

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.33081 of 2014

Between:

UltraTech Cement Limited,
a company incorporated under the Companies Act, 1956,
Regd office, Andheri East, Mumbai- 400 093,
Factory at Bhogasamudram village, Tadipatri mandal
Anantapuramu district.

.....Petitioner

And

Industrial Tribunal-cum-Labour Court,
Anantapuramu, Anantapuramu district AP and others

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 08.03.2016

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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a company incorporated under the Companies Act, 1956,
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Factory at Bhogasamudram village, Tadipatri mandal
Anantapuramu district.

... Petitioner

Vs.

\$ Industrial Tribunal-cum-Labour Court,
Anantapuramu, Anantapuramu district AP and others

.... Respondents

!Counsel for the petitioner : Sri C.R.Sreedharan, learned
Senior counsel representing
Sri Salloori Ramesh, counsel
for petitioner

Counsel for the Respondents : Learned Govt.Pleader (AP) for
Respondents 1 to 3;
Sri M.V.Pratap Reddy counsel
for respondent No.4

<Gist :

>Head Note:

? Cases referred:

1. 2000 SCC Online Kar 401
2. High Court of Chattisgarh at Bilaspur
3. 1998 SCC Online Pat.386
4. 2002 (2) ALD 462 (DB)
5. (1994) 1 Supreme Court Cases 572

6. 2015-II-LLJ-630
7. 2007(3) ALD 173
8. (2014) 6 SCC 434

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.33081 of 2014

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ORDER:

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The petitioner is a company incorporated under the provisions of the Companies Act and is engaged in the business of mining lime stone, manufacture and sale of cement. The workman/4th respondent (for short workman) in the writ petition was working in Mines Department. Disciplinary proceedings were initiated against him on the allegation of unauthorized absence, which ultimately resulted in dismissal from service by order dated 05.12.2011. Aggrieved by the said dismissal order, workman raised industrial dispute and filed claim statement under Section 2-A (2) of the Industrial Disputes Act (for short the Act) (state amendment) in the Industrial Tribunal-cum-Labour Court at Anantapur (for short 'the Tribunal'). The award was made on 02.05.2014 setting aside the order of dismissal from service. The petitioner was directed to reinstate the employee into service with continuity of service and all attendant benefits. However, the Tribunal denied back wages. Challenging the said award this writ petition is filed.

2. Sri C.R. Sreedharan, learned Senior counsel appearing for the petitioner made elaborate submissions on maintainability of the

dispute before the Tribunal and on merits of the findings recorded by the Tribunal.

3. Learned senior counsel contended that cement industry is a “Controlled Industry” as notified by the Central Government under the Industrial Disputes Act (for brevity ‘the Act’) and therefore, the ‘appropriate Government’ with reference to constitution of Industrial Tribunal and entrustment of industrial disputes concerning ‘controlled industry’ is the Central Government. The Central Government has to constitute the Industrial Tribunal. The Industrial Tribunal-cum-Labour Court at Anantapur is constituted by the State Government. Thus, the Tribunal had no jurisdiction to entertain the dispute raised by the respondent workman and thus the award is not an award in the eye of law and is unenforceable.

4. Learned Senior Counsel further contended that even though a notification is issued in exercise of power under Section 39 of the Act, delegating to the State Government powers exercisable by Central Government under the Act in relation to cement industry, such exercise of power is not applicable to the cases governed by Section 2 (a) (i) and it is mandatory for Central Government to issue notification constituting Industrial Tribunal and in the instant case, no such notification is issued.

5. In support of the said contention learned senior counsel places reliance on the following decisions:

Workmen of Bagalkot Udyog Limited, Bagalkot Vs Bagalkot Udyog Limited, Bagalkot and Others ^[1], **Larsen and Toubro Ltd., (now known as Tech Cement Limited) Vs State of C.G. and Others** ^[2], **M/s.Sintra Limited (in 13829) Vs The State of Bihar** ^[3], **Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and another Vs Presiding Officer, Industrial Tribunal-1, Hyderabad and another** ^[4].

