REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
[@ S.L.P. (CIVIL) NO. 12192 OF 2023]

M/S PREMIUM TRANSMISSION PRIVATE LIMITED ... APPELLANT(S)

VERSUS

KISHAN SUBHASH RATHOD AND OTHERS ... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. The instant appeal is at the instance of Premium Transmission Private Limited/Appellant and assails the order dated 17.01.2023 of the Industrial Court, Maharashtra bench at Aurangabad as confirmed by the High Court in Writ Petition No. 3259 of 2023 dated 21.03.2023. This Civil Appeal has been tagged and heard along with the Civil Appeal filed by the Appellant herein in Civil Appeal arising out of S.L.P.(Civil) No. 9970 of 2023. For convenience, judgments are pronounced separately.

3. The circumstances leading to the industrial dispute, several rounds of litigation, orders of this Court as well as the High Court are set out in the judgment disposing of the companion Civil Appeal. To avoid repetition, these events are not adverted to once again. It would be sufficient if the narrative starts with the complaint filed on 05.05.2022 by the Respondents before the Industrial Court in Complaint No. 1 of 2022 praying for the following reliefs:

> *"**5.1.** The cause of action leading to the instant Complaint has arisen in the territorial jurisdiction of this Hon'ble Court;*

5.2. *The Unfair Labour Practices complained of has been emerged from 18.04.2020 and is continued on day to day basis. There is no limitation period prescribed for a Complaint under Section 33-A of the ID Act. Even otherwise in view of the Orders passed by the Hon'ble Supreme Court in Suo Moto Writ (Civil) No.3/2020 the instant Complaint under Section 33-A is within limitation.*

5.3. *The subject matter of this Complaint is not res-subjudice before any other Court, Tribunal, High Court or Supreme Court;*

5.4. *The subject matter of this Complaint is coming up for consideration of the Hon'ble Court for the first time; and,*

5.5. *The Complainants are not in receipt of any caveat from the Respondent.*

(c) *Direct the Respondents to pay compensation to the tune of equal amount of wages due to each of the Complainant Nos. 1 to 118 in terms of prayer clause 9B) above;*

(d) *Allow the Complaint.*

At Aurangabad, dated 05.05.2022.

Signatures of the Complainants"

4. The Management resisted the interim prayer. The Industrial Tribunal vide order dated 17.01.2023 allowed the prayers and found prima-facie case, balance of convenience and irreparable loss in favour of the workmen. One of the main points for consideration in the order of the Industrial Tribunal was under Section 33(1) of the Industrial Disputes Act, 1947 (for short, "ID Act"). The view of the Industrial Tribunal on Section 33(1) of the Act is summarised:

4.1 Since a dispute (Reference (IT) No. 1 of 2020) was already pending, it was incumbent upon the Appellant Company to approach the Tribunal under Section 33(1) of the ID Act before altering service conditions or stopping the work of the workmen. The failure to do so constituted a breach of the Act.

4.2 The Tribunal observed that the workmen were removed from service through a "mere exchange of letters" between the Appellant Company and the Contractors, which was not legally sufficient to sever their engagement given the pending dispute. Hence**,** the balance of convenience lay in favor of the workmen. It held that denying interim relief would cause "great hardship" and "irreparable loss" to the workmen and their families, who were left without work.

4.3 The Tribunal allowed the interim application and directed the Appellant Company to provide work at the factory to the workmen (listed in Annexure-A of the reference, excluding deleted names) within one month and pay wages to these workmen regularly during the pendency of the complaint.

5. The management filed WP No. 3259 of 2023, through the impugned order, the Writ Petition was dismissed, hence the Civil Appeal.

6. Mr. CU Singh, Learned Senior Counsel, contends that directing workers working through a registered contractor either for continuation or regularisation is completely illegal. The relief of regularisation or coming on the muster rolls is dependent on the workers establishing their status *vis-à-vis* the management. The prayer, as granted, virtually amounts to allowing the dispute in the companion Civil Appeal. The test is not a *prima facie* case, balance of convenience or irreparable loss; but, the legal test is whether admittedly, the workers engaged through a registered contractor are workmen of the contractor or if the Management is the principal employer. The applicability of Section 33(1) of the ID Act arises only when the status of a workman is established.

7. Mr. Sandeep Deshmukh, Learned Counsel appearing for the respondents, submits that the workmen have been prevented from entering

the services because of the dispute referred by the Appropriate Government. The workmen have been working on regular works and there is no dispute on the working of the contract labour in the Management. The interim prayer conforms to the larger dispute referred to the Industrial Tribunal.

8. We have appreciated the limited submissions canvassed by the counsel appearing for the parties. The definition of workman in ID Act and the CLRA is captured through the plain reading of Section 2(s) of the ID Act, and Sections 2(1)(i) and 2(1)(b) of CLRA for a comparative study:

ID Act		**CLRA**
Provision(s)	**2(*s*)** "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person— (*i*) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the	**2(1)(*b*)** a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer; **2(1)(*i*)** "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person— (*A*) who is employed mainly in a managerial or administrative capacity; or (*B*) who, being employed in a supervisory capacity draws

