a) "appropriate Government" means,—*
>
> *(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;*
>
> *(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;*

55. Section 2(a) of the Industrial Disputes Act, 1947 (the Central Act) defines the 'appropriate Government' under Section 2(a)(i) as follows:

> *"(a) "appropriate Government" means,—*
>
> ***in relation to any Industrial Disputes*** *concerning any industry carried on by or under the authority of the Central Government or by a railway company or* ***concerning any such controlled industry as may be specified in this behalf by the Central***

Government *or in relation to an Industrial Dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)] or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the Banking Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port,* ***any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government****, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government,* ***the Central Government****,"*

(Emphasis added)

56. Sri. Sinha has also submitted that HAL is a 'controlled industry' under Schedule I of Industries (Development and Regulation) Act, 1951.

Industries (Development and Regulation) Act, 1951 (Act 65 of 1951) (which will hereinafter be referred to as IDR Act), is "*An Act to provide for the development and regulation of certain industries"* and it was enacted with effect from 31.10.1951. The statement of objects and reasons of the aforesaid Act reads as follows:

> ***"Statement of Objects and Reasons***.—*The object of this Bill is to provide the Central Government with the means of implementing their industrial policy which was announced in their Resolution No. I(3)-44(13)-48, dated 6th April, 1948, and approved by the Central Legislature.* ***The Bill brings under Central control the development and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import****. The planning of future development on sound and balanced lines is sought to be secured by the licensing of all new undertakings by the Central Government. The Bill confers on Government, power to make rules for the registration of existing undertakings, for regulating the production and development of the industries in the Schedule and for consultation with Provincial Government on these matters. Provision has also been made for the constitution of a Central Advisory Council, prior consultation with which will be obligatory before the Central Government takes certain measures such as the revocation of a licence or taking over the control and management of any industrial concern.*
>
> (Emphasis added)

57. Section 2 of the IDR Act provides that:-

> ***2. Declaration as to expediency of control by the Union***.—*It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.*

58. Article 7 (1) of the First Schedule referred to in Section 2 of the IDR Act mentions "Any industry engaged in the manufacture or production of any of the articles mentioned in each of the following headings or sub-headings, namely: - TRANSPORTATION: Aircraft.

59. Chapter III of IDR Act deals with Regulation of Scheduled Industries and Section 10 of the Act falling in this Chapter provides for Registration of existing industrial undertakings. The learned Counsel for the petitioner has submitted that HAL has been registered under

Section 10 of IDR Act, but no document has been brought on record which may substantiate this submission.

60. Assuming that HAL has been registered under Section 10 of the IDR Act, it will not imply that it becomes a controlled industry specified in behalf of the Industrial Disputes Act by the Central Government

61. Chapter III-AB of IDR Act contains provisions to provide relief to certain industrial undertakings and Section 18-FB falling in the aforesaid Chapter of the IDR Act provides as follows: -

> *"**18-FB. Power of Central Government to make certain declarations in relation to industrial undertakings, the management or control of which has been taken over under Section 18-A, Section 18-AA or Section 18-FA**.—(1) The Central Government, if it is satisfied, in relation to an industrial undertaking or any part thereof, the management or control of which has been taken over under Section 18-A, whether before or after the commencement of the Industries (Development and Regulation) Amendment Act, 1971, or under Section 18-AA or Section 18-FA, that it is necessary so to do in the interests of the general public with a view to preventing fall in the volume of production of any scheduled industry, it may, by notified order, declare that—*
>
> *(a) all or any of the enactments specified in the Third Schedule shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments) to such industrial undertaking, as may be specified in such notified order, or*
>
> *(b) the operation of all or any of the contracts, assurances of property, agreements, settlement, awards, standing orders or other instruments in force (to which such industrial undertaking or the company owning such undertaking is a party or which may be applicable to such industrial undertaking or company) immediately before the date of issue of such notified order shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notified order.*
>
> *(2) The notified order made under sub-section (1) shall remain in force, in the first instance, for a period of one year, but the duration of such notified order may be extended from time to*

time by a further notified order by a period not exceeding one year at a time:

Provided that no such notified order shall, in any case, remain in force—

(a) after the expiry of the period for which the management of the industrial undertaking was taken over under Section 18-A, Section 18-AA or Section 18-FA, or

(b) for more than eight years in the aggregate from the date of issue of the first notified order,

whichever is earlier.

(3) Any notified order made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order.

