

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.411 OF 2008
IN
WRIT PETITION NO. 247 of 2005

The Bank of India
Through its Zonal Manager,
Zonal Office, Kingsway, Sadar,
Nagpur

... Appellant

-vs-

1. Bank of India Workers Organization,
A Union duly registered under the
provisions of the Trade Unions Act, 1926,
bearing Registration No.6053 having its
Office at 542, Congress Nagar, Nagpur,
Through its General Secretary
Shirish Anandrao Damle

2. The Honourable Presiding Officer,
Central Government Industrial Tribunal
at Nagpur

... Respondents

Shri A. T. Purohit, Advocate for appellant.
Shri Rohan R. Deo, Advocate for respondent No.1.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

Arguments were heard on : August 12, 2021

Judgment is pronounced on : September 01, 2021

Judgment : (Per : A. S. Chandurkar, J.)

This Letters Patent Appeal takes exception to the judgment of learned Single Judge in Writ Petition No.247/2005 dated 18/10/2008. By the said judgment the award passed by the Central Government Industrial Tribunal, Nagpur (hereinafter referred to as the Tribunal) on 05/02/2002 in favour of the appellant has been set aside and the proceedings have been remanded for re-consideration to the said Tribunal.

2. The facts relevant for adjudication of the present appeal are that it is the case of the respondent No.1-Union that one Shri K. D. Kanholkar was working as Driver-cum-Sepoy with the appellant-Bank at its regional office from 22/09/1990. The said regional office at Kamptee was abolished on 31/05/1993. Thereafter he was not transferred to any other place and instead his services came to be terminated on 31/05/1993 without any notice. According to him he was in employment with the Bank as Driver and hence he sought reinstatement along with back-wages. The Central Government under provisions of Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act of 1947) referred the dispute to the Tribunal at Nagpur. The said employee through the registered Trade Union filed the statement of claim and the same was opposed by the Bank by filing its written statement. The parties filed their affidavits and after examination of the concerned witnesses, the Tribunal by its award dated 05/02/2002 recorded a finding that there was no appointment order issued by the Bank to Shri K. D. Kanholkar. In absence of any evidence in that regard it was held that he was not in employment with the Bank. No termination order was issued to him on 31/05/1993 and hence in absence of any evidence as to his engagement as Driver-cum-Sepoy, no relief could be granted to him. The reference was accordingly answered.

The Union challenged the aforesaid award in Writ Petition No.247/2005. The learned Single Judge found that it was not permissible for the Tribunal to go into the question as to whether the relationship of employer-employee existed between the Bank and Shri K. D. Kanholkar. Since it was found that the documentary material on record had not been duly considered by the Tribunal, the award passed by it was set aside. The proceedings were remanded

for re-consideration of the entire material on record and to decide the reference afresh. It is this order that is the subject matter of challenge in the present appeal.

3. Shri A. T. Purohit, learned counsel for the Bank submitted that the learned Single Judge committed an error in holding that it was not permissible for the Tribunal to go into the question as to existence of relationship of employer-employee between the parties. The terms of reference indicated that the Tribunal had to go into the question as to whether the action of the Management of the Bank in terminating the services of Shri K. D. Kanholkar was justified or not. The aspect as to relationship of employer-employee between the parties was incidental to the dispute that was referred for adjudication. It could not be said that the Tribunal by adjudicating the aspect of relationship between the parties had travelled beyond the terms of the reference. It was then submitted that heavy burden was on the employee to prove that he was infact engaged with the Bank as Driver-cum-Sepoy. Inviting attention to the averments in paragraph 9 of the reply filed by the Bank before the Tribunal it was submitted that such relationship had been specifically denied by the Bank and that was more the reason for the Tribunal to go into said aspect. In absence of there being any evidence whatsoever to indicate engagement of Shri K. D. Kanholkar as Driver-cum-Sepoy there was no reason whatsoever to remand the proceedings to decide the reference afresh. The order passed by the Tribunal in the facts of the case was legal and correct and the same did not warrant any interference. In support of his submission that it was permissible for the Tribunal to decide incidental issues while answering the reference, the learned counsel placed reliance on the following decisions :

