2026:AHC:209046

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 40418 of 2026

Adarsh Arjariya

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Nitesh Kumar, Shailendra
Counsel for Respondent(s)	:	C.S.C.

Court No. - 36

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. It is the case of petitioner that he was appointed by Respondent-4, i.e., M/s M.G.O. Technology Pvt. Ltd. vide an appointed letter dated 06.02.2026 and in pursuance thereof he joined on 09.02.2026 and worked for more than a month, however, no salary was paid as well as by an email dated 24.03.2026 his services were discontinued by Respondent-Employer on ground that there were certain discrepancies / mismatch in the name of petitioner in his documents and in joining letter.

2. In aforesaid circumstances, petitioner files a claim petition under Section 2A of U.P. Industrial Disputes Act, 1947 before Assistant Labour Commissioner, Jhansi for conciliation and in case the conciliation fails, an industrial dispute be referred.

3. Sri Shailendra, learned counsel for petitioner submits that a notice was issued to Employer, i.e., Respondent-4 by Conciliation Officer on 18.05.2026 fixing a date for appearance on 28.05.2026 and according to him the Employer does not appear. Learned counsel submits that in aforesaid circumstances Conciliation Officer by impugned order dated 24.08.2026 rejected claim petition and refused to refer any industrial dispute. Learned counsel refers following part of impugned order:

"पत्रावली का अवलोकन करने से ज्ञात हुआ कि आप द्वारा दिनांक 06.02.2026 से दिनांक 24.03.2026 तक डायरेक्टर, एम० जी० ओ० टेक्नालाजी प्रा० लि०, सी-2398, सी ब्लॉक इन्दिरा नगर, लखनऊ के अन्तर्गत मात्र 01 माह 15 दिन ही कार्य किया गया है। औद्योगिक विवाद अधिनियम 1947 की धारा 2 ए के अन्तर्गत विवाद ग्राहय करने हेतु कम से कम 240 दिन की हाजिरी होना अनिवार्य है। चूंकि आप द्वारा उक्त कम्पनी के अन्तर्गत कार्य करने में मात्र 01 माह 15 दिन की हाजिरी होने के कारण उक्त विवाद श्रम न्यायालय, झाँसी के समक्ष सन्दर्भित किये जाने योग्य नहीं है अतः उक्त विवाद को खारिज करते हुए पत्रावली दाखिल दफ्तर किये जाने के आदेश पारित किये जाते हैं।"

4. Learned counsel for petitioner refers contents of Section 2A of Act that it also includes dismissal of an individual workman as well as that Conciliation Officer cannot decide, whether petitioner falls within the definition of ‘workman’ or not. In case of any such dispute, appropriate authority would be the Labour Court after an industrial dispute is referred since it can be decided only on basis of pleadings and evidence.

5. Learned counsel also submits that it was not a case of retrenchment, therefore, a reason assigned in impugned order that petitioner was required to work atleast 240 days in a calendar year to raise any industrial dispute, cannot be sustained in the present case since it was a case of disengagement.

6. I have considered aforesaid submissions and considering that impugned order was passed ex parte, i.e., without hearing Employer, either due to non-appearance or otherwise, therefore, the Court is of the view that matter can be decided finally even without issuing notice to Employer, i.e., Respondent-4, on basis of pleadings and material available on record.

7. After going through the record as well as considering above submissions, the Court finds that impugned order cannot survive in eyes of law due to following reasons:

(a) In the given set of circumstances, if there was a dispute, whether petitioner was a workman or not, appropriate authority to decide it, would be the Labour Court after an industrial dispute is referred and not the Conciliation Officer since such dispute has to be decided on basis of evidence led by both parties including the nature of work of workman concerned and for that the Court takes note of a recent judgment passed by Supreme Court in the case of **M/s Premium Transmission Private Limited vs. The State of Maharashtra and others, (2026) 5 SCC 633** wherein purport of Section 10(1) of Industrial Disputes Act, 1947 was considered in detail and held that even any apprehended dispute can be referred and only after exchange of pleadings, the issue whether engagement was purely contractual or otherwise can be decided by Labour Court. Court finds that it can be a preliminary issue also. For reference, some paragraphs of **M/s Premium Transmission (supra)** is quoted below:-