(4) Any remedy for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of sub-section (1) and suspended or modified by a notified order made under that sub-section shall, in accordance with the terms of the notified order, remain suspended or modified, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall accordingly remain stayed or be continued subject to such adaptations, so, however, that on the notified order ceasing to have effect—

(a) any right, privilege, obligation, or liability so remaining suspended or modified shall become revived and enforceable as if the notified order had never been made;

(b) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of sub-section (1), the period during which it or the remedy for the enforcement thereof remained suspended shall be excluded."

62. The Third Schedule referred to in Section 18-FB(1)(a) of IDR Act includes the Industrial Disputes Act also. However, neither there is anything on record to establish that any Notification has been issued under the aforesaid provision, nor would any such Notification remain

in force for a period beyond eight years as per the provision contained in Section 18-FB(2). Therefore, the mere registration of HAL under Section 10 of the IDR Act would not make it a controlled industry as per the definition of the expression given in the Industrial Disputes Act and it will not affect the applicability of the Industrial Disputes Act on HAL.

63. Thus the submission of the learned Counsel for HAL that HAL is a controlled industry, cannot be accepted as there is nothing on record to establish that HAL is a controlled industry specified in this behalf by the Central Government.

64. The learned Counsel for HAL has relied upon a judgment of the Hon'ble Supreme Court in **Hindustan Aeronautics Ltd. v. Hindustan Aeronautical Canteen Kamgar Sangh**: (2007) 15 SCC 51, wherein a two Judge Bench of the Hon'ble Supreme Court held that it is undisputed that Hindustan Aeronautics Ltd. is an undertaking of the Central Government and it is the Central Government which exercises full control over the same and, therefore, the Central Government is the "appropriate government". The learned Counsel for HAKS has not advanced any submission in reply to this submission.

65. However, **Hindustan Aeronautics Ltd. v. Hindustan Aeronautical Canteen Kamgar Sangh**: (2007) 15 SCC 51 was decided without taking into consideration the fact that in an earlier three Judge Bench decision in the case of **Hindustan Aeronautics Ltd. v. Workmen**: (1975) 4 SCC 679, it was held that the appropriate Government in respect of HAL was the State Government. It was contended that the Central Government owned the entire bundle of shares in the company. It appoints and removes the Board of Directors as well as the Chairman and the Managing Director. All matters of importance are reserved for the decision of the President of India and ultimately executed in accordance with his directions. The memorandum and articles of association of the company unmistakably point out the vital role and control of the Central Government in the matter of carrying on of the industry owned by the appellant. Hence the industrial

dispute in question concerned an industry which was carried on "under the authority of the Central Government" within the meaning of Section 2(*a*)(*i*) of the Act and the Central Government was the only appropriate Government to make the reference under Section 10. The Hon'ble Supreme Court held that the submission so made was identical to the one made before and repelled by the Supreme Court in the case of **Heavy Engineering Mazdoor Union v. State of Bihar:** (1969) 1 SCC 765 wherein it was said that: -

> *"It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the State as in Graham v. Public Works Commissioners [(1901) 2 KB 781] where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government, (see State Trading Corporation of India Ltd. v. Commercial Tax Officer, Visakhapatnam [AIR 1963 SC 1811 Per Shah, J.] and Tamlin v. Hannaford [(1950) 1 KB 18, 25, 26]). Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. (cf. London County Territorial and Auxiliary Forces Association v. Nichols [(1948) 2 All ER 432]).*"

66. In **Hindustan Aeronautics Ltd. v. Hindustan Aeronautical Canteen Kamgar Sangh**: (2007) 15 SCC 51 relied upon by Sri. P. K. Sinha,

the question whether in respect of HAL, the State Government is the "appropriate Government" under the provisions of the Contract Labour Act, was put up for consideration of a two Judge Bench of the Hon'ble Supreme Court. The Hon'ble Supreme Court relied upon a Constitution Bench judgment in the case of **SAIL v. National Union Waterfront Workers**: (2001) 7 SCC 1, in which it was held that the "appropriate government" will be the government which exercises control and authority over the organisation concerned. A Notification under Section 10(1) of the Contract Labour Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government. The Hon'ble Supreme Court held that it is undisputed that Hindustan Aeronautics Ltd. is an undertaking of the Central Government and it is the Central Government which exercises full control over the same and, therefore, the Central Government is the "appropriate government". However, the Hon'ble Supreme Court did not take into consideration the earlier three Judge Bench judgment in the case of **Hindustan Aeronautics Ltd. v. Workmen**: (1975) 4 SCC 679.