- (a) *Gulf Oil Corporation Ltd. Mumbai vs. Union of India and ors. 2008(2) Mh.L.J. 625*
- (b) *Madho Ram vs. P. K. Jain 1997 II LLJ 1062 Del.*
- (c) *The Employers in relation to Punjab National Bank vs. Ghulam Dastagir AIR 1978 SC 481.*
- (d) *Mukund Staff and Officers Association vs Mukund Limited 2008 (2) Mh.L.J. 416*
- (e) *State of Madras vs. C. P. Sarathy and anr. AIR 1953 SC 53*
- (f) *State of Maharashtra vs. Dnyaneshwar Rakmaji Aher and anr. 1998(2) Mh.L.J. 135.*

It was thus submitted that taking an overall view of the matter and in the light of the legal position as settled by the decisions referred above, the order passed by the learned Single Judge was liable to be set aside. He thus prayed for allowing the Letters Patent Appeal.

4. Per contra Shri Rohan R. Deo, learned counsel for the Union supported the judgment of the learned Single Judge. According to him though it was open for the Tribunal to go into incidental matters while answering the reference as made, it was not permissible for the Tribunal to travel beyond the terms of reference so as to negate the reference proceedings itself. This aspect was rightly noticed by the learned Single Judge while setting aside the order of the Tribunal. Referring to the pleadings and the affidavits on record it was submitted that there was sufficient documentary material to substantiate the claim made by the Union. That material however was not considered by the Tribunal. This aspect was rightly noticed by the learned Single Judge and hence the order of remand was necessitated. Prima facie, that material on record clearly indicated the engagement of Shri K. D.

Kanholkar as Driver-cum-Sepoy by the Bank and the fact that his engagement was put to an end in a manner contrary to law. He also referred to the notice to produce various documents given by the Union to the Bank and reply given to that notice before the Tribunal. Placing reliance on the decisions in *Pottery Mazdoor Panchayat vs. Perfect Pottery Co. Ltd. and anr. (1979) 3 SCC 762* and *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar (1964) II LLJ 460* it was submitted that in the light of the reasons assigned by the learned Single Judge there was no case made out to interfere in the appeal. On the contrary that order was liable to be maintained and the reference proceedings ought to be decided expeditiously.

5. We have heard the learned counsel for the parties at length and with their assistance we have gone through the documentary material placed on record. By the impugned judgment the learned Single Judge was pleased to remand the proceedings to the Tribunal for re-consideration principally on two grounds namely, that the Tribunal had travelled beyond the terms of the reference by going into the question as whether Shri K. D. Kanholkar was in employment of the Bank so as to indicate existence of relationship of employer and employee between them. This according to the learned Single Judge was impermissible for the Tribunal to do. The other ground for remand is that the Tribunal failed to take into consideration various documents that were on record thus vitiating its order.

6. Under Section 10 (1) of the Act of 1947 it is open for the appropriate Government to make an order referring a dispute or any matter appearing to be connected with or relevant to the dispute when it is of the opinion that any

industrial dispute exists. Section 10(4) which is relevant for the present purpose reads thus :

Section 10(4) : Where in an order referring an industrial dispute to (a Labour Court, Tribunal or National Tribunal) under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, (the Labour Court or the Tribunal or the National Tribunal, as the case may be) shall confine its adjudication to those points and matters incidental thereto.

On a reading of Section 10(4) it is clear that the Tribunal is conferred with the jurisdiction to adjudicate the points of dispute that have been referred to it by the appropriate Government and the Tribunal has to confine its adjudication to “those points and matters incidental thereto”. According to the learned counsel for the Bank the dispute as referred to the Tribunal was whether the action of the Management of the Bank in terminating the services of Shri K. D. Kanholkar with effect from 31/05/1993 was justified. It was his contention that the aspect as to whether Shri K. D. Kanholkar was infact in employment of the Bank was an issue incidental to the dispute as referred under Section 10(1)(d) of the Act of 1947.

7. For examining the aforesaid contention it would be necessary to refer to the law in that regard. In *The Delhi Cloth and General Mills Co. Ltd. vs. The Workmen and others* AIR 1967 SC 469 while considering the meaning of the expression “ matters incidental thereto ” it was observed in paragraphs 8 and 9 as under :

(8) Under S.10(1)(d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring

“ the dispute or any matter appearing to be connected with, or relevant to the dispute, to a Tribunal for adjudication.”

“Under S. 10(4) where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.”