	Navy Act, 1957 (62 of 1957); or (*ii*) who is employed in the police service or as an officer or other employee of a prison; or (*iii*) who is employed mainly in a managerial or administrative capacity; or (*iv*) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.	wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or (*C*) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.
Definition	Any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward.	A person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward.
Inclusion	Does not explicitly exclude "Out-workers" (people working from home/outside).	Does not explicitly include dismissed/discharged workmen in the definition itself (focus is on current employment).
Exclusion	Does not explicitly exclude "Out-workers" (people working from home/outside). Excludes	Excludes "Out-workers" (people to whom articles are given to be processed at their own home/not under control

	persons employed mainly in a managerial or administrative capacity.	of the principal employer). Excludes persons employed mainly in a managerial or administrative capacity.
Supervisory Exclusion	Excludes supervisors drawing wages exceeding Rs.10,000/month.	Excludes supervisors drawing wages exceeding Rs. 500/month (Note: This amount is outdated in text but practically interpreted similarly).
Relationship	Requires a Direct Employer-Employee relationship (Master-Servant) between the Management and the Workman.	Recognizes a Tripartite relationship: The workman is hired by the Contractor but works for the Principal Employer.

9. Though the definition of "workman" under Section 2(1)(i) of the CLRA is textually derived from Section 2(s) of the ID Act, 1947, the two differ fundamentally in their juridical scope and the structural basis of the employment between employer and employee. The definition under ID Act is broad, which includes persons dismissed, discharged, or retrenched in connection with an industrial dispute to ensure they retain locus standi for adjudication. The CLRA, being regulatory in nature, contains no such "extended meaning" for terminated employees. Furthermore, the CLRA introduces a specific statutory exclusion for "out-workers" whereas the ID Act does not have this specific statutory exclusion. Under the ID Act, the status of such workers is determined by the "Control and Supervision Test".[1] If the employer controls how the work is done, they may still be workmen under ID Act, even if working off-site. Under CLRA, they are statutorily barred from the

[1] *Dharangadhara Chemical Works Ltd. v. State of Saurashtra,* AIR 1957 SC 264.

definition. Finally, the ID Act presupposes a direct privity of contract (master-servant relationship) between the management and the worker, whereas the CLRA definition strictly operates through the medium of a contractor, covering workers hired "by or through" a third party for the establishment's work.

10. A plain reading of Section 33[2] of the ID Act makes it clear that the restrictions from change of conditions etc., by the management is attracted

---

[2] *"**33.** Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.--(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,--*
(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,
(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—
(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or
(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.
Explanation.--For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.
(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.
(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such

and applicable if a workman is employed by the Management. The question on relationship between the Management and the Workman is for decision in Complaint (IT) No. 1 of 2021. At this stage, the interim prayer amounts to a virtual pre-judgment of the main dispute between the parties. In this litigation, the Management attempts to nip the dispute in the bud by raising preliminary objections and the Union is praying for relief which the union should agitate after the preliminary issues are decided in favour of the workmen. Both the parties are not conforming to the requirements of law in resolving a dispute of fact or dispute in law. *Steel Authority of India and others. v. National Union Waterfront Workers and others*[3], in the event of discontinuation or discharge, provides for a few measures for workmen working under a registered contractor and are summed up as follows:

10.1 Remedies Available if Notification Under Section 10(1) is Issued for Abolition of Contract Labour

10.1.1 The issuance of a Section 10 notification does not lead to the automatic absorption of contract workers as regular employees of the principal employer.

10.1.2 The immediate legal effect of such abolition is that the contract labour working in that specific process must cease to function in that capacity. The principal employer is prohibited from employing contract labour for that job thereafter.

---

order in relation thereto as it deems fit: Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit: Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed."

[3] (2001) 7 SCC 1.

10.1.3 The workers do not become unemployed immediately; they remain employees of the contractor. The contractor can utilize their services in any other establishment where contract labour is not prohibited.

10.2 Remedies Available if the Contract is Continued as a "Camouflage" (Sham Contract)

10.2.1 If it is proved that the contract was a mere ruse or camouflage to hide the real employer-employee relationship and that the principal employer retained full control and supervision over the workers the contract is disregarded as a legal fiction.

10.2.2 In such cases, workmen "will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour". Unlike the Section 10 scenario, here the workers become direct employees of the company. They are entitled to back wages and benefits as if they were regular employees from the start (or a date determined by the Tribunal).

10.2.3 Determining whether a contract is "sham" or "genuine" involves disputed questions of fact (e.g., Who supervised the work? Who paid the wages? Who supplied the tools?). Therefore, only the Industrial Tribunal/Court can adjudicate the dispute. Writ Courts generally do not decide these disputed questions under Article 226 of the Constitution of India.

10.3 Modes and Methods of re-employment if discontinuation of the contract is valid

10.3.1 If the principal employer intends to employ regular workmen for the work previously done by contract labour, they must give preference to the erstwhile contract labourers.

10.3.2 The principal employer cannot simply hire fresh candidates from the open market while ignoring the displaced contract workers. They are legally bound to consider the contract workers who were working in that establishment.

10.3.3 To ensure this "preference" is meaningful, the principal employer may relax maximum age limit and academic qualifications; specifically, non-technical posts to accommodate experienced workers.

11. In fine, we conclude in the facts and circumstances of the case, the relief granted by the High Court and the Industrial Court through the orders dated 21.03.2023 and 17.01.2023 are unsustainable. The impugned orders are set aside. Liberty to the workmen is granted to pray for an interim measure in terms of the dictum in *SAIL (supra)* before the Industrial Court. The Civil Appeal is allowed with these observations. No order as to costs.

12. Pending applications, if any, are disposed of accordingly.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

New Delhi;
January 27, 2026.