

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 30.08.2019

Judgment Delivered on : 13.09.2019

WA No. 470 of 2016

*(Arising out of order dated 11.05.2016 passed in WP No. 4937 of 1999
by the learned Single Judge)*

- Pragatisheel Engineering Shramik Sangh Industrial Estate, Nandini Road, Bhilai, through its General Secretary, Chhattisgarh

---- Appellant

Versus

1. Simplex Castings Ltd. Unit -1, Bhilai, through its Senior Manager, Personnel, Y.M. Dave S/o Late Shri Mukund Dave R/o 183/13, Shantinagar Bhilai M.P. Now Chhattisgarh
2. Presiding Officer, State Industrial Court Bench at Raipur, Krishna Sadan 16 H.I.G. Shankar Nagar, Raipur Chhattisgarh
3. State of Madhya Pradesh, Now Chhattisgarh Through The Secretary, Department of Labour Raipur Chhattisgarh

---- Respondents

WA No. 333 of 2016

*(Arising out of order dated 11.05.2016 passed in WP No. 69 of 2000
by the learned Single Judge)*

- Pragatisheel Engineering Shramik Sangh Labour Camp, Jamul, District Durg, Chhattisgarh

---- Appellant

Versus

1. Bhilai Wires Ltd. Industrial Area, Bhilai, District Durg M.P. Now Chhattisgarh
2. The State Industrial Court M P H I G- 16, Shankar Nagar, Raipur M.P. Now Chhattisgarh

---- Respondents

WA No. 334 of 2016

*(Arising out of order dated 11.05.2016 passed in WP No. 73 of 2000
by the learned Single Judge)*

- Pragatisheel Engineering Shramik Sangh Labour Camp, Jamul, District Durg, Chhattisgarh

---- Appellant

Versus

1. Simplex Castings Ltd Through its Senior Manager, Personnel, Y. M. Dave, S/o Late Shri Mukund Dave, R/o 183/13, Shantinagar, Bhilai Madhya Pradesh Now Chhattisgarh

2. The State Industrial Court Madhya Pradesh H I G- 16, Shankar Nagar, Raipur, Madhya Pradesh Now Chhattisgarh

---- Respondents

WA No. 337 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 72 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp, Jamul, District Durg, Chhattisgarh

---- Appellant

Versus

1. Vishwa Vishal Engineering Ltd. Bhilai, District Durg Chhattisgarh,
2. The State Industrial Court M.P. H.I.G. 16, Shankar Nagar, Raipur M.P. Now Chhattisgarh

---- Respondents

WA No. 418 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 51 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp Jamul, District Durg Chhattisgarh

---- Appellant

Versus

1. Simplex Engineering And Foundry Works Unit -I Bhilai, District Durg Chhattisgarh
2. The State Industrial Court M P H I G- 16, Shankar Nagar, Raipur M. P. Now Chhattisgarh

---- Respondents

WA No. 420 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 74 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp Jamul, District Durg Chhattisgarh

---- Appellant

Versus

1. Beekey Engineer Corporation Bhilai District- Durg, Chhattisgarh.
2. The State Industrial Court M P H. I. G. 16, Shankar Nagar, Raipur Madhya Pradesh, Now Chhattisgarh.

---- Respondents

WA No. 424 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 76 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp Jamul, District-Durg, Chhattisgarh.

---- Appellant

Versus

1. Bhilai Engineering Corporation Urla Raipur Chhattisgarh, Chhattisgarh
2. The State Industrial Court M.P. HIG- 16, Shankar Nagar, Raipur M.P. Now Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

WA No. 428 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 50 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp Jamul, District-Durg, Chhattisgarh.

---- Appellant

Versus

1. Simplex Engineering And Foundry Works Unit - II Bhilai, District-Durg, Chhattisgarh.
2. The State Of Industrial Court M.P. HIG-16 Shankar Nagar, Raipur M.P. Now, Chhattisgarh.