(9) *From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word ‘incidental’ means according to Webster’s New World Dictionary :*

“ happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:”

“Something incidental to a dispute” must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore cannot cut at the root of the main thing to which it is an adjunct. ...”

From the aforesaid it becomes clear that while the dispute referred is the fundamental thing, something incidental thereto would be adjunct to it. Thus

a thing that is incidental cannot cut at the root of the main thing to which it is an adjunct. In other words, by seeking to decide an incidental matter the entire basis of the reference proceedings cannot be removed.

8. Having considered the meaning of expression “matters incidental thereto” the Hon’ble Supreme Court in the context of the facts before it observed in paragraph 18 of that judgment that the order of reference as made was based on the report of the Conciliation Officer and it was open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Act of 1947. It was further observed that the parties could not be allowed to go a stage further and contend that foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. It was not competent for the Tribunal to entertain such a question under Section 10(4) of the Act of 1947. Reference was also made to the decision in *Syndicate Bank vs. Its Workmen 1966-2 Lab LJ 194* and in paragraph 16 it was observed that the said decision indicated that it was open to the parties to show that the dispute referred was not an industrial dispute at all and it was certainly open to them to bring out before the Tribunal the ramifications of the dispute. The parties however could not be allowed to challenge the very basis of the issue set forth in the order of reference. The observations in paragraphs 8 and 9 which have been reproduced herein above would thus have to be understood in the context of the observations made in the subsequent paragraphs of the decision in *Delhi Cloth and General Mills* (supra).

9. The Constitution Bench of the Honourable Supreme Court in ***C. P. Sarathy*** (supra) has held that in making a reference under Section 10(1) of the Act of 1947 the Government undertakes an administrative act and the Court cannot therefore canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi-judicial determination. It was however open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of Act of 1947 and therefore the Tribunal had no jurisdiction to make the award. It was noticed that there was no procedure prescribed under the Act of 1947 or in the Rules framed for the Government to ascertain the particulars of the dispute from the parties before referring them to a Tribunal under Section 10(1) of the Act of 1947.

The aforesaid decision clearly lays down that it would be open for a party challenging the award to show that what was referred by the appropriate Government was not an industrial dispute within the meaning of of the Act of 1947 and therefore the Tribunal had no jurisdiction to make the award.

10. In this context it is necessary to refer to the judgment rendered by the Bench of three learned Judges in ***Management of Express Newspapers (Private) Ltd. Madras vs. The Workers and ors. AIR 1963 SC 569***. The observations made in paragraphs 11 and 12 are relevant and the same are as under :

“11. There is also no doubt that the proceedings before the Industrial Tribunal are in the nature of quasi-judicial proceedings and in respect of them a writ of certiorari can

issue in a proper case. If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ, and the power of the High Court to issue an appropriate writ in that behalf cannot be questioned.

12. *It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the appellant is a closure or a lockout. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the appellant amounts to a closure, there would be an end to the proceedings before the Tribunal so far as the main dispute is concerned. If on the other hand, the finding is that the action of the appellant amounts to a lockout which has been disguised as a closure, then the Tribunal will be entitled to deal with the reference. The finding which the Tribunal may make on this preliminary issue is a finding on a jurisdictional fact and it is only when the jurisdictional fact is found against the appellant that the Industrial Tribunal would have jurisdiction to deal with the merits of the dispute. This position is also not in dispute.”*

The aforesaid observations are a clear pointer to the aspect that in a given case it is open for the Tribunal while entertaining the reference to frame a

preliminary issue to decide whether it has jurisdiction to deal with the merits of the dispute or not. The further observations in paragraph 19 of the decision are also material in the present context and the same are as under :

“19. The fact that the relevant action of the appellant is called a lockout does not mean that the Tribunal must hold it to be lockout. In this connection it may be recalled that in several cases where industrial disputes are referred for industrial adjudication in respect of certain persons named as workmen, the employers raise the contention that the specified persons are not their workmen and it has never been suggested that merely because the said persons are described as workmen in the reference, the employer is precluded from disputing their status or that the Tribunal has no jurisdiction to try such an incidental dispute. Therefore, we do not think that Mr Sastri is right in contending that issue No.2 has been so worded as to exclude the jurisdiction of the Tribunal to deal with the question as to whether the appellant’s impugned action amounts to a closure or not.