6. Learned senior counsel further contended that though the

Supreme Court in the case of **Yovan, India Cements Employees Union and Another Vs Management of India Cements Ltd., and Others**^[5] held that the State Government can exercise power of constitution of Industrial Tribunal and refer the disputes to the Industrial Tribunal even with reference to cement industry, the said decision is rendered in the facts of the said case and is not applicable to the issue raised in the present writ petition. He further submitted that the decision of the Supreme Court in Yovan's case was considered by the Division Bench of Karnataka High Court in **Workmen of Bagalkot Udyog Limited** (cited *supra*) and distinguished the said judgment. The principle laid down in the above decision by the Karnataka High Court applies in all fours to the facts of this case. Learned senior counsel contended that the said decision is followed by the High Court of Chattisgarh in **Larsen and Toubro Ltd.,** (cited *supra*). The Division Bench of Patna High Court in **M/s.Sintra Limited** (cited *supra*) has also taken the same view as that of the Karnataka High Court. Thus, the principle laid down in the above decisions would make it clear that the Tribunal has no jurisdiction to adjudicate the claims arising out of employment in 'cement industry', like the petitioner, which is 'controlled industry'.

7. Learned senior counsel further contended that the dispute raised before the Industrial Tribunal is also not maintainable inasmuch as without raising the conciliation proceedings, workman cannot directly approach the industrial tribunal. According to learned senior counsel Section 2-A of the Act, was amended by the Act 24 of 2010 and amended sub section (2) has come into force with effect from 15.09.2010. Sub Section 2 as amended now incorporates that a workman can directly invoke the jurisdiction of the industrial tribunal only after the expiry of 45 days from the date he has made an application to the conciliation officer, if in the meantime issue is not resolved. In the instant case, the workman did not file application for conciliation and has directly invoked the jurisdiction of the Labour

Court/Industrial Tribunal. In view of the said amendment, the earlier amendment brought out by the State of Andhra Pradesh to Section 2-A has no relevance and the central amendment to the extent of repugnancy shall prevail over the State amendment. The Labour Court/Industrial Tribunal erred in entertaining the dispute directly even before the application for conciliation was made.

8. Learned senior counsel placed reliance on the decision of the Delhi High Court in **Rajendra Singh Vs. State Bank of India** ^[6] in support of his contention that unless application is made for conciliation and waited for 45 days no dispute can be raised before the Industrial Tribunal.

9. Learned senior counsel contended that the judgment of this Court in **Municipal corporation of Kurnool Vs. Smt.K.Vijayalakshmi** ^[7], relied by the Industrial Tribunal has no application to the facts of this case.

10. Sri. M.V. Pratap Reddy, learned counsel appearing for the 4th respondent/workman contended that the claim made before the Industrial Tribunal is valid and within the competence of the Industrial Tribunal-Cum-Labour Court at Anantapuram to adjudicate the dispute raised by the workman. In view of the notification issued by the Government of India, in exercise of power under Section 39 of the Act, the State Government is equally competent to establish Industrial Tribunal and to confer jurisdiction to adjudicate disputes arising out of industries involved in manufacturing of cement. The very issue was considered by the Hon'ble Supreme Court in **Yovan's case** and in view of the said decision the principle is settled. Learned counsel contended that in view of the decision of the Supreme Court, the decision of Karnataka, Patna and Chattisgarh High Courts, are not good law.

11. Learned counsel also contended that the provision under

Section 2-A (2) of the Act as amended by Act 24 of 2010 is not attracted and the workman can directly invoke the jurisdiction of Industrial Tribunal for adjudication of claim of dismissal from service and he need not raise conciliation proceedings before invoking the jurisdiction of Industrial Tribunal.