---- Respondents

WA No. 430 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 70 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp Jamul, District Durg, Chhattisgarh

---- Appellant

Versus

1. Beekey Casting Limited Bhilai District-Durg, Chhattisgarh.
2. The State Industrial Court M P H I G-16, Shankar Nagar, Raipur Madhya Pradesh, Now Chhattisgarh

---- Respondents

WA No. 469 of 2016

(Arising out of order dated 11.05.2016 passed in WP No. 68 of 2000_
by the learned Single Judge)

- Pragatisheel Engineering Shramik Sangh Labour Camp, Jamul, District Durg, Chhattisgarh

---- Appellant

Versus

1. M/s. Simplex Engineering and Foundry Works Ltd. Unit III, Tedesara, Distt. Rajnandgaon, Madhya Pradesh Now Chhattisgarh
2. The State Industrial Court Madhya Pradesh H I G- 16, Shankar Nagar, Raipur Madhya Pradesh, Now Chhattisgarh

---- Respondents

For respective Appellants	:	Mr. Prafull N. Bharat, Mr. Shishir Dixit and Mr. Goutam Khetrapal, Advocates
For respective Respondents/ Management	:	Dr. N.K. Shukla, Senior Advocate assisted by Mr. Priyankesh Chandrakar, Mr. Kishore Bhaduri, Mr. Ravi Ranjan Sinha Mr. N.K. Vyas, Mr. Vinod Deshmukh, Mr. Ankit Pandey and Mr. Apoorva Mishra, Advocates
For Respondent-State	:	Mr. Amit Buxy, Panel Lawyer

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

CAV JUDGMENT**Per P. R. Ramachandra Menon, Chief Justice**

1. Denial of relief to the workmen represented by the Appellant-Union in respect of the claim for reinstatement in service as sought for in the writ petitions and at the same time, allowing the writ petitions filed by the Management/Employer, setting aside the verdict passed by the Industrial Court which granted a lump-sum compensation of Rs.20,000/- for each of the workmen, is put to challenge in these appeals preferred by the Union. The finding rendered by the Industrial Court that the Workmen-Union had failed to establish / substantiate the Employee-Employer relationship, that the workmen had a continuous service of more than 240 days and further that they were not entitled for the claim of reinstatement, came to be upheld in the writ petitions; which made the learned Single Judge to interdict the compensation ordered by the

Industrial Court (referring to the lapse / failure on the part of the Management in producing any relevant material in support of their contention that the workers concerned were not employed by them) holding it as not correct or sustainable, being contrary to the law and precedents.

2. To understand the nature of contentions put forth by the Appellant/Union, it will be worthwhile to have a bird's eye view to the factual scenario, which was prevailing in the field, when the industrial dispute arose during the early 1990's. It is stated that there was a widespread industrial unrest because of the alleged non-recognition of the worker's rights in getting proper appointment orders dealing with their service conditions and in providing eligible benefits in accordance with law. The workmen, under such circumstances, joined the Appellant-Union, who exposed their grievance, demanding proper remedial measures before the Employers/Managements. This was to be chagrin of the Employers/Managements, which led to strike and such other direct actions/agitations. Pouring oil to the fire, a Union Leader and Activist named Shankar Guha Niyogi was shot dead, in connection with which the CBI prosecuted several industrialists. There was an en-mass protest, which led to a police firing, in which 17 workmen / public lost their lives. The accused in the murder case came to be convicted by the trial Court, who however got acquitted in appeal filed before this Court.
3. Allegedly as a measure of retaliation, the Employers joined together and there was an en-mass termination of services, which made the Union to raise an industrial dispute in terms of the relevant provisions of the

Madhya Pradesh (now Chhattisgarh) Industrial Relations Act, 1960 (hereinafter referred to as 'the Act, 1960') and the matter was referred for adjudication by the 'Appropriate Government' on 26.03.1993. In fact, the three separate issues referred were with regard to; (i) the various allowances payable; (ii) the various leave eligibility/ entitlement and (iii) whether the termination of services of the employees/workmen shown in the Annexure/Schedule was correct or justified and if not, the relief to which they were entitled for. Subsequently, the terms of reference were modified and one more issue was referred by the 'Appropriate Government' as per the proceeding dated 31.07.1995; which was in relation to 'granting of interim relief' to the workmen named in the Annexure/Schedule during pendency of the proceedings.

4. Pursuant to the reference, the Union filed detailed claim statement projecting their rights as employees of the Respondents-Managements and asserting that, the termination of services was quite wrong and illegal in all respects. This was sought to be rebutted by the Managements by filing written statement, contending that, but for a few named persons, the others were never employed by the Managements but by the Contractors, to whom work was assigned by the Managements. It was also asserted that there was no Employee-Employer relationship and that the persons concerned had no continuous service of 240 days in the preceding 12 months to have sought for or obtained any relief under the relevant labour legislation. The Managements also contended that in respect of some persons, as named, they had either left the services of their own or their services

were terminated because of serious misconducts after conducting a domestic enquiry, in accordance with law; adding that the persons directly employed by the Managements were however retained in the services and they did not have any grievance.

