

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8830 OF 2023**

Quess Corp Ltd.	... Petitioner
Versus	
Pankaj Balasaheb Pharande and Ors.	... Respondents

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Mr. Avinash Jalisatgi a/w. Mr. T.R. Yadav a/w. Mr. Satish Hegde a/w.
Mr. Divya Wadekar for Petitioner.
Mr. Ravindra Sankpal for Respondent No.1.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 12th MARCH 2024**

P.C. :-

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing.

3. By this Petition, Petitioner challenges order dated 11th January, 2023 passed by the II Labour Court, Pune on Application at Exhibit 'C-14' filed by the Petitioner in Reference IDA No. 357 of 2021. By that Application, Petitioner questioned maintainability of the Reference filed by Respondent No.1. The Labour Court has rejected the Application filed by the Petitioner holding that, the Reference filed by Respondent No.1 under Section 2-A(2) of the Industrial Disputes Act, 1947 is maintainable.

4. I have heard Mr. Jalisatgi, learned counsel appearing for the Petitioner and Mr. Sankpal, learned counsel appearing for Respondent No.1.

5. The short issue that arises for consideration is whether Reference filed by Respondent No.1 directly before the Labour Court under the provisions of 2-A(2) of the Industrial Disputes Act in respect of his prayers for payment of overtime allowance is maintainable. Respondent No.1 filed Ref (IDA) NO. 357 of 2021 before Second Labour Court at Pune seeking prayer for payment of overtime allowance of Rs.60,60,066/- in respect of period from January, 2011 to April, 2021 against not just the Petitioner but also against Respondent Nos.2 to 4. In that Reference, Petitioner filed Application at Exhibit C-14 raising a preliminary objection about maintainability of the Reference. The Application is rejected by the Labour Court holding the Reference is maintainable under Section 2(A)(2) of the Industrial Disputes Act as the definition of the term "Industrial Dispute" under Section 2(k) includes every dispute or difference between employers and employees or between the employer and workman or between workman and workmen which is connected with the employment or non employment or terms of

employment or with the condition of labour of any person.

6. Perusal of the Order passed by the Labour Court would indicate that the Reference is held to be maintainable by relying on the definition of the term “Industrial Dispute” under Section 2(k) of the Industrial Disputes Act. However, the Labour Court has apparently not considered the provisions of Section 2A of the Industrial Disputes Act in proper perspective. Section 2A of the Industrial Disputes Act reads thus:

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).”

Thus, the scheme of Section 2A is such that it makes a departure from general provision under Section 10 under which an industrial dispute which affects multiple employees can be referred to a labour court for adjudication. Section 2A confers a right of on an individual workman to directly file a Reference before the Industrial Court even though the dispute affects only such individual workman. However, Sub-section 1 of Section 2A provides that such dispute must relate to only discharge, dismissal, retrenchment or otherwise termination of services of an individual person. Sub-section 2 of Section 2A uses the word “any such workman as is specified in Sub-section (1)”. Thus only the workman , who is specified in sub-section 1 of Section 2A can directly file a Reference before the Industrial Court. This would consequently mean that only disputes relating to discharge, dismissal, retrenchment or otherwise termination of individual workmen can be directly filed before the Labour Court under Sub-section (2) of Section 2A.

6. Admittedly, in the present case, Respondent No.1 does not

seek to espouse any dispute relating to dismissal, discharge, retrenchment or otherwise termination. His grievance is with regard to non-payment of overtime, which is not covered by Sub-section (1) of Section 2A. In my view, the Reference filed by the Respondent No.1 was clearly not maintainable.

7. The Petition accordingly succeeds. Order dated 11th January, 2023 passed by the II Labour Court, Pune is set aside. Reference IDA No. 357 of 2023 filed by Respondent No.1 is held to be not maintainable. The Labour Court shall proceed to pass a formal order disposing off the Reference as not maintainable.

8. Needless to say that, the Respondent No.1 shall be at liberty to adopt appropriate proceedings in respect of his grievance of non-payment of overtime and all contentions of parties in that regard are kept open.

9. Writ Petition is allowed. No order as to costs.

(SANDEEP V. MARNE, J.)