11. The power of the Tribunal to frame preliminary issues while entertaining the reference has been recognised in ***Workmen of M/s. Hindustan Lever Ltd. and Ors. Vs. Management of M/s. Hindustan Lever Ltd. AIR 1984 SC 516***. In paragraph 25 it has been observed as under :

“25. In this connection, it may be recalled that when a reference is made under Section 10 of the Act, Rule 10-B of the Industrial Disputes (Central) Rules, 1957 obliges the workman involved in the reference to file with the Tribunal a statement of demands relating only to the issues as are included in the order of reference and simultaneously serve a copy of the same to the

employer. Sub-rule (2) enjoins the employer within two weeks of the receipt of the statement of claim to file its rejoinder and simultaneously serve a copy of the same on the workman. Ordinarily, the Tribunal after ascertaining on what issue the parties are at variance raises issues to focus attention on points in dispute. In industrial adjudication, issues are of two types: (i) those referred by the Government for adjudication and set out in the order for reference and (ii) incidental issues which are sometimes the issues of law or issues of mixed law and fact. The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to the reference are precluded or prohibited from raising; to wit if the employer does not question the status of the workmen, the Tribunal cannot suo motu raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the expression of the Act.....” (emphasis supplied by us)

In ***National Council for Cement & Building Materials Vs. State of Haryana and Ors. (1996) 3 SCC 206*** the aspect that an incidental matter could go to the root of the jurisdiction of the Tribunal has been noticed. In paragraphs 9 and 10 it has been observed as under :

“9. The reference of a dispute to the Industrial Tribunal is made under Section 10 of the Act. Sub-section (4) of Section 10 provides as under:-

“(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government

has specified the points of dispute for adjudication, "the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

"10. This sub-section indicates that the extent of jurisdiction of the adjudicatory Tribunals is confined to the points specified in the order of reference or matters incidental thereto. Matters which are incidental to the reference may, sometimes, assume significant proportions and may relate to questions which go to the root of the jurisdiction of the Tribunal as, for example, question relating to the nature of the activity of the Employer as to whether it constitutes an industry or not, as has been done in the instant case. It is on the determination of this question that the jurisdiction of the Tribunal to adjudicate upon the reference rests." (emphasis supplied by us)

12. In ***Madho Ram*** (supra) that was relied upon before the learned Single Judge and has been pressed into service in this appeal by the learned counsel for the Bank, the question considered was whether the Tribunal while adjudicating the dispute under Section 10(4) of the Act of 1947 and deciding matters "incidental thereto" could go into questions that went to the root of the matter such as existence of relationship of master and servant. The Division Bench of the Delhi High Court was considering in appeal the judgment of learned Single Judge who had refused to interfere with the award passed by the Industrial Tribunal. The Tribunal had framed a point as to whether the relationship of employer and employee existed between the parties while considering the reference as to

whether the services of Madho Ram had been terminated illegally and/or unjustifiably. After referring various decisions of the Honouable Supreme Court including the decisions in *C. P. Sarathy, Delhi Cloth and General Mills Co. Ltd., Hindustan Lever Ltd* and *Pottery Mazdoor Panchayat* (supra) it was held that a preliminary issue going to the root of the matter could be decided by the Tribunal but the Tribunal ought to decide such question along with other issues on merits so that there was not delay in the matter. The order passed by the learned Single Judge was not interfered with and it was observed that the decisions relied upon by the workman did not hold that the existence of the relationship of employer and workman could not be gone into by the Tribunal even if there were pleadings to that effect.

It is seen that the Division Bench of the Delhi High Court has held that as an incidental matter the question of relationship of employer and employee between the parties could be gone into as a preliminary issue but the same was required to be adjudicated alongwith all other issues on merits.

13. In *Gulf Oil Corporation Ltd.* (supra) which decision was relied upon by the learned counsel for the appellant the order of reference made by the Central Government was under challenge at the instance of the employer. The question referred was whether the demand of the Union for reinstatement of the services of an employee as well as his regularisation was legal, proper and justified. In that context it was observed by the Division Bench in paragraph 6 of the said decision that various questions on fact in relation to employer and employee relationship could be raised by the employer before the Tribunal which could be decided by the

Tribunal in accordance with law. It was held that a question that was ancillary or would arise for proper and complete adjudication of the referred question would have to be dealt with by the Tribunal. The Management would have to discharge its onus while the workman would have to discharge the onus placed upon him to show that he was a workman of the Corporation. It may be noted that the Division Bench referred to various decisions of the Honourable Supreme Court including that in *C. P. Sarathy* (supra).