5. It is seen that, just one or two persons were examined on the part of the Union and admittedly no documents, such as 'appointment order' or other materials were produced to show the alleged employment under the Respondents-Management or as to the payment of salary or in connection with the statutory contributions made. The Managements/ Establishments examined some of the officers and in some cases some contractors as well, besides producing various documents in support of their case. On completion of the trial, after hearing both the sides, the Industrial Court passed an Award, whereby a specific finding was referred to the effect that the Workmen-Union had failed in substantiating the Employee-Employer relationship and also that the workmen were having continuous service of 240 days in the proceeding 12 months. It was accordingly held that the workers were not entitled for reinstatement or any consequential relief. At the same time, the Industrial Court observed that, since the Employers/Managements had raised a contention that the workers concerned were engaged by Contractors, a duty was cast upon the Employers as well, to produce materials in support of the said contention and since they had not chosen to do so, the Managements were mulcted with the liability to pay compensation to an extent Rs.20,000/- per workman, which was awarded accordingly.

6. Aggrieved by the Award passed by the Industrial Court in directing the Managements to satisfy compensation of Rs.20,000/- for each worker, despite the specific finding arrived at that the Workmen-Union had failed to prove the 'Employee-Employer relationship' and that they were not having continuous services of more than 240 days, the Employers/Managements filed writ petitions challenging the Award to the said extent. The Union also filed separate writ petitions to the extent an adverse finding was rendered by the Industrial Court denying the benefit of reinstatement with consequential benefits. All the writ petitions were heard together by the learned Single Judge and the rival contentions were appreciated in the light of various judicial precedents on the point. The learned Single Judge reached a conclusion that the burden to prove the 'Employee-Employer relationship' was very much upon the Workmen-Union and that the finding rendered by the Industrial Court that the Workmen-Union had failed in this regard and also that they were not having continuous services of 240 days in the preceding 12 months was not liable to be interfered with. The learned Single Judge simultaneously observed that, after having arrived at such a finding by the Industrial Court, it was not correct or proper for the said Court to have held that the Managements had also a duty to produce documents with regard to 'contract employment' and in awarding compensation of Rs.20,000/- to each of the worker for failure of the Managements in this regard; which hence was set aside. In other words, the writ petitions filed by the Managements were allowed, whereas the writ petitions filed by the Union came to be dismissed,

which are under challenge in these appeals preferred by the Union, as mentioned above.

7. Arguments on behalf of the Appellant/Union were advanced by Mr. Prafull N. Bharat, which was supported and supplemented by other learned lawyers including Mr. Shishir Dixit and Mr. Goutam Khetrpal, whereas the arguments on behalf of the Respondents-Managements were led by Dr. Shukla, Senior Counsel, as supported and supplemented by Mr. Kishore Bhaduri, Mr. N.K. Vyas, Mr. Ravi Ranjan Sinha and other learned counsel appearing for the Employers / Managements.
8. The learned counsel for the Appellant/Union traversed through the relevant provisions of the labour legislation involved, the judicial precedents and observations made by the Industrial Court with specific reference to paragraphs 44,45,48,49 and 50. It was pointed out that both the Industrial Court and the learned Single Judge proceeded on a wrong tangent as to the 'burden of proof' in cases of this nature and also as to the requirement to satisfy 240 days of service in preceding 12 months. Since the Respondents-Managements contended that the workers were engaged through Contractors and not directly by the Managements themselves, it was for the Managements to have substantiated the said version by producing the requisite documents, particularly, the agreements between the Managements and the Contractors and other relevant records. Referring to the definition of term "Contract" under Section 2(c) of the Contract Labour (Regulation

and Abolition) Act, 1970 and Section 29 of the said Act, it was asserted that, it was quite obligatory for the Respondents-Management to have maintained and produced such records as available with them to support their contentions and having failed to do so, the course of action pursued by the Industrial Court, deprecating their conduct and awarding compensation of Rs.20,000/- to each worker (which by itself is a meagre amount) ought not to have been interdicted by the learned Single Judge. Reliance is sought to be placed on a judgment rendered by the Apex Court in **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Others**¹ enabling to draw adverse inference when the documents in possession with the party concerned were not made available to the Court for effective adjudication. Similarly, reliance was placed also on the verdict in **Sudarshan Rajpoot Vs. Uttar Pradesh State Road Transport Corporation**². (paragraphs 15, 16, 17 and 26) pointing out that the question of 'Employee-Employer relationship' was only incidental and that the main question was en-mass termination of service. For the very same reason, it was stated that there was no sanctity or relevance to satisfy continuous service of 240 days in the preceding 12 months, as it would be applicable only in the case of 'retrenchment' and not for any other purpose. The learned counsel appearing for the Union also made available a verbatim English translation of the Award passed by the Industrial Court and we have perused the same.