67. Again, in **Nashik Workers Union v. Hindustan Aeronautics Ltd.**, (2016) 6 SCC 224, the question as to which Government is the 'appropriate Government' in respect of HAL, was decided by a two Judge Bench of the Hon'ble Supreme Court as follows: -

> ***"32.*** *In the case at hand, the issue which arises for consideration is whether the decision in HAL 2 [Hindustan Aeronautics Ltd. v. Hindustan Aeronautical Canteen Kamgar Sangh, (2007) 15 SCC 51] can be regarded as a binding precedent. As is noticeable, HAL 2 has not taken note of the earlier decision in HAL 1 [Hindustan Aeronautics Ltd. v. Workmen, (1975) 4 SCC 679]. It has been clearly held in HAL 1 that regard being had to the dictionary clause of the ID Act for the purpose of Hindustan Aeronautics Ltd., it is the State Government which has to make the reference. In HAL 2 the Court has referred to the decision in SAIL case [SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1] and opined that it is undisputed that Hindustan Aeronautics Ltd. is an undertaking of the Central Government and it is the Central Government which exercises full control*

over the same and, therefore, the appropriate Government is the Central Government. This analysis runs counter to HAL 1 and as well the ratio of the decision in SAIL case. On the contrary there is no discussion either on the facts or the law. It has been opined that the facts are "undisputed".

***33.** In HAL 1, the three-Judge Bench had referred to the decision in Heavy Engg. Mazdoor Union [Heavy Engg. Mazdoor Union v. State of Bihar, (1969) 1 SCC 765]. As has been held in Tata Memorial Hospital Workers Union [Tata Memorial Hospital Workers Union v. Tata Memorial Centre, (2010) 8 SCC 480], the authority in Heavy Engg. Mazdoor Union has been approved in SAIL with some divergence. The authority in SAIL case, as the conclusion would show, covers two situations — the unamended provision and the amended provision. It does not disturb the principles stated in HAL 1. Thus, two aspects, first, HAL 2 does not take note of HAL 1 and second, it proceeds on the basis of undisputed facts which are not stated. It is to be noted that there is nothing in the order in HAL 2 to suggest that Hindustan Aeronautics Ltd. is an agent of the Central Government.*

***34. In our considered opinion, as HAL 2 has not noticed HAL 1 which has been approved in SAIL case, it cannot be considered as a binding precedent. Therefore, we hold that HAL 1 still holds good and lays down the correct law and we are bound by it** as its foundation flows from Heavy Engg. Mazdoor Union which has been approved in SAIL with some divergence as has been stated in Tata Memorial Hospital Workers Union. Be it stated, that divergence really does not affect the approval. **We have no hesitation in our mind that HAL 2 cannot be regarded as a binding precedent**...."*

(Emphasis added)

68. Thus the judgment in the case of **Hindustan Aeronautics Ltd. v. Hindustan Aeronautical Canteen Kamgar Sangh**: (2007) 15 SCC 51 cited by Sri. P. K. Sinha has been held by the Hon'ble Supreme Court not to be a binding precedent, in a case in which HAL was a party, and the Hon'ble Supreme Court held that appropriate Government in respect of HAL is the State Government.

69. In the judgment dated 01.04.2024 passed in Writ C No. 1002796 of 2003 and Writ C No. 1001632 of 2015 titled **Hindustan Aeronautics Ltd. versus State of U.P.** a coordinate Bench of this Court has held that: -

> *"when the provisions of the Act, 1947 are seen in the context of the Notification dated 03.07.1998, it is clearly apparent that the State Government could have referred the industrial dispute to a Tribunal for adjudication which in effect has been done by means of reference order dated 13.06.2002 amended on 17.09.2002. Admittedly, in terms of the third proviso of Section 10 (1) (d) of the Act, 1947, the State Government is competent to refer the dispute to an Industrial Tribunal constituted by the State Government. Merely because in the reference order dated 13.06.2002 as amended on 17.09.2002, the third proviso does not find place, the same cannot and will not take away the powers of the State Government, which is the competent Government in terms of the Notification dated 03.07.1998, of referring the industrial dispute to a Tribunal constituted by it.*

70. In that case also, the learned Counsel for HAL had submitted that HAL being a controlled industry, the tribunals constituted by the State Government are not empowered to decide the case pertaining to controlled industry and that considering the definition of "Industrial Dispute" as defined under Section 2 (l) of the State Act, an industrial dispute concerning the controlled industries would not be governed by the provisions of the State Act. The said argument was rejected by the coordinate Bench keeping in view the notification dated 03.07.1998. The Court held that the powers vested in "appropriate Government" in this case, the State Government, which considering the third proviso to Section 10(1)(d) of the Central Act was empowered to refer the industrial dispute to a tribunal constituted by it and HAL finds place in the said notification.