12. Learned counsel further submitted that even though an amendment is brought out to Section 2-A by the Central Government and Sub-Section (2) is added, amendment made by the State Government is still applicable and in terms thereof, it is permissible for the workman to directly invoke the jurisdiction of the labour Court/Industrial Tribunal without availing the conciliation procedure. The provision introduced by the State of Andhra Pradesh in Section 2-A is not obliterated by a subsequent amendment and both provisions deal with independent contingencies and there is no inconsistency/repugnancy in the said provisions, in order to invalidate the State amendment.

13. The two issues that arise for consideration in this writ petition are:

1. Whether the Industrial Tribunal-cum-Labour Court at Anantapuram has jurisdiction to entertain the claim made by the 4th respondent/workman who was working in cement industry which is notified as controlled industry?
2. Whether the aggrieved employee of an industry should first raise conciliation proceedings and only after failure of conciliation proceedings or lapse of 45 days from the date of making an application should invoke the jurisdiction of the Industrial Tribunal ?

ISSUE NO.1

14. To appreciate the rival contentions, it is necessary to consider the scope of relevant provisions of Industrial Disputes Act, 1947. The relevant provisions are Section 2(a)(i), and Section 39 of the Act, which read as under:

“Section 2(a)(i) :-

In this Act, unless there is anything repugnant in the subject or context,--

(a) "appropriate Government" means--

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government concerning any such controlled industry as may be specified in this behalf by the Central Government”

39. Delegation of powers:

The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable, by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,--

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.”

15. It is also necessary to notice the notification issued by the Central Government in exercise of power under Section 39 of the Act on 08.11.1977. It reads as under:

“S.O.826 (E)- In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of 1947) exercisable by it under that Act and the rules made thereunder shall, in relation to the Cement Industry be exercised also by all the State Governments, subject to the condition that the Central Government shall continue to exercise all the powers under the said Act and Rules made thereunder:

(i) relating to mines and quarries even where such mines and quarries from part of the Cement Industry; and

(ii) relating to the dispute between the employers who are members of the Cement Manufacturers Association. Express Building, Church Gate, Bombay and their workmen represented by Indian National Cement and Allied Workers’ Federation, Mazdoor Karyalaya, Congress House, Bombay, which has been referred for arbitration in pursuance of Section 10A of the said Act, read with notification No.S.O.757-E, dated 8th November 1977 [No.S.11025/9/77/D.I. (A)], in terms of the arbitration agreement published by the notification of the Government of India in the Ministry of Labour Order No.L.29013/2/77/D.O.III(B), dated the 28th November, 1977.”

16. Section 7 of the Act, envisages constitution of Labour Courts for adjudication of industrial disputes relating to any matter specified in

the second schedule appended to the Act and for performing such other functions as may be assigned under the Act by appropriate Government. Section 7-A provides for constitution of Industrial Tribunal for adjudication of industrial disputes relating to any matter, whether specified in the II schedule or III schedule and for performing such other functions as may be assigned under the Act by appropriate Government.

17. In case of controlled industry the 'appropriate Government' is the Central Government. The 'cement industry' is a 'controlled industry'. Section 2-a (i) vests exclusive jurisdiction in the Central Government in relation to Industrial dispute arising from employment in various sectors mentioned therein including Controlled Industry. Thus, in so far as cement industry is concerned, Central Government is the 'appropriate Government' which is competent to deal with the matters arising out of Industrial Disputes Act. However, section 39 of the Act vests residuary power in the Central Government to delegate the powers vested in the Central Government to the State Governments by way of a General or Special Order with reference to the controlled industry or other industries mentioned therein. In exercise of such power Central Government issued notification in S.O.826(E) dated 08.11.1977 published in the Gazette on 08.12.1977 delegating power to State Government with reference to Cement industry. By virtue of this notification the power as exercisable by the Central Government under Section 2 (a) (i) is now vested in the State Government in so far as cement industry is concerned.

