



W.P.(MD)No.10148 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.10148 of 2024

and

W.M.P.(MD)Nos.9164 & 9165 of 2024

M.Palanivelu

... Petitioner

Vs.

- 1.The Chief Secretary to the Government,
Ministry of Labour and Employment,
Fort St.George, Chennai.
- 2.The Presiding Officer,
State Industrial Tribunal,
MH Campus, Chennai-600 014.
- 3.The Registrar,
Department of Cooperative Societies,
No.170, Periyar EVR Salai,
Kilpauk, Chennai-600 010.



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- 4.The Joint Registrar,
Department of Co-operative Societies,
Trichy Region,
Trichy-620 020.
- 5.The Deputy Registrar,
Department of Co-operative Societies,
Trichy Region, Trichy-620 020.
- 6.The Managing Director (DCM/Finance/BHEL)
B.H.E.L. Employees Co-operative Bank Ltd.,
BHEL Township, Kailasapuram,
Trichy 620 014.
- 7.The Secretary (DGM/HR/BHEL),
(The Special Officer),
B.H.E.L. Complex Co-operative
Labour Contract Society Ltd.,
No., Y.T.11, Dr.Ambedkar Nagar,
R.Sector Township, Kailasapuram,
Trichy-620 014.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the Common order passed in I.A. No.6 of 2018 in I.D. No.33 of 2017 along with I.D. Nos.21 of 2017 to 41 of 2017 on the file of the INDUSTRIAL TRIBUNAL, CHENNAI dated 28.02.2018 and quash the same as illegal and violating the order of this Court in WA (MD) Nos.660 to 680 of 2017 and further regularise the service of the petitioner.



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For Petitioner : Mr.Chamundi Bose
For Respondents : Mr.A.Baskaran
Addl. Govt. Pleader for R1 to R5 & R7
Mr.Raguvaran Gopalan for R6

ORDER

Heard Mr.Chamundi Bose, learned counsel for the petitioner, Mr.A.Baskaran, learned Additional Government Pleader appearing for respondents 1 to 5 and 7 and Mr.Raguvaran Gopalan, learned counsel appearing for the respondent No.6.

2. This Writ Petition has been filed seeking a Writ of Certiorarified Mandamus to call for the records pertaining to the common order passed in I.A.No.6 of 2018 in I.D.No.33 of 2017 from the file of learned Industrial Tribunal, Chennai dated 28.02.2018 and to quash the same.



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WEB COPY 3. The brief facts that are relevant for disposal of the present Writ Petition are as under:

The petitioner herein filed an Industrial Dispute before the learned Industrial Tribunal, Tamil Nadu, Chennai, seeking a relief to direct the respondents therein to absorb and regularise the services of the petitioner along with time scale of pay and all other attendant and monetary benefits since the date of his initial appointment upto date etc. The said Industrial Dispute was filed under Section 10 of “the Industrial Disputes Act, 1947” (hereinafter referred to as “the ID Act, 1947”). The respondent No.6 herein, who is also respondent in the said I.D.No.33 of 2017, filed I.A.No.6 of 2018, to reject the Industrial Dispute on the ground that the learned Industrial Tribunal lacks jurisdiction to entertain the said Industrial Dispute in the absence of an appropriate reference under Section 10 of the ID Act, 1947 by the appropriate Government. In other words, it is the specific contention of respondent No.6 that it is only in the event of a reference made by the appropriate Government in terms of Section 10 of the ID Act, 1947, the learned Industrial Tribunal could



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assume jurisdiction to entertain any dispute, but not otherwise, keeping in view the relief sought in the Industrial Dispute raised by the petitioner herein. The said IA was allowed by the learned Industrial Tribunal holding that there was no reference as required under Section 10 of the ID Act, 1947 and therefore, the Industrial Dispute at the instance of the petitioner herein cannot be entertained by the learned Industrial Tribunal for want of conferment of jurisdiction for the relief sought in the Industrial Dispute in question. It is aggrieved by the said order, the petitioner has filed the present Writ Petition.