9. The main contention advanced by the learned Senior Counsel, Shri (Dr.) N.K. Shukla, appearing on behalf of the Respondents-Management in

¹ AIR 1968 SC 1413

² (2015) 2 SCC 317

WA Nos. 418/2016, 428/2016 & 469/2016, is that the writ appeals are not at all maintainable in view of the mandate under Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter referred to as 'the Act, 2006'). The learned Senior Counsel also pointed out that the facts and figures were specifically placed and proved before the Industrial Court and there was no admission from the part of the Managements that the persons named in the Annexure/Schedule were working in the Managements/ Establishments; adding that they were virtually not even known to the Managements, except to the extent specifically mentioned in the written statements. Paragraphs 23 to 32 of the judgment of the Apex Court in **Mukand Ltd. Vs. Mukand Staff and Officers**³ is also sought to be relied on, in support of the contentions as above. It is pointed out that the jurisdiction exercised by the learned Single Judge in respect of the challenge raised against the Award passed by the Industrial Court was of supervisory in nature, under Article 227 of the Constitution of India, from which no appeal is provided, as stipulated under the statute. Heavy reliance is sought to be placed on the verdict passed by the Apex Court in **Ramesh Chandra Sankla Etc Vs. Vikram Cement Etc.**⁴ and some other cases, contending that the judgment passed by the learned Single Judge in the writ petitions is not in the 'Original jurisdiction' of the High Court, but under 'Supervisory jurisdiction', in terms of Article 227 of the Constitution of India, from which no appeal lies. Various judgments referred to by the learned Single Judge as to the 'burden of proof' cast

³ AIR 2004 SC 3905

⁴ AIR 2009 SC 713

upon the Workmen-Union are also pressed into service, to contend that the verdict passed by the learned Single Judge does not warrant any interference.

10. The question considered by the Apex Court in **Mukand Ltd.** (supra) was whether the Industrial Court was justified in adjudicating upon the service conditions of employees, who were not workmen under the Industrial Disputes Act, 1947 and hence clearly outside its jurisdiction. It has been observed in paragraph 28 of the said verdict that, it was not the contention of the respondent-Staff and Officers' Association that the Tribunal, after considering the materials before it, had arrived at a finding that the non-workmen were necessary parties to the reference or that it complied with the requirement of issuing summons to the non-workmen under Section 18 of the Act, in accordance with law. It was accordingly held in paragraph 32 that, the non-workmen in said case were not necessary parties and hence that the finding of the High Court that the 'workmen' and the 'non-workmen' belong to the same class was an erroneous view, which made the Court to hold that the reference was limited to the dispute between the Company and the Workmen employed by them and that the Tribunal, being creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference. (paragraph 36)
11. Shri Kishore Bhaduri, the learned counsel representing the Respondent/Management in WA No. 470/2016, submits that the Appellant-Union had examined only one witness and the burden to

prove the facts was never satisfied, much less anything satisfactory. It is stated that the witness examined by the Appellant-Union was not a 'competent person' in terms Section 27 of the Act, 1960, who could not even identify or say anything with regard to the officers in the Managements, and he had conceded that he was speaking only for himself.

12. According to Shri N.K. Vyas, the learned counsel appearing for the Respondents-Management in WA Nos. 333/2016 and 424/2016, no issue was raised by the Union as to the nature of engagement through contractor, nor was it a subject matter / issue referred by the 'Appropriate Government' to be adjudicated by the Industrial Court. Since the engagement of the workers through Contractor with reference to the provisions under the Act, 1970 was not a subject matter of the terms of reference, there was no obligation for the Respondents-Management to produce any records in terms of Section 29 before the Industrial Court; more so, when there was no case for the Union that the engagement through contractor was a camouflage or sham arrangement. In the said circumstance, the Industrial Court could not have adjudicated any such issue in connection with the contractual employment and could not have travelled beyond the specific terms of reference. In the instant cases, since the issue referred was justifiability of the termination of services of the workmen named in the Annexure/Schedule, the Industrial Court, having found that the Workmen-Union has failed in establishing the 'Employee-Employer relationship', was not correct or justified in awarding compensation to an