In *Mukund Staff and Officers Association* (supra) the Tribunal was considering the reference as to whether the workmen whose names were mentioned in the schedule were liable to be reinstated with back-wages and continuity in service. While dealing with the reference, the Tribunal framed the issue as to whether the party No.2 proved that the persons mentioned in the order of reference were workmen within the meaning of Section 2(s) of the Act of 1947. This order was challenged by the Union on the ground that by framing such issue the Tribunal travelled beyond the order of reference. It was held that while the Union was seeking reinstatement of its members, the Company had denied their claim in absence of any relationship of employer and employee. The burden therefore was upon the members of the Union to prove that they were workmen under Section 2(s) of the Act of 1947. While maintaining the order passed by the Tribunal framing the issue as to relationship between the parties as a preliminary issue it was directed that same ought to be decided along with all other issues together.

14. In *Pottery Mazdoor Panchayat* (supra) that was relied upon by the

learned counsel for the Union, the question referred to the Industrial Tribunal was “ *Whether the employers in relation to the Poly Pather Clay Mines of Perfect Pottery Co. Ltd., Jabalpur, were justified in closing down the said mine and retrenching the following 81 workers with effect from July 1, 1967. If not, to what relief are the workmen entitled ?*” The Tribunals while answering the reference went into the question as to whether the business infact was closed down by the Management. In that context it was observed that the Tribunals were not called upon to adjudicate upon the question whether in fact there was a closure of business or whether under the pretence of closing the business the workers were locked out by the Management. The point of dispute was the propriety and justification of the Management’s decision to close down the business. Since the limited dispute raised was whether the closure was effected for a proper and justifiable reason, the Tribunal could not have gone into the factual aspect of closure. In paragraph 12 of the said decision it was observed that it was not necessary to rely exclusively on the terms of the references to come to the aforesaid conclusion as the history of the dispute and the documents on record indicated that the dispute between the parties related not to the question as to whether the business in fact was closed by the Management but whether there was any justification or propriety on the part of the Management in deciding to close down the business.

In *Hochtief Gammon* (supra) the Hon’ble Supreme Court was considering the scope of the provisions of Section 18(3)(b) of the Act of 1947 as regards addition of parties to the proceedings. In that context it was observed that adjudicating the dispute referred or any matter incidental thereto, the Tribunal

could order joinder of parties having recourse to Section 18(3)(b) of the Act of 1947.

These decisions therefore are not of much assistance while dealing with the aspects arising in the present case.

15. The learned Single Judge in paragraph 12 of the impugned judgment has by relying upon the decisions in *Pottery Mazdoor Panchayat, Sitaram Vishnu Shirodkar vs. The Administrator of Goa and others*, 1984 Mh.L.J. 566 and *India Tourism Development Corporation, New Delhi vs. Delhi Administration*, 1982 Lab I C 1309 held that a question or issue which cuts the very roots of reference proceedings and proposes to demonstrate the absence of facts supporting it has been treated as outside the purview of the Industrial Tribunal to which the reference is made. While it is true that the Industrial Tribunal cannot travel beyond the pleadings of the parties and adjudicate an aspect that is beyond the terms of reference, it has been held by the Constitution Bench in *C. P. Sarathy, Management of Express Newspapers (Private) Limited Madras* and *Workers of M/s Hindustan Lever Limited and others* (supra) that if the pleadings of the parties to the reference give rise to a preliminary issue as to whether the dispute referred is an industrial dispute or not, the Industrial Tribunal would be justified in framing such a preliminary issue based on the pleadings of the parties and deciding the same. Thus, framing a preliminary issue based on pleadings of the parties being permissible, it cannot be said that doing so would amount to travelling beyond the terms of the reference or removing its basis. Holding otherwise would result in taking away the right of a party impugning the award to show that what was referred by the Government was not

an industrial dispute within the meaning of the Act of 1947 as held in paragraph 16 of the decision of the Constitution Bench in *C. P. Sarathy* (supra).