71. As the learned Counsel for HAL has submitted that it is undisputed that HAL is a controlled industry and the appropriate Government in respect thereof is the Central Government and this submission has not been disputed by the learned Counsel for HAKS, who has merely submitted that although the Central Government is the appropriate Government, in exercise of its powers under Section 39 of the Central Act it has delegated its powers to the State Government and as the judgment cited by the learned Counsel for HAL in support of his contention that the appropriate Government in relation to industrial disputes involving HAL is the Central Government, has been held not

to be good law, I undertook the exercise to gather the information regarding HAL available on its official website, which revealed the following facts.

72. The Company had its origin as Hindustan Aircraft Limited, which was incorporated on 23.12.1940 at Bangalore by Sri Walchand Hirachand in association with the then Government of Mysore, with the aim of manufacturing aircraft in India. In March 1941, the Government of India became one of the shareholders in the Company and subsequently the Government of India took over its management in 1942. In January 1951, Hindustan Aircraft Limited was placed under the administrative control of Ministry of Defence, Government of India.

73. In August 1963, Aeronautics India Limited was incorporated as a Company wholly owned by the Government of India, to undertake manufacture of Mig-21 aircraft under license. Thereafter, the Government decided to amalgamate Hindustan Aircraft Limited with Aircrafts India Ltd. so as to conserve resources in the field of aviation where the technical talent in the country was limited and to enable the activities of all the aircraft manufacturing units to be planned and coordinated in a most efficient and economical manner. Amalgamation of the two companies i.e. Hindustan Aircraft Limited and Aeronautics India Limited was brought about on 01.10. 1964 by an Amalgamation Order issued by the Government of India and the Company after the amalgamation was named as "Hindustan Aeronautics Limited (HAL)" with its principal business being design, development, manufacture, repair and overhaul of aircraft, helicopters, engines and related systems like avionics, instruments and accessories.

74. HAL is a Public Sector Undertaking, which is listed with the National Stock Exchange. 71.64% shares of the company are held by its promoter, which is the Central Government, in the name of the President of India. Thus it is a Government company as defined in

Section 2(45) of the Companies Act, 2013, which corresponds to Section 617 of the Companies Act, 1956.

75. Section 2(a) of the Industrial Disputes Act (the Central Act) provides that in relation to any Industrial Disputes concerning any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, the "appropriate Government" would mean the Central Government. As 71.64% shares, i.e. more than fifty one per cent paid up share capital of HAL is held by the Central Government, the appropriate Government in relation to an industrial dispute concerning HAL will be the Central Government.

76. None of the precedents in which it has been held that the appropriate Government in relation to industrial disputes concerning HAL is the State Government, takes into consideration that Section 2(a) of the Central Act provides that in relation to any Industrial Disputes concerning any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, the "appropriate Government" would mean the Central Government and those are *sub-silentio* judgments so far as this point is concerned, which judgments fall within the category of exceptions to the binding precedents.

77. Therefore, my answer to Question A is that the Central Government is the appropriate Government in respect to the industrial disputes concerning HAL, which is a Government Company in which more than 51% shares are held by the Central Government in the name of the President of India.

Question B -Whether the State Government was competent to refer the dispute between the parties for adjudication to the Tribunal?

78. Section 39 of the Central Act empowers the Central Government to delegate its powers to the State Government. In exercise of this power, the Central Government has issued a Notification dated 03.07.1998 whereby it has delegated its powers in relation numerous undertakings specified in the Schedule annexed with the said Notification, to the

State Government. The Schedule appended to the said Notification includes HAL also. The Central Government having delegated its powers to the State Government under a statutory provision, the State Government is legally authorized to exercise the delegated power in respect of HAL and to make a reference of the dispute to a Tribunal in accordance with the law.

Question C -Whether the State Government could have referred the dispute to an Industrial Tribunal constituted under Section 4-B of the U. P. Industrial Disputes Act or the dispute ought to have been referred to a Tribunal constituted under Section 7-A of the Industrial Disputes Act (Central)?

79. Section 10 (1) of the Central Act reads as follows: -

> ***"Section 10 - Reference of disputes to Boards, Courts or Tribunals***
>
> *(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-*
>
> *(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 veraciously 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 the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government. (inserted with effect from 21.08.1994)"

(Emphasis added)

80. The third proviso to Section 10 of the Central Act categorically provides 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. If the Central Government can refer a dispute to an Industrial Tribunal constituted by the State Government, the same can also be done by the State Government in exercise of powers delegated by the Central Government under Section 39 of the Central Act.