extent of Rs.20,000/- per worker fastening the liability upon the Managements for the alleged failure as to the burden of proof, which hence was rightly interdicted by the learned Single Judge. The duty cast upon the Workmen-Union in terms of Section 27 of the Act, 1960 to have effective representation of the workmen was also not satisfied, whereas the Managements had examined the Deputy General Manager and had produced various documents in support of their contentions. It was also pointed out that pursuant to interim orders passed in connection with the matter, substantial payment has already been effected towards 'interest' portion of the compensation, which would have generated had the compensation amount was deposited as ordered. It is stated that cheques were drawn and issued to all the 14 workers (in their addresses given in the cause title) covered by the verdict passed by the learned Single Judge on 21.07.2016, which was accepted only by 04 workmen and in the remaining cases, the cheques were neither returned nor found deposited in the Bank. The submission on behalf of the Respondents-Employers was supported by Shri Ravi Ranjan Sinha, the learned counsel appearing for the Respondents-Management in WA Nos. 420/2016 & 430/2016 as well.

13. Since the maintainability of the writ appeals is questioned from the part of the Respondents-Management as put forth by Dr.Shukla, the said question is considered as the first point.
14. Maintainability of appeal before the Division Bench against a verdict passed by the single judge under the relevant statute of the State of

Madhya Pradesh was the subject matter of consideration in **Ramesh Chandra Sankla** (supra). The employee, who voluntarily retired, accepting the service benefits, subsequently moved the Labour Court, stating that it was received under protest. The Employer-Company appeared and raised a preliminary objection seeking to decide the maintainability of the proceeding, which was answered against the Company/ Management, which was subjected to challenge before the Industrial Court. The view expressed by the Labour Court was upheld by the Industrial Court which was taken up to the writ Court. The learned Single Judge dismissed the writ petition holding that the orders passed by the Labour Court and confirmed by the Industrial Court was only of 'interlocutory' in nature and did not decide in controversy. On further challenge, the Division Bench held that the writ petition filed by the Company was dealt with by the learned Single Judge in exercise of the 'supervisory jurisdiction' under article 227 of the Constitution of India, from which no appeal would lie and accordingly, the appeal was dismissed, which led to proceedings before the Apex Court.

15. Maintainability of intra-court appeal was discussed by the Apex Court in paragraph 20 onwards, finally holding in paragraph 25, that an intra-court appeal would lie only in respect of a verdict passed by the learned Single Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution and that no such intra-court appeal will lie when the jurisdictional exercise was under Article 227 of the Constitution. Reference was also made to the position under the different Letters Patent dated 26.06.1862 issued by the British Crown

pursuant to the authority conferred on it by the Indian High Courts Act, 1861 also conferring rights to institute appeal to the Division Bench in the given circumstances as applicable to High Courts of Calcutta, Madras and Bombay (Chartered High Courts), and the circumstances when the appeals were provided.

16. The history of legislation was traced out with reference to the Government of India Acts, 1915 and 1935 in relation to the provisions of the Constitution. The Bench also held that nomenclature of the proceeding was not the deciding factor and hence that mere observation of the learned Single Judge that he was exercising his power under Article 227 of the Constitution by itself could not take away the right of appeal against the judgment, if the Petition was under Article 226 of the Constitution and subjected to intra-court appeal {placing reliance on **Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors., (1988) 5 SCC 749**}. However, in the case in hand, the Bench held that the facts and circumstances revealed that the matter decided by the learned Single Judge of the High Court could not be said to be an original proceeding under Article 226 of the Constitution and that the same was finalized by the learned Single Judge under Article 227 of the Constitution; by virtue of which, no further appeal was maintainable.
17. Coming to the verdict passed by the Larger Bench of the Apex Court (Three-Judges Bench) in **Radhe Shyam and Anr. Vs. Chhabi Nath and Ors.**⁵ (pursuant to a Reference by a Bench of Two-Judges), the main points considered and decided are that : (a) judicial orders of Civil

⁵ AIR 2015 SC 3269

Court are not amendable to writ jurisdiction under Article 226; (b) the scope of jurisdiction under Article 226 is distinct and different from the jurisdiction under Article 227 and (c) a writ of mandamus under Article 226 will not lie against a private person not discharging any public duty. The observations made by the Apex Court in paragraphs 21 to 23 are relevant to understand the scope of declaration as made above and hence they are extracted below :

