HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

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LPA No.119/2024
LPA No. 120/2024
LPA No. 121/2024

Reserved on: 01 .03.2025
Pronounced on: 20.03.2025

LPA No. 119/2024

1. General Officer Commanding,
HQ 15 CORPS, Q (OPS) C/O 56 APO.
2. Commanding Officer, Col RR,
Badami Bagh, Cantonment, Srinagar
Kashmir c/o 56 APO Srinagar
Kashmir.
3. Lt. Col RR, (Punjab) Badami Bagh,
Cantonment, Srinagar, Kashmir C/O
56 APO Srinagar Kashmir.
4. HQ 31, Sub Area Commander,
Badami Bagh, Cantonment, Srinagar
Kashmir C/O 56 APO Srinagar
Kashmir.

vs.

1. Aijaz Ahmad Mir S/o Abdul cani
Mir R/O Drangbal, Parnpore, Kastrmir.
2.Director, DEFENCE,Procurement, Sanatnagar,
Srinagar-Kashmir.
3.State Industrial Tribunal cum Labour Court, J&K
Srinagar.

LPA No. 120/2024

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HQ 15 CORPS, Q (OPS) C/O 56 APO.
2. Commanding Officer, Col RR,
Badami Bagh, Cantonment, Srinagar
Kashmir c/o 56 APO Srinagar
Kashmir.
3. Lt. Col RR, (Punjab) Badami Bagh,
Cantonment, Srinagar, Kashmir C/O
56 APO Srinagar Kasmir.
4. HQ 31, Sub Area Commander,

Badami Bagh, Cantonment, Srinagar
Kashmir C/O 56 APO Srinagar
Kashmir.

vs.

1. Mohd Amin Mir son of Abdul Gani Mir resident of Drangbal Pampore Kashmir
2. Director, Defence Procurement, Sanatnagar, Srinagar-Kashmir.
3. State Industrial Tribunal cum Labour Court, J&K Srinagar.

LPA No. 121/2024

1. General Officer Commanding,
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3. Lt. Col RR, (Punjab) Badami Bagh,
Cantonment, Srinagar, Kashmir C/O
56 APO Srinagar Kasmir.
4. HQ 31, Sub Area Commander,
Badami Bagh, Cantonment, Srinagar
Kashmir C/O 56 APO Srinagar
Kashmir.

vs.

1. Tariq Ahmad Malla son of Ali Mohd Malla resident of Kralpora Pulwama Kashmir
2. Director, DEFENCE
Procurement, Sanatnagar,
Srinagar-Kashmir.
3. State Industrial Tribunal cum Labour Court, J&K Srinagar.

For Appellants:
Mr. T. M. Shamsi DSGI with Mr. Fizan Ahmad Ganai CGSC.

For Respondents:

Mr. M.M.Dar Advocate with Mr. U.M.Banday and Mr. Zaffar Mehdi Advocates.

CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE.

JUDGEMENT

Sanjeev Kumar-J

1. These *intra Court* appeals filed by the appellants under Clause 12 of the Letters Patent arise out of an order and judgment dated 23-02-2024 passed by the learned Single Judge of this Court ['the Writ Court'] in OWP No. 341/2017 and two clubbed matters, whereby the Writ Court has upheld the award dated 15-06-2016 passed by the Industrial Tribunal-cum- Labour Court, J&K, Srinagar ('the Labour Court').

2. Briefly put, the facts leading to filing of these appeals, as can be culled out of the pleadings and the material on record, are that S/Shri Aijaz Ahmed Mir, Tariq Ahmed Malla and Mohd Amin Mir [' hereinafter referred to as the Writ Petitioners for convenience'] were engaged as casual porters for rendering services to the appellants on need basis from April, 2010 till December, 2012. They were thrown out of service after December, 2012 on the ground that there was no work with the appellants available for them. The writ petitioners served a legal notice upon the appellants for their arbitrary ouster from the services. The writ petitioners also staked their claim for regularization of their services. The notice was replied by the appellants informing the writ petitioners that there was no provision for regularization of casual porters.

3. The Writ petitioners filed an application before the Assistant Labour Commissioner, Srinagar, [‘for short ALC, Srinagar’] which was dismissed by ALC Srinagar vide order dated 26-03-2013. The application was dismissed on the ground that the dispute raised by the writ petitioners was outside the scope of the Industrial Disputes Act. The writ petitioners were accordingly advised to approach the appropriate forum.

4. After rejection of the application for conciliation by ALC, Srinagar, the writ petitioners approached the Regional Labour Commissioner, Central, Jammu by way of an application filed under Section 15 of the Payment of Wages Act, 1936 for recovery of their un-paid wages. The application was dismissed by the Regional Labour Commissioner (Central), Jammu vide its order dated 09-10-2013 with the observation that the matter pertains to State Labour Department. The writ petitioners were, thus, directed to approach the ALC, Srinagar for redressal of their grievance.