81. In view of the aforesaid discussion, this Court is of the considered view that the State Government has the power to refer the dispute concerning HAL to the Industrial Tribunal constituted under Section 4-B of the State Act.

Question D -Whether the question regarding the contract between HAL and the canteen operator being sham or not, was included in the scope of reference? If not, its effect.

82. Before proceeding to decide this issue, it will be appropriate to have a look at the statutory provision contained in Section 10(4) of the Industrial Disputes Act, 1947 (the Central Act), which is as follows: -

"(4) Where in an order referring an industrial dispute to 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, 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."***

(Emphasis added)

83. The State Government had referred only the following two questions for decision of the Tribunal: -

a. *Whether termination of services of 57 employees working in canteen of HAL, Lucknow, by the employer M/s Hindustan Aeronautics Ltd., Lucknow on 25.11.2000 and 23.12.2000, is proper and legal? If not, to what relief the employees are entitled.*

b. *Whether it would be proper and legal to treat the workmen as employees of HAL, Lucknow keeping in view their long continuous service? If yes, its effect.*

84. Apparently, the Tribunal was required to examine the question whether the workmen in question can be treated as employees of HAL keeping in view their long continuous service. The scope of enquiry was limited to this question only and the Tribunal could not have examined the question whether the workmen can be treated to be employees of HAL on any other ground.

85. Section 10(4) of the Central Act mandates the Tribunals to confine their adjudication to the matters referred to them and the matters incidental thereto. The issue whether the contract between HAL and the canteen contractor was sham, is not incidental to the issue whether the workmen in question can be treated as employees of HAL keeping in view their long continuous service.

86. In **TISCO Ltd. v. State of Jharkhand**: (2014) 1 SCC 536, the Hon'ble Supreme Court held that: -

> ***"16.*** *The Industrial Tribunal/Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it.* ***The Tribunal has to confine itself within the scope of the subject-matter of reference and cannot travel beyond the same.*** *This is the view taken by this Court in a number of cases including in National Engg. Industries Ltd. v. State of Rajasthan [(2000) 1 SCC 371]. It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/exact nature of "dispute" between the parties."*

(Emphasis added)

87. In view of the foregoing discussion, I find that the finding returned by the Industrial Tribunal, that the contract between HAL and the canteen contractor was sham, was beyond the scope of reference and it has been recorded without jurisdiction.

Question E- Whether the Industrial Tribunal has jurisdiction to examine the plea of the contract between HAL and the canteen contractor being sham or void?

88. Before proceeding to answer this question, it would be beneficial to have a look at Section 10 of the Contract Labour Act, which is as follows: -

> *"**10. Prohibition of employment of contract labour**.—(1) Notwithstanding anything contained in this Act, **the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by Notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment**.*
>
> *(2) Before issuing any Notification under sub-Section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—*
>
> *(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;*
>
> *(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;*
>
> *(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;*
>
> *(d) whether it is sufficient to employ considerable number of whole-time workmen.*
>
> *Explanation.—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."*
>
> (Emphasis added)

89. The Governor of U.P., in consultation with U.P. State Contract Labour Advisory Board, had issued a Notification dated 24.04.1990 under Section 10(1) of the Contract Labour Act prohibiting employment of contract labour in engineering industries situated in the State. Only M/ s Jay Vijay Metal Industries, Varanasi and BHEL, Haridwar were exempted from the operation of this Notification. Subsequently, HAL requested the U.P. Government for granting exemption from the applicability of the Contract Labour Act. The request was accepted by the State Government and another Notification dated 04.03.1991 was issued through whereby HAL Lucknow and its Units at Kanpur and Korva (Sultanpur) were also granted exemption from the provisions of the Contract Labour Act.

90. The learned Counsel for HAKS has submitted that although the prohibition to engage contract labour in various industrial units in the State of U.P., including HAL, was imposed after consultation with the Board, the exemption from prohibition was granted without consultation with the Board.

91. When the appropriate Government in respect of industrial disputes concerning HAL is the Central Government and State Government is not the appropriate Government in relation to HAL, the State Government has no power under the Contract Labour Act either to prohibit engagement of contract labour in HAL or to grant exemption from such prohibition and such prohibition could be imposed or exemption could be granted only by means of a Notification issued by the Central Government.