"21. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all other courts having limited jurisdiction subject to supervision of King's Court. Courts are set up under the Constitution or the laws. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

22. The Bench in *Surya Dev Rai* also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction

under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh and another vs. Amarnath and another (AIR 1954 SC 215), Ouseph Mathai vs. M. Abdul Khadir (AIR 2002 SC 110), Shalini Shyam Shetty vs. Rajendra Shankar Patil {2010 (8) SCC 329} and Sameer Suresh Gupta vs. Rahul Kumar Agarwal {2013 (9) SCC 374}. In Shalini Shyam Shetty, this Court observed :

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not

resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

(emphasis added)

23. Thus, we are of the view that judicial orders of Civil Courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

18. Scope of filing appeal against the verdict passed by a Single Judge was the subject matter of consideration in the decision rendered by a Full Bench of this Court in **High Court Bar Association Through its Secretary, Chhattisgarh Vs. State of Chhattisgarh and Ors.** reported in **AIR 2016 CG 3 (FB)**. The said case was filed by the High Court Bar Association, challenging the explanation to Section (2) of the Act, 2006 as inserted by Amendment Act 2 of 2014 which created a legislative presumption. The said explanation reads as follows :

"Explanation - Where points raised in the petition before the Division Bench against the order or judgment of the

Single Judge were adjudicated upon, by the Sub-ordinate Court, Tribunal or Quasi-Judicial Authority, as the case may be, it shall be presumed that such order or judgment by the Single Judge of the High Court has been passed in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.”

The Bench dealt with the matter elaborately and held that, it was to provide a remedy by a intra-court appeal, from a judgment or order passed by one Judge of the High Court in exercise of its original jurisdiction, that the enactment itself was made as per the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (Act No.1 of 2007) to have an appeal before the Division Bench. The said provision, as it originally inserted, reads as follows :

“(2) Appeal to the Division Bench of High Court from a judgment or order of one Judge of the High Court made in exercise of original jurisdiction :- (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court.

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

The statement of the 'Objects and Reasons' of the above Act providing for intra-court appeal was specifically adverted to, analysing the effect of the amendment brought about by way of the 'explanation' as per Amendment Act 2 of 2014 and it was held that the 'legislative presumption' shut the remedy of appeal once the order passed by the learned Single Judge was in a case arising from an order passed by the Sub-ordinate Court, Tribunal or Quasi-Judicial Authority. It was accordingly, that the moot question was framed as to whether, by such

legislative device, was it permissible under the law, to create a legislative presumption of such a kind in the backdrop of the submissions advanced before the Court, to the effect that such legislative presumption was against judicially evolved principles based on interpretation and analysis to ascertain the ambit of jurisdiction of the High Court under Article 226 and 227 of the Constitution of India.

19. After appreciating the question as above, the learned Judges discussed the various rulings rendered by the Apex Court and other High Courts on the aspect of jurisdiction of the High Court under Article 226 and 227 of the Constitution of India, with specific reference to those cases where maintainability of the writ appeal / letters patent appeal was involved. One of the rulings referred to in this regard is **Umaji Keshao Meshram Vs. Smt. Radhikabai**⁶, which was subsequently relied on and followed in **Mangalbai Vs. Dr. Radhyshyam s/o Parischandra Agrawal**⁷ and **Sushilabai Laxminarayan Mudliyar Vs. Nihalchand Waghajibhai Shaha**⁸. The Bench also made a reference to the case law discussed in **Kanhaiyalal Agrawal Vs. Factory Manager, Gwalior Sugar Company Ltd.**⁹, (rendered by relying on the dictum in **Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad**¹⁰), whereby it was held that if the Single Judge of the High Court was considering the petition under Article 226 of 227 of the Constitution and the petition so filed was dismissed by the learned Single Judge on merits, the matter could be considered in its