18. The scope of such notification was considered by the Supreme Court in **Yovan's case**. The Government of Tamilnadu issued notification on 23.09.1987 under Section 10 (1) (c) of the Act referring the dispute between the Union and Management of India Cements to the Industrial Tribunal-cum-Labour Court. The respondent-Company raised preliminary objection on the reference by the State Government

contending that the appropriate authority in relation to the cement industry is the Central Government. The said objection was accepted and the claim petition was dismissed. The Supreme Court construed the notification dated 08.12.1977 and held that both Central and State Governments are appropriate Governments under the Act and therefore, upheld the notification issued by the Government of Tamilnadu. Thus on the same issue, the Supreme Court has held that the State Government is also appropriate Government to exercise power under the Industrial Disputes Act concerning the cement industry.

19. In **Workmen of Bagalkot Udyog Limited's case**, the Government of Karnataka issued notification dated 29.08.1986 under Section 10(1) of the Act, prohibiting employment of contract labour in cement industry. On a challenge made, learned Single Judge of the Karnataka High Court set aside the said notification holding that the State Government is not the 'appropriate Government' within the meaning of Section 10 (1) of the Act.

20. The Division Bench of the Karnataka High Court was of the view that a delegate cannot acquire status equivalent to that of a delegator because despite delegating its powers, the delegator is never denuded of the same and delegator has an unrestricted right to strip off the powers of its delegate. The Division Bench of the Karnataka High Court therefore was of the view that the State Government cannot be treated as appropriate Government in relation to an industrial dispute concerning the cement industry. The Division Bench also sought to distinguish **Yovan's case**, on the ground that the question raised before the Supreme Court is different and in the context of the said facts of the case, the observations were made. The Karnataka High Court was of the view that what was mentioned by the Supreme Court in Para 8 are only observations.

21. In the cases before the Karnataka, Chattisgarh and Patna High Courts, matters arose under the Contract Labour (Regulation and Abolition) Act 1970. Reading of the judgment of the Patna High Court would show that there is no similar notification issued delegating power to the State Governments. In fact the Patna High Court observed that there is no such provision vested by the Act, 1970 to delegate. It appears that no similar notification as issued under Section 39 of I.D Act was issued under the Act, 1970. Thus all the three decisions have to be seen in the light of the provisions contained in the Act, 1970. The said decisions are not applicable to the facts of the case on hand.

22. On a true and proper construction of relevant provisions of the Industrial Disputes Act, I am of the considered opinion that once Central Government exercises power under Section 39 of the Act and delegates the power vested in the Central Government to the State Government, the State Government is equally competent to exercise all the powers as vested in the Central Government by the Act. Once power is validly delegated to the State Government, it cannot be said that State Government cannot constitute Industrial Tribunal for adjudication of claims arising out of employment in cement industry. The delegation is still valid and such delegation is not under challenge.

23. In Para 5 of the judgment in **Yovan**, the Supreme Court posed the question for consideration as under:

“The only short question which arises for our determination is as to which is appropriate Government to make a reference in this Case.”

24. The said question was answered in Para 8, which reads as under:

“Therefore, it is clear that both the Central and the State Governments are appropriate Governments under the Act. That being so, the notification issued by the Government of Tamilnadu dated January 23, 1987 is a valid notification. The stand taken by the

respondent-management is not tenable. Accordingly the impugned order of the Labour Court is hereby set aside. The civil appeal will stand allowed. The Labour Court is directed to proceed with the reference in accordance with law most expeditiously. There shall be no order as to costs.”

25. It is a decision on the point in issue. The said decision is binding on this court. The decision of the Supreme Court in **Yovan’s** applies in all fours to the facts of this case.

26. Thus, the State Government is competent to constitute Industrial Tribunal covering cement industry also and the Tribunal at Anantapur is validly constituted to adjudicate disputes arising from employment in the petitioner industry. I therefore see no merit in the contention of learned senior counsel on the point of jurisdiction and same is rejected. The issue is answered accordingly.

ISSUE NO.2

27. To appreciate the rival contentions, it is necessary to consider the relevant provisions. Section 2-A along with State of Andhra Pradesh amendment and Sections 10 and 12 of the Act to the extent relevant to this case, read as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the

Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

STATE AMENDMENT -- Andhra Pradesh

Renumber section 2A as sub-section (1) thereof and after sub-section (1) as so renumbered, insert the following sub-section, namely:--

"(2) Notwithstanding anything in section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."—A.P. Act 32 of 1987"

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:

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

Section 12 - Duties of conciliation officers

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

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

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

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

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

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

[Provided that, [subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

28. As a consequence to the introduction of Section 2-A of the Act, dismissal of a workman is also treated as an industrial dispute. Section 12 of the Act, envisages conciliation of any dispute which includes dispute relating to dismissal of an employee. Section 12 mandates, conciliation officer to initiate conciliation proceedings without delay and try to ensure that conciliation can be brought out between the employer and employee. In case of failure to arrive for settlement, a failure report should be submitted to the Government. As provided in Section 12 (6), the entire exercise, ordinarily, should be completed within 14 days of the commencement of the conciliation proceedings, if no shorter period is prescribed by the appropriate Government. On failure of conciliation proceedings, it is permissible for the appropriate Government, under Section 10 to refer the dispute to Industrial Tribunal/Labour Court on matters specified in II schedule and III schedule. Dismissal from service is one of the matters specified in II schedule. Section 10 (1) vests ample power in the appropriate Government to refer any dispute to a labour Court/Industrial Tribunal 'at any time' which would mean even before the conciliation proceedings commenced/concluded.

29. The scheme of Sections 10 and 12 of the Act would show that even if a workman is dismissed from service, he cannot directly invoke the jurisdiction of labour Court/Industrial Tribunal, unless conciliation proceedings are taken up and reference is made by the appropriate Government. In terms of Section 12 whenever there is an industrial dispute the person must file an application for conciliation and on such application, the conciliation officer shall make an endeavor that the matter is resolved through conciliation process. However, fact remains, conciliation proceedings continue endlessly and even where failure report is submitted, Government takes its own time to refer the dispute to Labour Court/ Industrial Tribunal. This system has caused lot of hardship and suffering to workmen. The workman is helpless and had to wait endlessly for such reference. To obviate this problem and to save the workman in endlessly waiting for conclusion of the proceedings and reference to industrial Tribunal by the appropriate Government, the State of A.P., introduced Section 2-A(2), which provision enables a workman to directly invoke the jurisdiction of the labour Court/Industrial Tribunal, aggrieved by an order of dismissal from service. This is a special provision and operates notwithstanding the provisions contained in Sections 10 and 12. In other words, workman need not file application for conciliation and need not wait for reference by the appropriate Government but straight away can raise a dispute before Labour Court/Industrial Tribunal.

30. The Central Government now brought out amendment to Section 2-A by virtue of Act 24 of 2010. By this amendment sub section 2 is incorporated. Sub section 2 envisages that notwithstanding anything contained in Section 10, within 45 days from the date of initiation of the conciliation proceedings, if conciliation proceedings are not concluded, it is open to the concerned workman to raise industrial dispute before the labour Court/Industrial Tribunal. In other words, the provision envisages that

a workman after having made conciliation application, he need not wait endlessly and if conciliation proceedings are not concluded within 45 days and in the mean time, no reference is made by the appropriate Government under Section 10, he can directly invoke the jurisdiction of Labour Court/Industrial Tribunal.

31. The learned senior counsel contended that in view of introduction of Sub Section 2 to Section 2-A by the Central amendment Act, the state amendment get obliterated and the central amendment shall prevail. According to learned senior counsel, there is clear repugnancy between these two provisions and whenever there is repugnancy between the two provisions operating on the same subject, the central enactment shall prevail over the state enactment. According to learned senior counsel, unless a workman files an application for conciliation and waits for 45 days for conciliation officer to conclude the conciliation proceedings, he cannot directly invoke the jurisdiction of the Labour Court/Industrial Tribunal. Therefore, the workman cannot rely on state amendment to directly approach the Labour Court/ Industrial Tribunal.

32. At the first blush, the said contention appears attractive and plausible. However, to appreciate the said contention, it is necessary to look into the reasons for bringing about said amendment. Having realized the inordinate delay in conclusion of conciliation proceedings and reference to Industrial Tribunal/ Labour Court and in order to alleviate the suffering of workmen, Union of India desired to amend the Industrial Disputes Act. The statement of objects and reasons for amending the Industrial Disputes Act makes this issue amply clear. Relevant portion of paragraphs 2 and 4 of statement of objects and reasons read as under:

“2. At present the workman, whose services have been discharged, dismissed, retrenched, or otherwise terminated under Section 2-A of the Act, is unable to approach the Labour

Court or Tribunal in the absence of a reference of industrial dispute by the appropriate Government to Labour Court or Tribunal. This causes delay and untold suffering to the workmen.

...

4. Accordingly, the Industrial Disputes (Amendment) Bill, 2009, *inter alia*, seeks to provide for :-

(i) & (ii) xxxxxxxx

(iii) direct access for the workman to the Labour Court or Tribunal in case of disputes arising out of Section 2-A of the Act.”

33. A closure scrutiny of these two provisions the legislative intent is clearly discernable. The intendment is to enable the workmen to seek legal redressal. For the workmen working within the territorial limits of State of Andhra Pradesh, Section 2-A(2) as introduced by State of Andhra Pradesh gives them direct access to Labour Court/Industrial Tribunal. Similar provision is made by few other States. In States where provision similar to AP Amendment is not available, the amendment now brought out by Central Government is an improvement from the earlier position and brings lot of respite to workmen working in those States.

34. As seen from the provision in Section 2-A, as amended by the Central Act as well as State amendment, both grant discretion to workman to raise industrial dispute directly before the Industrial Tribunal/Labour Court against his dismissal from service. However, central act mandates initiation of conciliation process, where as, state act does not impose such fetters. These are enabling provisions and do not prohibit the workman from filing an application before the conciliation officer for resolution of the dispute through conciliation process and await reference by appropriate Government. Thus, in given case, a workman working within the territory of State of Andhra Pradesh can file application before the conciliation officer for

resolution of his dispute though he could have directly raised the dispute before Labour Court/ Industrial Tribunal. In case, the workman invokes the conciliation process, as per the amendment carried out by Act 24 of 2010, such workman has to wait for 45 days before raising dispute before the Industrial Tribunal/Labour Court.

35. Thus, if workman files an application for conciliation and the conciliation proceedings are pending, unless 45 days are completed after the initial filing of an application for conciliation, he cannot invoke the jurisdiction of the labour Court/Industrial Tribunal raising the dispute. Sub-section (2) of Section 2-A as amended by the Central enactment is applicable in case a workman has filed an application for conciliation. If no such application is filed, and the dispute arises within the limits of the State of A.P., he can directly invoke the jurisdiction of the Labour Court/Industrial Tribunal and provision in Section 2-A(2)(central amendment) is not an impediment. Thus, these two provisions deal with two different contingencies and are not in conflict. The purpose and intendment of both provisions is same.

36. Industrial Disputes Act is a welfare legislation and is intended to protect and safeguard welfare and interest of large work-force working under various employers including private managements. Thus, having regard to legislative history and imperative need to give liberal construction to welfare legislation, harmonious construction of these two provisions is necessary and imperative and on such construction it is clearly discernable that there is no repugnancy between these two provisions and these provisions operate independently and in two different fields.