16. It thus appears from the aforesaid decisions that while contesting the reference it is open to a party to raise pleadings that what was referred for adjudication was not an industrial dispute at all. Moreover, a party seeking to impugn the award can contend that what was referred by the Government was not an industrial dispute and hence the Tribunal had no jurisdiction to make the award. If the rival pleadings give rise to an issue going to the root of the jurisdiction of the Tribunal a preliminary issue in that regard can be framed. The only requirement was that such preliminary issue ought to be tried along with all other issues together. Framing of such preliminary issue even if the same went to the root of the matter would not amount to going behind the order of reference as held in *C.P.Sarathy* and *Management of Express Newspapers (Private) Ltd.* (supra). It is one thing to say that the Tribunal framed and decide a preliminary issue based on pleadings of the parties which could go to the root of the matter and it is another thing to say that the Tribunal cannot go beyond the order of reference so as to remove the basis of the reference itself. In other words, while the entire basis of the reference cannot be removed by the Tribunal it can adjudicate upon jurisdictional points on which the parties are at issue as reflected in their pleadings.

17. Perusal of the statement of claim submitted by the Union indicates that in paragraph 3 it has been pleaded that Shri K. D. Kanholkar was a member of the Union and on his termination the Union decided to espouse the cause of the

workman thus giving rise to an industrial dispute. In the reply filed by the Bank it was denied that Shri K. D. Kanholkar was ever in service of the Bank and that there was no relationship of master and servant between the Bank and Shri K. D. Kanholkar. Hence there was no question of any industrial dispute arising in that regard.

The aforesaid pleadings thus indicate that the parties were at dispute with regard to the engagement of Shri K. D. Kanholkar as a workman of the Bank. These pleadings did give rise to a preliminary issue as to whether Shri K. D. Kanholkar was in service of the Bank thereby seeking adjudication of the aspect of existence of the relationship of employer and employee. It is found in the light of these pleadings that a preliminary issue as to the existence of relationship of employer and employee between the parties does arise and the Tribunal was required to go into the same.

18. It is however found that while answering the reference, the Tribunal failed to consider the entire material on record as found by the learned Single Judge. It is undisputed that the Union had given notice to produce twelve documents to the Bank. In the reply to that application it was clearly stated that the documents demanded were not either relevant or that some of them were not available. The effect of refusal to produce the documents in the light of the reply as given was not considered by the Tribunal. Similarly the contents of Motor Insurance Claim Form pertaining to the car owned by the Bank bearing No. MZV 6673 have also not been considered. Same is the position with regard to the log book that was placed on record. The learned Single Judge in paragraphs 14 and 15

of the impugned judgment has noticed that all the documentary material that was on record of the Tribunal was not taken into consideration by it. Even the effect of non-production of some of the documents had not been considered. It is in that backdrop that the proceedings were remanded for re-consideration. We find on perusal of the record of the case that said observations have been rightly made and the Tribunal has not gone into the entire documentary material on record. Similarly the effect of non-production of some of the documents has also not been considered. The order of remand to the Tribunal for re-consideration was the only course open to be followed and the same has been done rightly so.

19. Thus while maintaining the order to the extent remand of the proceedings has been directed, we hold that in the light of the pleadings of the parties it would be open for the Tribunal to frame a point amongst others, as regards existence of relationship of employer and employee between the parties. However, as held in *B.P. Maheshwari Versus Delhi Administration & Others AIR 1984 SC 153 and National Council for Cement and Building Materials* (supra) all issues as framed ought to be decided together.

19. As a sequel to the forgoing discussion, the following order is passed:-

- (a) The direction of remand of the proceedings to the Central Government Industrial Tribunal Nagpur for fresh adjudication as issued in Writ Petition No.247 of 2005 by learned Single Judge is maintained.
- (b) The Tribunal shall in the light of pleadings of the parties frame appropriate points for determination. Even if any preliminary point is

framed, it shall be decided alongwith other points as framed in the light of observations made hereinabove.

- (c) The reference shall be decided on its own merits after considering the entire material on record, uninfluenced by any observations made in this order. The reference proceedings shall be decided expeditiously and preferably within a period of six months from the first date of appearance of parties before it which shall be 15/09/2021.
- (d) By modifying the judgment of the learned Single Judge in Writ Petition No.247 of 2005, the letters patent appeal is partly allowed in aforesaid terms with no order as to costs.

JUDGE

JUDGE