⁶ AIR 1986 SC 1272

⁷ AIR 1993 SC 806

⁸ AIR 1992 SC 185

⁹ AIR 2001 SC 3645

¹⁰ AIR 1999 SC 2423

proper perspective in appeal, as it was a case arising out of an order passed by the Industrial Court. The reiteration of the principles in the subsequent decisions rendered by the Apex Court in **Surya Dev Rai Vs. Ram Chander Rai**¹¹, **Shahu Shikshan Prasarak Mandal Vs. Lata P. Kore**¹², **State of Madhya Pradesh Vs. Visan Kumar Shiv Charan Lal**¹³ and **MMTC Ltd. Vs. Commissioner of Commercial Tax**¹⁴ was also adverted to, besides referring to the verdict passed on 30.03.2015 in Shiv Kumar Vs. Union of India (Civil Appeal No. 3231 of 2015) as mentioned in paragraph 18 of the verdict. The Bench observed in paragraph 19, that a survey of the aforesaid decisions rendered by the Apex Court settled the legal position with regard to the maintainability of writ appeal by laying down that, where facts of the case justified filing of petition both under Section 226 and 227 of the Constitution and where the Petitioner had sought relief invoking jurisdiction under Article 226 of the Constitution, remedy of writ appeal would be available. It was observed that no straight-jacket formula could be laid down and the position may vary from case to case. It was accordingly, held that even in the case where the petition before the Single Judge arises out of order passed by the Sub-ordinate Court, Tribunal or Quasi-judicial Authority, in the given facts and circumstances of the case and applying the parameters and tests laid down by the Supreme Court in the judgments cited, writ appeal may be held as maintainable. This made the Bench to observe that the 'explanation' inserted by the Amendment

¹¹ AIR 2003 SC 3044

¹² AIR 2009 SC 366

¹³ AIR 2009 SC 1999

¹⁴ AIR 2009 SC 1349

Act, 2014 will virtually put away the power of judicial review exercisable by the Division Bench while hearing the appeal against an order passed by the Single Judge, in a matter arising out of an order passed by the Sub-ordinate Court, Tribunal or Quasi-judicial Authority, thus holding that the 'explanation' to Section 2 inserted by the Amendment Act of 2014 was bad, in turn, declaring it as unconstitutional and inoperative in law.

20. Applying the above legal position to the given facts and circumstances of the writ petitions filed under Article 226 and 227 of the Constitution of India and considering the scrutiny conducted by the learned Single Judge, we are of the view that the appeals filed by the Union are maintainable. We hold it accordingly.
21. With regard to the challenge raised by the Appellant-Union and as to scope of interference, there is no dispute as to the terms of reference. The subject matter involved in these writ appeals is with reference to the question whether the termination was justified or not and if not, what remedy the workmen would be entitled to ? The averments made by the Appellant-Union were sought to be rebutted by filing written statements by the Respondents-Managements, contending that, but for the persons named therein, the others were never engaged by the Respondents-Managements and that they were engaged only by some Contractors. Despite the opportunity given to the Union, but for examining one or two persons making a self-serving statement / assertion before the Industrial Court, no document such as 'appointment

order' or any other material issued by the Managements or such other authority to support the contention of the Workmen-Union that they were engaged by the Managements was ever produced. On the other hand, the Managements examined their witnesses and produced some documents in support of their stand that the workers were not engaged by them.

22. For deciding the question whether the termination of service was correct or justified, it was quite fundamental for the Workmen-Union to have pleaded and proved that the worker named was engaged as an employee by the Respondents-Management. Unless the Employee-Employer relationship was established by raising specific pleadings and adducing evidence in support thereof, it was not possible for the Industrial Court to have answered the question whether the termination of such an employee by the Managements was correct and justified or not. Once the Workmen-Union satisfies the burden as to the Employee-Employer relationship and that the workman was a person who was entitled to have protection under the statute, the burden will shift to the Management to justify their action in the matter of termination. It is in the said background, that the necessity to have continuous service of 240 days in the preceding 12 months, in accordance with relevant provisions of the statute, was also subjected to scrutiny by the Industrial Court with reference to the pleadings and evidence on record, which came to be answered against the Workmen-Union, for having failed to discharge the burden in this regard. If only the burden was discharged from the part of the Workmen-Union in this regard and the action of

Management was held as wrong and illegal, would arise the next question as to the relief to be granted i.e., whether the workers should be ordered to be reinstated and the consequential benefits, if any, or whether the workers were entitled for such other benefits including payment of compensation. The Workmen-Union having failed to cross the first hurdle, it was not correct or proper for them to have contended that the 'burden of proof' was upon the Respondents-Managements to prove a 'negative fact' with regard to the contents as contended in their written statement.