37. The issue can also be looked at from another angle. What is provided in Section 2-A(2) as introduced by Act 24 of 2010 is that a person ordinarily cannot invoke the jurisdiction of the Industrial Tribunal/Labour Court without waiting for completion of 45 days. This

provision of waiting for 45 days is enabling provision and is directory but not mandatory. Section 10 enables appropriate Government to refer a dispute to Labour Court or Industrial Tribunal as the case may be even without regard to conciliation mechanism or in the midst of conciliation process and need not wait for a failure report. Thus, a dispute can reach Labour Court/ Industrial Tribunal even without or in supersession of conciliation process. In that view of the matter and provision in Sub-section (2) as amended by the Central enactment being an enabling and procedural provision, violation of the same do not vitiate the proceedings otherwise properly instituted. Labour Court/ Industrial Tribunal is vested with jurisdiction to adjudicate industrial disputes filed/referred and in whichever manner the dispute reaches the Labour Court/Industrial Tribunal, it is competent to adjudicate the dispute. Merely because persons did not make an application to the conciliation officer and waited for 45 days do not oust the jurisdiction of Labour Court/Industrial Tribunal to adjudicate.

38. In **Municipal Corporation of Kurnool**, objection was raised on maintainability of Industrial Dispute on the ground that procedure as envisaged in Rule 11 of the Industrial Disputes Rules, 1958 was not applied. It was contended that a specific form is prescribed called Form-K-4 under Rule 11(6) of the Rules and if a dispute is to be raised, it is to be in the said form only. It is being a mandatory requirement, non compliance thereof vitiates maintainability of the dispute raised. On detailed analysis of various provisions of the Act, Rules and principles laid down by the Supreme Court, the Division Bench of this Court held that

“the settled proposition of law that non compliance of the procedural provisions cannot destroy the substantial right available to the party” (para 49). This court held that the procedural law must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it and no proceedings in a Court of law should be

allowed to be defeated on mere technicalities.

39. In the case of **Rajender Singh**, Delhi Government brought out amendment to Section 10 to enable a workman to raise a dispute in the Industrial Tribunal. Delhi High Court held that since Section 2-A(2) of the Act as amended by Act 24 of 2010 (Central Act) starts with non-absentee clause i.e. “notwithstanding anything contained in Section 10”, the State amendment to Section 10 is no more in force and Central amendment shall prevail. Thus, the said decision is distinguishable on the facts of the case.

40. It is also appropriate to notice from the claim statement filed before the Industrial Tribunal that workman served a demand letter by registered letter with acknowledgment on the management to reconsider the decision of removal and take back him into service with service benefits. Having waited for reasonable time of response to the said demand, the dispute is raised before the Industrial Tribunal. The specific assertion of the workman is not denied in the counter statement filed by the management-petitioner herein.

41. Having regard to the facts of this case and merely because the workman has not filed an application before the Conciliation Officer, the dispute raised before the Industrial Tribunal cannot be invalidated. I do not see patent error committed by the Labour Court in entertaining the dispute and over-ruling the objection on maintainability of the dispute directly without waiting for 45 days. Point is answered accordingly.

42. Assuming that there is some merit in the contention of the learned senior counsel that the Industrial Tribunal ought not to have entertained the dispute without first filing an application for conciliation, facts on record would disclose that the workman was dismissed from service on 5.12.2011; the dispute was raised before the Industrial Tribunal in the year 2012; and on detailed consideration of the rival

claims, award was passed in favour of the workman in the year 2014. If the plea raised by the petitioner is accepted at this stage, it would result in relegating the workman to the stage of filing an application for conciliation under Section 12 of the Act. If the conciliation proceedings do not result in settlement, after 45 days from the date of filing such application, the petitioner can still raise a dispute before the Industrial Tribunal. Moreover, what is envisaged in Section 2-A(2) of Central Amendment is a procedural provision. Thus, in exercise of equity jurisdiction under Article 226 of the Constitution of India and in the peculiar facts of this case, I am not inclined to nullify the well considered decision of Labour Court-cum- Industrial Tribunal on this ground. It is not just and equitable. It would cause greater injustice to the workmen. In the peculiar facts of this case, I am not inclined to relegate the workman to the stage of filing application for conciliation under Section 12 of the Act and subject him to undergo the rigmarole, more particularly, when the Industrial Tribunal has adjudicated the matter on merits and found the dismissal of the workman from the service as illegal. Thus, on this ground also, petitioner has to fail.