92. In **SAIL v. National Union Waterfront Workers**: (2001) 7 SCC 1, a Constitution Bench of five Hon'ble Judges of the Supreme Court held (in paragraph 125 of the judgment) that: -

> *(2)(a) A Notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government…*
>
> * * *

> *(5)* ***On issuance of prohibition Notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder****. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.*

(Emphasis added)

93. Thus the adjudicator can examine the validity of the contract only if the appropriate Government has issued a Notification under Section 10 of the Contract Labour Act prohibiting engagement of contract labour in the organization in question, which is not the case here as the appropriate Government, which is the Central Government, has not issued any Notification under Section 10 of the Contract Labour Act.

94. Further, although the State Government is not the appropriate Government in respect of HAL, it has also exempted HAL from the prohibition vide Notification dated 04.03.1991 issued by it.

95. Although Sri. Dhruv Mathur has challenged the validity of the Notification dated 04.03.1991 during submissions advanced before this Court, the validity thereof has not been challenged at any earlier point of time and its quashing has not been sought. Therefore, the validity of the long standing Notification dated 04.03.1991 cannot be challenged without seeking its quashing. Moreover, it is not necessary to go into this question when this Court has already held that the State Government is not the appropriate Government in respect of HAL and the appropriate Government for HAL is the Central Government.

96. In view of the foregoing discussion, the Court finds that there is no prohibition against engagement of contract labour in HAL.

97. The Industrial Tribunal has jurisdiction to adjudicate upon industrial disputes, which expression is defined in section 2(k) of the Central act as follows: -

> *"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;*

98. Unless HAL is found to be the employer of the workmen in question, the dispute between the workmen and HAL is not an 'industrial dispute' within the meaning of the expression used in the Industrial Disputes Act and the Tribunal has no jurisdiction to adjudicate upon the dispute between HAL and the workmen.

99. Therefore, the Tribunal has no jurisdiction to examine the validity of the contract between HAL and the canteen contractor and to record a finding that the contract is sham.

100. When this Court has come to a conclusion that the impugned award passed by the Industrial Tribunal is without jurisdiction, the Writ Petition can be decided without deciding any more question. However, since the dispute is quite old and the Writ Petitions are also pending since 2012 and elaborate submissions have been heard on all the points, this Court proceeds to decide all the questions to put a quietus to the entire dispute.

Question F- Whether the finding recorded by the Tribunal that the contract between HAL and the canteen operator was sham, is sustainable in law?

101. The Tribunal has concluded that in fact the 66 canteen workers, regarding whom the reference was made, were the employees of the principal employer – HAL and the contract between HAL and the canteen contractor was merely a paper agreement and it was sham. The basis for recording the aforesaid finding is that (1) the canteen employees had sought parity in wages with the wages payable to unskilled workmen of HAL, which was accepted by the deputy Labour Commissioner, Kanpur and the challenge to the aforesaid order made by HAL remained unsuccessful up to the Hon'ble

Supreme Court, (2) the contract between HAL and the contractor contained provisions beneficial to the workmen and it also provided that in case the canteen contractor fails to make any payment to the workmen, HAL will pay the amount to them and will recover the same from the contractor and (3) the contract also provided that the contractor shall pay increments in wages to the workmen in furtherance of Government Orders and orders of Deputy Labour Commissioner and HAL will reimburse the contractor.

102. Regarding the first reason for recording the aforesaid finding, i.e., the canteen employees had sought parity in wages with the wages payable to unskilled workmen of HAL, which was accepted by an order dated 28.04.1989 passed by the Labour Commissioner and the challenge to the aforesaid order made by HAL remained unsuccessful up to the Hon'ble Supreme Court, suffice it to say that an order granting parity in pay with the unskilled workers of HAL will in no manner affect the validity of the contract between HAL and the canteen contractor.

103. Secondly, in the order dated 28.04.1989 passed by the Labour Commissioner, U.P., Lucknow, on the representation submitted by HAKS seeking pay parity with directly appointed unskilled workers, the following points for determination had been framed: -

(1) Whether the application of the Union dated 5-6-82 is maintainable on the ground that it does not fall under the purview of Rule 25 of the U. P. Contract Labour (Regulaton and Abolition) Rules, 1975?

(2) To what wages, dearness allowance, house rent, travelling allowance, medical facilities and other conditions of service of the sanitation workers are canteen employees are entitled?

(3) Whether the engineering wages being at present paid by the Contractors were within the meaning of Rule 25(iv)?