5. The writ petitioners thereafter approached the ALC, Srinagar by way of an application for initiating Conciliation Proceedings. They also seems to have moved an application under Payment of Wages Act for release of pending wages. As is claimed, the writ petitioners waited for 45 days to know the outcome of the conciliation proceedings initiated by them before the ALC, Srinagar and when no decision was taken by the ALC, Srinagar (Conciliation Officer), the writ petitioners approached directly the Labour Court under Section 2-A (2) of the Industrial Disputes Act, 1947 [‘the ID Act’].

6. In the application filed by the writ petitioners before the Labour Court, the writ petitioners prayed for setting aside of their disengagement and reinstatement in service. On being put on notice, the appellants

appeared and filed their written statement. It was the stand taken by the appellants that the writ petitioners were only casual porters engaged on need basis and, therefore, they can neither be reinstated nor they can be permanently absorbed. However, after filing the written statement, the appellants absented from the proceedings. They were set *ex parte* by the Labour Court and the writ petitioners were directed to lead their evidence in *ex parte*. On the basis of material on record, and the evidence led by the writ petitioners the Labour Court framed following two issues for adjudication:

(i) Whether the office of appellants, for the purpose of dispute referred in this reference, was falling within the definition of "Industry" under the Industrial Disputes Act, 1947 ?

(ii) Whether the instant reference petition was maintainable in view of the provisions of sub-section (2) of Section 2-A of the Industrial Disputes Act ?

7. The Labour Court having considered the matter in the light of different provisions of the ID Act, came to the conclusion that the job of a porter is not an activity directly or indirectly related to protecting the sovereignty of the State and, therefore, the appellants were clearly falling within the definition of 'Industry' under the ID Act. On the second issue, the Tribunal held that failure of the Conciliation Officer i.e. ALC, Srinagar to submit failure report within period of 45 days gave cause of action to the writ petitioners to invoke sub section (2) of Section 2-A of the ID Act and, therefore, the reference before the Labour Court was clearly maintainable.

8. After deciding the twin issues framed, the Labour Court addressed the application of the writ petitioners on merits and came to the conclusion that the termination of the writ petitioners was in violation of the provisions of

Section 25-B and 25-F of the ID Act and, therefore, bad in the eye of law. The Labour Court allowed the reference and directed the appellants herein to reinstate the writ petitioners forthwith with a further direction to the appellants to pay full back wages to the writ petitioners within a period of three months, failing which they were held entitled to receive interest at the rate of 8% per annum till final realization.

9. The Award dated 15.06.2016 passed by the Labour Court was called in question by the appellants here by filing three writ petitions which have been disposed of by the writ Court vide impugned judgment dated 23.02.2024. Feeling aggrieved and dissatisfied by the judgment of the writ Court, the appellants are before us in these three appeals.

10. Having heard learned counsel for the parties and having perused the material on record, we need to first put on record that the Labour dispute raised by the writ petitioners before the Labour Court directly in terms of sub section (2) of Section 2-A of the ID Act, 1947 was contested by the appellants by filing their written statement. The appellants, however, did not contest the reference by leading any evidence in rebuttal. As a matter of fact, the appellants absented themselves after filing their written statement and were proceeded *ex parte* by the Labour Court. However, on the basis of the pleadings of the parties, the Labour Court framed two important issues for adjudication i.e. (i) *Whether the appellants (the employer) falls within the definition of 'Industry' as given in Section 2 (j) of the ID Act; and, (ii) whether the reference made by the writ petitioners directly to the Labor Court is maintainable in view of the provisions of sub section (2) of Section 2-A of the ID Act, 1947.*

11. The Tribunal has very casually dealt with both these issues and answered them in favour of the writ petitioners. The reasoning given by the Labour Court is far from convincing. In order to find out as to whether the activity of a Department would fall within the definition of 'Industry', the nature of job being performed by a workman/employee is not the sole determining factor. The term 'Industry' as defined in Section 2 (j) of the ID Act has baffled the legal minds ever since its enactment. In the year 1978, a Seven Judge Bench of the Supreme Court in **Bangalore Water-Supply & Sewerage Board vs. A. Rajappa & others, (1978) 2 SCC, 213** surveyed the entire case law with regard to the denotation and connotation of the word 'Industry' as used in Section 2 (j) of the ID Act. The Supreme Court, relying upon its earlier judgment in **State of Bombay and ors vs. The Hospital Mazdoor Sabha, AIR 1960 SC, 610** reiterated the triple test evolved in **Hospital Majdoor Sabha** case (supra). It was thus held that 'Industry' exists where there is (i) systematic activity (ii) organized by cooperation between employer and employee; (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. If this triple test is satisfied, then *prima facie* there is an 'industry' in that enterprise.