43. It is not in dispute that workman met with an accident which resulted in prolonged treatment in the Manipal Hospital, Bangalore. On earlier occasion, absence from 4.9.2009 to 31.5.2010 was regularized on the application filed by the workman on the ground of his sickness and treatment. The request of the petitioner to post him to light duty was also considered and he was posted to Quality Control Department from Mechanical Department with effect from 2.8.2010. This would amply demonstrate that management was aware of the injuries caused to the workman, the treatment he was undergoing and necessity to post him to some lighter duties. However, workman did not report to duty. According to the workman, he had applied for sanction of leave/regularization of the leave for subsequent period also. The enquiry officer recorded a finding of willful unauthorized absence to

hold the charge as proved.

44. On detailed analysis of evidence available on record, the Industrial Tribunal held that findings of the enquiry officer cannot be believed in view of the statement made by the management-petitioner herein in the counter affidavit filed before the Industrial Tribunal. The inconsistency in the record was also noticed by the Industrial Tribunal. The Industrial Tribunal noted that though Enquiry Officer held that in the cross examination of the management witness, it was specifically asserted that no information was received from the workman from 1.6.2010 on his absence, but in the counter affidavit filed in the Industrial Tribunal, the petitioner contended that the leave applied by workman from 01.06.2010 to 30.06.2011 was not granted, due to absence of any proof or supporting document. The Tribunal therefore came to the conclusion that it is not a case of non intimation to the employer regarding absence.

45. Having regard to the undisputed fact that the workman met with an accident and was undergoing long treatment for the injuries caused to his body, the Tribunal found that absence cannot be called as willful and deliberate. The Tribunal also noticed that allegation against the respondent was not on 'habitual absenteeism'. Having regard to the said finding, the Tribunal held that it is not a case of willful, deliberate and habitual absence warranting severe disciplinary action as taken by the management-petitioner herein.

46. It is settled principle of law that mere absence from duty does not ipso facto amount to major misconduct. Absence from duty can be classified as a major misconduct only if employee was absenting from duty willfully and deliberately without prior permission and such absence is unreasonably for a long period. If an employee was frequently absenting from duty on some lame excuses causing disruption of work of the employer, it can be viewed as grave

misconduct. As analyzed by the Industrial Tribunal, this is not a case of such habitual absenteeism and willful or deliberate absence from duty.

47. I, therefore, see no perversity in the findings recorded by the Industrial Tribunal necessitating interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. It is settled principle of law that the scope of judicial review on award passed by the Industrial Tribunal is very limited to where labour Court commits serious error of law or findings recorded suffers from error apparent on face of record (**Ishwarlal Mohan Lal Thakkar Vs Paschim Gujarat**

Vij Company Ltd^[8]). The writ Court does not Act as a Court of Appeal against the award passed by the Industrial Tribunal.

48. For the aforesaid reasons, the writ petition fails and accordingly the same is dismissed. No costs. Miscellaneous petitions, if any pending, stand closed.

P.NAVEEN RAO, J

Date: 08-03-2016
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Note: L R copy to be marked.--Yes

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 33081 of 2014

Date : 08-03-2016

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[\[1\]](#) 2000 SCC Online Kar 401

[\[2\]](#) High Court of Chattisgarh at Bilaspur

[\[3\]](#) 1998 SCC Online Pat.386

[\[4\]](#) 2002 (2) ALD 462 (DB)

[\[5\]](#) (1994) 1 Supreme Court Cases 572

[\[6\]](#) 2015-II-LLJ-630

[\[7\]](#) 2007(3) ALD 173

[\[8\]](#) (2014) 6 SCC 434