23. There is of course a contention for the Union that the Respondents-Managements, having taken up the plea that the engagement of the workers concerned was through Contractors, and it was quite obligatory for them to have maintained the relevant records under Section 29 of the Act, 1970. It was also pointed out that the Management's witness examined before the Industrial Court had conceded that they were maintaining relevant records in this regard and as such, non-production of the said records before the Industrial Court persuaded the Industrial Court to draw adverse inference; in turn, leading to granting of compensation of Rs.20,000/- to each of the workers, which by itself is not adequate and reinstatement ought to have been ordered in the said circumstances. The 'burden of proof' on the part of the Respondent-Management, who was having custody of the documents to have produced the same before the Court, is sought to be asserted with reference to the ruling rendered by the Apex Court in **Gopal Krishnaji**

Ketkar Vs. Mohamed Haji Latif & Others¹⁵. The main question considered in the said case was whether the land comprised in Plot No. 134 was the property of the Dargah or whether it belonged to the appellant. The learned Judges observed in paragraph 5 of the verdict that, in the course of evidence the appellant had admitted that he was enjoying the income of Plot No.134, but he did not produce any accounts to substantiate his contention. The appellant had also admitted therein that "he had got records of the 'Dargah income' and that the account was kept separately", which however was not produced. It was contended that there was no duty for the appellant to have it produced and the onus was upon the respondents to prove their case and to show that the Dargah was the owner of Plot No.134, which contention was not accepted as correct by the Bench holding that even if the burden of proof did not lie on a party, the Court may draw adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. (emphasis supplied).

24. The said decision does not come to the rescue of the Appellant-Union herein, for the reason that the employment of the workers under any Contractor was never a fact at issue. It is settled law that the Industrial Court cannot travel beyond the terms of reference. The reference order, admittedly, did not frame any issue / question as to whether the engagement of the workers was on 'contract basis' or not; or whether it was a 'camouflage / sham arrangement' or whether the workers were liable to be treated as employees of the Respondents-Management.

¹⁵ AIR 1968 SC 1413

This being the position, merely for the reason that the Respondents-Management had stated that the workers were engaged through Contractors, by itself, would not cast any 'burden of proof' upon their shoulders to produce the registers under Section 29 of the Act, 1970. Insofar the Respondents-Management contended that the workers concerned were not employed by them, the further question whether they were engaged through Contractor or otherwise, was not a subject matter for consideration, as the 'terms of reference' were not got amended in this regard. As it stands so, the contention raised to the contrary do not hold any water. For the very same reason, the reliance is sought to be placed on the verdict passed by the Apex Court in **Sudarshan Rajpoot** (supra) is also quite out of context and is not applicable.

25. With regard to the 'burden of proof', the learned Single Judge has relied on verdict passed by the Apex Court in **General Manager (OSD), Bengal nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and another**¹⁶. The necessity to satisfy the two well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are :- (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee or not. The observation of the Apex Court in paragraphs 10 to 13 were extracted in this regard. Similarly, specific reference was made to the relevant factors to be taken into consideration to establish the Employee-

¹⁶ (2011) 1 SCC 635

Employer relationship as dealt with by the Apex Court in paragraph 65 of the verdict passed in **Balwant Rai Saluja and another Vs. AIR India Limited and others**¹⁷ which are to the following effect :-

- (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.

Discussion was also made with regard to the applicability of the provisions of the Evidence Act, 1872 to Industrial adjudication, besides other relevant rulings rendered as to the scope of judicial review of an award passed by the Industrial Court. It was in the light of the above binding judicial precedents, that the scrutiny / analysis was made to find out whether the Employee-Employer relationship had been established between the parties in the given case. The discussion made in this regard by the learned Single Judge, also with reference to mandate of Section 27 of the Chhattisgarh Industrial Relations Act, 1960 and Rule 60 of the Chhattisgarh Industrial Relations Rules, 1961 reached the conclusion that the Union had failed to establish the Employee-Employer relationship, as correctly held by the Industrial Court. It was therefore observed that, after having rendered such a finding by the Industrial Court, the further finding wrongly placing the 'burden of proof' on the Respondents-Managements for having not produced the

¹⁷ (2014) 9 SCC 407

documents in terms of Section 29 of the Act, 1970 or such other materials, was quite contrary and perverse and deserved to be set aside, which accordingly was set aside. The 'finding' rendered by the learned Single Judge is well supported by 'reasoning' and it was based on the said finding, that the Award passed by the Industrial Court granting compensation of Rs.20,000/- to each worker was held as not correct or sustainable and interdicted, virtually allowing the writ petitions filed by the Respondents-Management, while dismissing the writ petitions filed by the Appellant-Union.

26. In the above facts and circumstances, we are of the view that the verdict passed by the learned Single Judge is perfectly within the four walls of law and is not assailable under any circumstances. The challenge raised by the Union fails. The appeals are dismissed accordingly. No costs.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge