

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18944 OF 2024

The Manager,
M/s Koso India Private Limited ... Petitioner
V/s.
The President Association of
Engineering Workers ... Respondents

*Mr. P. S. Dani, Senior Advocate with Mr. Piyush Shah, Advocates for the
Petitioner.*

*Ms. Jane Cox i/by Mr. Ghanashyam R. Thombare, Advocates for the
Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 04 February, 2025.

PC. :

1. The Petition challenges order dated 2nd August, 2024 passed by Presiding Officer, Industrial Tribunal, Nashik rejecting application at Exhibit 16 filed by the Petitioner seeking dismissal of the Reference on the ground of res-judicata.

2. I have heard Mr. Dani, learned Senior Advocate appearing for Petitioner and Ms. Cox, learned Advocate appearing for Respondents-Union. After having considered the submissions canvassed by the learned Advocates appearing for the parties, it appears that earlier complaint of

unfair labour practise being complaint (ULP) No.94 of 2008 was filed by the Respondent-Union *inter-alia* seeking the reinstatement of the eight workmen. In that complaint, Petitioner filed written statement, denying existence of employer-employee relationship and contended that the concerned workmen are actually contract workers. In view of creation of dispute by the employer about existence of employer-employee relationship, the Labour Court proceeded to dismiss complaint (ULP) No.94 of 2008 by order dated 17th July, 2019 holding the same as not maintainable. Accordingly, the Respondent-Union raised a dispute which came to be referred to Industrial Tribunal and registered as Reference (IT) No.1 of 2021 for reinstatement of the eight workmen with full back wages and continuity of service. One of the issues that would be adjudicated by the Industrial Tribunal is about existence of employer-employee relationship between the Petitioner and the concerned workmen. Its a settled position of law by several judgments of the Apex Court in ***Cipla Limited Vs. Maharashtra General Kamgar Union and ors.*¹** and ***Sarva Shramik Sangh Vs. Indian Smelting and Refining Corporation Limited*²** that Labour/ Industrial Court does not have jurisdiction to entertain complaint of unfair labour practices whenever dispute relating to existence of employer-employee relationship is raised and that such dispute must be adjudicated through a reference made under the provisions of the Industrial Dispute Act, 1947.

3. In that view of the matter, the Respondent-Union has rightly sought raising of dispute relating to re-instatement of the eight workmen and

1 2001(3) SCC 101

2 2003(10) SCC 455

the reference has correctly been made to the Industrial Tribunal in that regard.

4. The application filed by the Petitioner has rightly been rejected by the Industrial Tribunal.

5. Writ Petition is devoid of merits and it is accordingly rejected.

(SANDEEP V. MARNE, J.)