104. The Labour Commissioner held that Uttar Pradesh Contract Labours (Regulation and Abolition) Rules, 1975 provides that the contract labours will not be paid wages less than the minimum wages or the minimum agreed wages. The Labour Commissioner found that the work being performed by the contractual canteen workers was not the same are was being performed by the directly appointed workmen, they are entitled for minimum wages which were being paid to

directly appointed unskilled workmen. The request for modification of other service conditions was rejected.

105. HAL had challenged the aforesaid order dated 28.04.1989 by filing Writ Petition No. 4553 of 1989, which was dismissed by means of a judgment and order dated 28.01.1994 and the order passed by the Labour Commissioner was affirmed. SLP (Civil) No. 8768 of 1994 filed by HAL was also dismissed and the order dated 28.04.1989 passed by the Labour Commissioner attained finality. When the only finding given in the order dated 28.04.1989 passed by the Labour Commissioner was that the contract workers are entitled to wages equal to the minimum wages paid to directly appointed unskilled workmen and the claim for modification of other service conditions was rejected, the aforesaid order cannot form the basis of treating the contract workers to be the employees of HAL when the order did not record any finding to this effect.

106. The second and the third reasons assigned by the Tribunal for recording the aforesaid finding is that the contract between HAL and the contractor contained provisions beneficial to the workmen and it also provided that in case the canteen contractor fails to make any payment wages of its increments to the workmen, HAL will pay the amount to them and will recover the same from the contractor.

107. In this regard, the following statutory provisions contained in the Contract Labour Act are to be kept into consideration: -

> *"2(b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;*
>
> *2(c) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;*
>
> *2(g) "principal employer" means—*

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named.

* * *

***20. Liability of principal employer in certain cases**.—(1) If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.*

(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

***21. Responsibility for payment of wages**.—(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.*

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

*(4) **In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor** either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."*

(Emphasis added)

108. Sections 20 and 21 of the Contract Labour Act fall in Chapter V of the Contract Labour Act, which is titled "Welfare and Health of Contract Labour" and which contains Sections 16 to 21. A perusal of the statutory provisions quoted above establishes that HAL being the principal employer, is under a statutory obligation to ensure beneficial provisions for the workmen of the contractor and to make payment of dues to the workmen in case the contractor fails to make the payments and thereafter to recover the same from the contractor. The conditions put in the contract between HAL and the canteen contractor in compliance of the aforesaid statutory mandate will not make the contract between HAL and the canteen contractor sham and it will not result in the contractual canteen workers employees of HAL.

109. The points to be considered while examining the validity of a contract between the principal employer and the employer have been explained by the Hon'ble Supreme Court in its judgment in the case of **International Airport Authority of India v. International Air Cargo Workers' Union**: (2009) 13 SCC, wherein it was held that: -

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

(Emphasis added)

110. In **Balwant Rai Saluja v. Air India Ltd.**, (2014) 9 SCC 407, the Hon'ble Supreme Court considered numerous precedents on this point and held that: -

> ***"41.*** *We conclude that the question as regards the status of workmen hired by a contractor to work in a statutory canteen established under the provisions of the 1948 Act has been well settled by a catena of decisions of this Court. This Court is in agreement with the principle laid down in Indian Petrochemicals case [Indian Petrochemicals Corpn. Ltd. v. Shramik Sena, (1999) 6 SCC 439] wherein it was held that :*
>
> > *"22. ...* ***the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the 1948 Act only and not for all other purposes****."*
>
> *We add that* ***the statutory obligation created under Section 46 of the 1948 Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to the 1948 Act and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject-matter of various other legislations, policies, etc.*** *Therefore, we cannot accept the submission of Shri Jayant Bhushan, learned counsel that the employees of the statutory canteen ipso facto become the employees of the principal employer.*
>
> *** * ***
>
> ***52.*** *To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, this Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer-employee relationship between the factory and the workmen working in the canteen. In this regard, the following cases would be relevant to be noticed.*
>
> *** * ***
>
> ***65.*** *Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:*
>
> *(i) who appoints the workers;*
>
> *(ii) who pays the salary/remuneration;*

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635], International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374] and Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756].”

(Emphasis added)

111. The decision in the case of **Balwant Rai Saluja** (Supra) was followed in **BHEL v. Mahendra Prasad Jakhmola**: (2019) 13 SCC 82 and the law laid down in **International Airport Authority of India** (Supra) has been followed in **Kirloskar Brothers Ltd. v. Ramcharan**, (2023) 1 SCC 463.

112. In the present case, the canteen contractor used to select and appoint the canteen workers, he used to pay them salaries, he used to assign them work and duties and he used to supervise and control their work and conduct. The employees were working in canteen and they were not performing any duties relating to the principal business of HAL, i.e., manufacturing parts of aircrafts. Therefore, the canteen workers cannot be treated to be the employees of HAL and there is no material to establish that the contract between HAL and the canteen contractor was sham. The contrary finding recorded by the Industrial Tribunal, besides being without jurisdiction, is perverse also.

Question G -Whether the concerned employees are entitled for reinstatement, regularization of services and payment of back-wages?

113. It is undisputed that the employees had been appointed by the Canteen contractor, they were paid wages by the contractor and they worked under the supervision of the contractor. HAL was not their employer

and when HAL was not liable to pay wages to them, the liability to pay back wages, if any, cannot also be fastened on HAL.

114. The services of the canteen employees were terminated by the canteen contractor after the subsidized canteen was replaced by a marked rate canteen and the business of the canteen and consequently requirement of man power for running the canteen, was reduced drastically. HAL offered deployment to all the 63 employees on casual basis to perform other duties in the HAL and they were directed to report in the technical training center at 09:00 a.m. on 27.11.2000. Although HAL did not have any legal obligation towards the canteen employees, it claims to have done it only on compassionate basis,. This offer was rejected by all the employees through similarly worded letters, claiming that the order for their redeployment was illegal as they were regular employees of HAL and not of the contractor. As has already been held above, the employees were employees of the canteen contractor and not of HAL.

115. Assuming that the employees considered them to be employees of HAL, the refusal of the employees to perform duties assigned by their alleged employer cannot be said to be justified and it will also disentitle them from claiming any benefits, including back wages, from HAL.

116. Thereafter on 09.12.2000, HAL had issued letters to all the concerned employees stating that the subsidised canteen was being restored as earlier and the employees should contact the canteen contractor and start working in the canteen. However, on the same date, the canteen contactor sent a letter stating that the office bearers of workers union had obstructed the working of the canteen, had turned all the persons out of the canteen and had locked up its door. Although the lock was opened at 11:45 hours but the canteen contactor and his employees were not permitted to enter the canteen.

117. Back wages are payable only when the employees are illegally restrained from working, although they are willing to perform their duties. In the present case, neither the employees worked at the places

to which they were redeployed by HAL on compassionate basis, nor did day perform duties in the canteen. Therefore, the employees are not entitled to claim back wages.

118. As has already been held above, the employees were employed by the canteen contractor and HAL was merely their principal employer. Therefore, the employees had no right to claim reinstatement and regularization in HAL and they having declined to perform the duties assigned by HAL, had no right to claim any back wages.

119. The learned Counsel for HAKS has challenged the validity of retrenchment order on the ground of violation of Section 25-N of the Industrial Disputes Act (the Central Act), which provides as follows: -

> *"**25-N. Conditions precedent to retrenchment of workmen**.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—*
>
> *(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
>
> *(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf."*

120. Section 25-N falls in Chapter V-B of the Industrial Disputes Act (the Central Act), which contains "Special Provisions Relating To Lay-Off, Retrenchment And Closure In Certain Establishments". The establishments to which the special provisions contained in Chapter V-B would apply, have been mentioned in Section 25-K of the Act, which is as follows: -

> ***25-K. Application of Chapter V-B**.—(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.*

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

121. The number of employees working in the canteen was admittedly far below 100. Sri. Mathur has submitted that at some point of time, as many as 103 employees were working in the canteen. However, the requirement for attracting Section 25-N is that not less than one hundred workmen were employed in the establishment on an average per working day for the preceding twelve months, which is not the case here. Therefore, the provision of Section 25-N will not apply to the present case.

Question H - Whether the impugned award is sustainable in law?

122. In view of the aforesaid discussion, this Court is of the view that the employees are not entitled to any relief and the Tribunal has wrongly passed the impugned award directing reinstatement of the canteen employees and consideration for regularization of their services. The Tribunal has not erred in rejecting the claim of the employees for payment of back wages.

123. Accordingly, Writ C No. 1000315 of 2012 is ***allowed***. The award dated 09.08.2011 passed by the Presiding Officer, Industrial Tribunal (II), U.P., Lucknow in Award Case No. 52 of 2023, which has been published on 20.10.2011, is quashed. Writ C No. 1000491 of 2012 is ***dismissed***.

124. The parties will bear their own costs of litigation.

(Subhash Vidyarthi J.)

Order Date: 04.11.2024

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