> "55. Plainly interpreted, an industrial dispute means any "dispute or difference" between employers and workmen connected with employment, non-employment, the terms of employment, or conditions of labour.
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> 56. From Management's perspective, the members of the third respondent Union are not its workers. The very denial of the status could also be considered as a dispute in the established facts and circumstances of a case.
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> 57. The relevant portion of Section 10(1) of the ID Act reads as follows:
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> "10. Reference of disputes to Boards, Courts or Tribunals.—(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time…."
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> 58. Section 10 enables the appropriate Government to refer an industrial

dispute to a Board, to a Labour Court or to a Tribunal, depending upon the nature of the dispute. The step taken under Section 10 sets in motion a process for adjudication of a dispute between the parties. The steps envisaged under Section 12 are known as a conciliatory measure without actually inviting adjudication between the management and the Union. Section 12, in terms, does not stipulate that a condition precedent to invoking its jurisdiction is to first approach the management and receive a reply, and then knock on the doors of the Conciliation Officer. The process of reference is administrative in nature and is not tested on the touchstone of a judicial or quasi-judicial order by a statutory authority or a court.

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60. A dispute in fact or a dispute in law cannot be exhaustively dealt with either by examples or through a definition. The dispute is presented in a variety of dynamic circumstances where one party asserts a right, and another party denies the right. Similarly, a party affirms the existence of a fact, and another party disputes its existence. These situations would attract the simple meaning of a dispute. Similarly, industrial disputes can have different combinations; namely, between workers and management, Union and management, and, as in the present case, contract labour and the Management. In a situation where an unresolved dispute subsists, the same is resolved through the process of conciliation.

61. The management, in the instant case, objects to the status of workers and, at the same time, cannot be heard to argue that the status asserted by them is not adjudicated by the Industrial Court. The inconsistency is that the preliminary objection is raised to reject the ongoing proceedings in Reference (IT) No. 1 of 2021, as there is no demand made to the management beforehand. The Union and the workers complain of unfair labour practice against the Management, and the remedy for redressal of both unfair practice and declaration that the contract is a sham is before the Industrial Court. Therefore, for the Rule of Law to prevail, the grievances are not wished away without adjudication. Ubi jus ibi remedium, i.e. where there is a right, there is a remedy in law, is a

principle to be kept in perspective. Through the reference, a forum for redressal alone is provided to the contract labour. The argument of the management derives a forum to the Union/workers and hence not accepted.

62. Further, as per the ratio of SAIL [SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1] , the contract labour is given the option to question the contract as a sham and nominal, and pray for appropriate reliefs. The objection to continuing the industrial dispute under Section 10 is substantial and has been rightly rejected by the High Court.

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64. The power to refer an “apprehended” dispute is the statutory application of the old adage “a stitch in time saves nine”. It enables the State to intervene before the industrial peace is shattered. Consequently, permitting preliminary objections to stall this urgent process negates the preventive intent of the statute, converting a mechanism of immediate relief into an engine of delay. The appropriate Government, in its armchair, while referring an industrial dispute for resolution, keeps in its perspective industrial peace and prosperity, to enable workers to work out their just and economic demands and avoid strikes and lockouts. The administrative decision merely looks at an industrial dispute or an apprehended industrial dispute. The merit or otherwise of the dispute is for the adjudicatory body to decide.

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67. In the circumstances of this case, the Management's preliminary objection is that the industrial dispute referred to is illegal and without merit. For the reasons stated above, we are in agreement with the impugned judgment [Premium Transmission (P) Ltd. v. State of Maharashtra, 2023 SCC OnLine Bom 3340] . To keep the ongoing adjudication in line with the principles laid down by this Court, the Labour Court is directed to frame two issues, namely: (i) whether the contracts through which the employment is provided to the contract labour are sham and nominal, and (ii) whether, considering the nature of

> work discharged by the workmen of the subject Union, the Management is the principal employer of the members of the respondent Union."

(b) The case set up by petitioner was of disengagement from service or termination from service and not a case of retrenchment, therefore, a finding that since petitioner has not worked for 240 days in a calendar year and worked for only 45 days, therefore, no industrial dispute could be referred, is unsustainable. Even if such dispute exist, it would be decided by Labour Court after an industrial dispute is referred.

8. In view of above discussion, impugned order dated 24.08.2026 is set aside and matter is remitted to Conciliation Officer, Jhansi to decide afresh after giving an opportunity to Employer also and for that a fresh notice be issued. Subsequently, preferably within a period of six months fresh order be passed.

9. The writ petition is accordingly disposed of.

(Saurabh Shyam Shamshery,J.)

October 6, 2026
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Digitally signed by :-
AWADESH KUMAR
High Court of Judicature at Allahabad