4. It is not in dispute that there is no reference as mandated under Section 10 of the ID Act, 1947. But the learned counsel for the petitioner contended that the learned Division Bench of this Court while disposing of W.A.(MD)Nos.660 to 680 of 2017, directed the petitioner and others to file individual claim petition before the Industrial Tribunal Chennai and further directed the State Industrial Tribunal, to take up the matter and consider the case after issuing notice to all the parties and affording them full opportunity and then to decide the matter. Therefore, the requirement of reference under Section 10 of ID Act, 1947 is not a



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pre-condition for assuming jurisdiction for considering the relief sought in the Industrial Dispute in question. The learned Industrial Tribunal, having taken note of the order passed by the learned Division Bench and also paragraph 10 of the Industrial Dispute filed by the petitioner herein, came to the conclusion that the learned Industrial Tribunal cannot assume jurisdiction to adjudicate the dispute pertaining to the issue of regularization and absorption of the services of the petitioner in the 6th respondent bank and concluded that the Industrial Dispute cannot be entertained by it. No doubt, the learned Division Bench while clarifying the order passed by the learned single Judge, directed the petitioner herein to file individual claim petition before the State Industrial Tribunal. But the learned Division Bench permitted the Industrial Tribunal to adjudicate the matter on its own merits by duly affording an opportunity to all the parties concerned to adduce oral and documentary evidence.

5. In the said Industrial Dispute, respondent No.6 herein raised a preliminary objection about the jurisdiction of the Industrial Tribunal and the said issue was decided by the learned Industrial Tribunal under the order



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impugned herein. Paragraph 10 of the Industrial Dispute filed by the petitioner herein itself disclose that there was no reference as required under Section 10 of the ID Act, 1947 but it is only by virtue of the order passed by the learned Division Bench, referred to above, the said Industrial Dispute was filed. It is settled law that neither this Court nor any superior Court can confer jurisdiction of any authority or Court unless such a jurisdiction is otherwise conferred under the relevant statute. Without having any jurisdiction, even if any order or award is passed by the Industrial Tribunal, the same is *non est* in the eye of law and cannot be enforced. The learned Division Bench also while disposing of the above said Writ Appeals, permitted the learned Industrial Tribunal concerned to decide the matter on merits.

6. In the light of an admitted fact situation that there is no reference as required under Section 10 of the ID Act, 1947, whether the relief sought by the petitioner herein in the Industrial Dispute filed by him can be entertained by the learned Industrial Tribunal at the instance of an individual, in the absence of any reference is the only question that fall for consideration before the learned



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Industrial Tribunal and the learned Industrial Tribunal came to the conclusion that in the absence of any reference as required under Section 10 of the ID Act, 1947, the dispute pertaining to the relief sought by the petitioner before the Industrial Tribunal cannot be entertained for want of jurisdiction.

7. It is settled law that the jurisdiction of the Industrial Tribunal would arise only by virtue of reference under Section 10 of the ID Act, 1947 except in case of disputes falling under Section 2-A of the ID Act, 1947. The scope of adjudication of the dispute is also within the parameters of reference made under Section 10 of the ID Act, 1947. As there is no reference in the instant case, this Court is unable to find fault with the impugned order passed by the learned Industrial Tribunal allowing the IA filed by the respondent No.6 and rejecting the main Industrial Dispute filed by the petitioner herein. It is an admitted fact, but for the reference under Section 10 of the ID Act, 1947, the learned Industrial Tribunal lacks jurisdiction to entertain a dispute seeking a relief of absorption and regularization. But the jurisdiction of the learned Industrial Tribunal was presumed only by virtue of an order passed by this Court in the Writ Appeals



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referred to above. The law in this regard is well settled and the Hon'ble Apex Court in the case of ***Jagmittar Sain Bhagat and others Vs. Director, Health Services, Haryana and others*** reported in ***(2013) 10 SCC 136***, held as under:

“9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan & Ors., AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios & Anr., AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213).

10. In Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Thr. Lrs., (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in Premier Automobiles



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WEB COPY *Ltd. v. K.S. Wadke & Ors., (1976) 1 SCC 496; Kiran Singh v. Chaman Paswan, AIR 1954 SC 340; and Chandrika Misir & Anr. v. Bhaiyalal, AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, “performance cannot be forced in any other manner.”*

11. The law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever; in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing;, “it is an objection going to the nullity of the order on the ground of want of jurisdiction”. Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypore, AIR 1919 PC 150; State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr., AIR 1996 SC 2664; Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. & Anr., AIR 2005 SC 4446; and Carona Ltd. v. M/s. Parvathy Swaminathan & Sons, AIR 2008 SC 187). ”



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8. In the light of the settled legal position, the order passed by the learned Division Bench of this Court under no circumstances can be said to confer jurisdiction on the learned Industrial Tribunal to entertain the dispute at the instance of the petitioner herein and in the absence of any reference as required under Section 10 of the ID Act, 1947.

9. In the light of the above, this Court does not find any error, illegality or perversity in the impugned order passed by the learned Industrial Tribunal and accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Neutral Citation: Yes / No
Index : Yes / No

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