12. A fortiori, the Court also held that 'Industry' does not include spiritual or religious services or services geared to celestial bliss e.g. making on a large scale Prasad or food. The Industry, however, would include material services and things. Absence of profit motive or gainful objective of the activities is irrelevant, whether the venture is public, joint, private or other sector. The true focus is functional and the correct test is the nature of the activity with special emphasis on the employer/employee relations. If

the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking. Hon'ble the Supreme Court also excluded the sovereign functions of the State from the purview of Industry, though sounding a caution that mere welfare measures undertaken by the State may not be disguised for sovereign functions. The relevant extract of the judgment is set out below:-

> "Banerji, 'amplified by Corporation of Nagpur, in effect met with its Waterloo in Safdarjung. But in this latter case two voices could be heard and subsequent rulings zigzaged and conflicted precisely because of this built-in ambivalence. It behaves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and over-rule what we regard as wrong. Hesitancy, half-tones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote employment through diverse strategies which need for their smooth fulfillment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law lose its savour of progressive certainty wherewith shall it be salted ? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of 'industry' under the Act. We speak, not exhaustively but to the extent covered by the debate at the bar and, to that extent, authoritatively, until over-ruled by a larger bench or superseded by the legislative branch. (1) [1963] 1 L.L.J. 567 (culcutta).
>
> 1. 'Industry', as defined in Sec, 2 (j) and explained hi Banerji, has a wide import.
>
> (a) Where (i) systematic activity, (ii) organized by co- operation between employer and employee, (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to, celestial bliss e.g. making, on a large scale, prasad or food), prima facie, there is an 'industry' in that enterprise.
>
> (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.
>
> (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
>
> (d) If the Organisation is a trade or business, it does not cease to, be one because of philanthropy animating the undertaking.

11. Although sec. 2(j) uses, words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' (provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the- fold of 'industry' undertakings, callings and services adventure 'analogous to the carrying on of trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if off the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or other sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing mom.

(a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iiia) co-operatives, (iv) research institutes (v) charitable projects and (vi) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of sec. 2 (j).

(b) A restricted category of professions, clubs, co- operatives and even Gurukulas and little research labs, may qualify for exemption if in simple ventures substantially and going by the dominant nature criterion substantatively, in single simple ventures, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If in a pious or altruistic mission many employ them- selves, free or for small honoraria, or likely return mainly by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant, relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity, compassion, developmental passion or project. IV The dominant nature test :

(a) where a complex of activities, some of which qualify for exemption others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of

> the departments as explained in the Corporation of Nagpur, will be true test. The whole, undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.
> (b) Notwithstanding the previous clauses, sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.
> (c) Even in departments discharging sovereign functions, if there are units which are industries and they are Substantially severable, then they can be considered to come within sec. 2(j).
> (d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.
>
> We over-rule Safdarjung, Solicitors' case, Gymkhana, Delhi University, Dhanrajgirji Hospital and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha is hereby rehabilitated. We conclude with diffidence because Parliament which has the commitment to the political nation to legislate promptly in vital areas like industry and trade and articulate the welfare expectations in the conscience' portion of the constitution, has hardly intervened to restructure the rather clumsy, vaporous and tall-aud-dwarf definition or tidy up the scheme although Judicial thesis and anti-thesis, disclosed in the two decades long decisions, should have produced a legislative synthesis becoming of a welfare State and Socialistic Society, in a world setting where I.L.O. norms are advancing and India needs updating. We feel confident, in another sense, since counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule of Life-Indian Life-at the threshold of the decade of new development in which Labour and Manage- ment, guided by the State, will constructively partner the better production and fair diffusion of national wealth. We have stated that, save the Bangalore Water Supply and Sewerage Board-appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a smaller bench for disposal on the merits in accordance with the principles of Law herein laid down.

13. From the reading and understanding of the law laid down in Bangalore Water Supply's case (supra) in the context of argument raised by Mr. Shamsi, that Army performs sovereignty functions and therefore, cannot be brought within the meaning of the term 'Industry' as used in Section 2(J) of the ID Act, it is deducible that the sovereign functions, strictly understood, qualify for exemption but not welfare acts or economic adventure undertaken by the Government or the statutory bodies. Even in departments discharging sovereign functions if there are units which are

industries and they are substantively severable, they can be considered to come within Section 2(j). The exposition of the term 'Industry' by the Supreme Court in Bangalore Water Supply case continues to be an authoritative pronouncement even on date, though contrary voices seeking reconsideration of the judgment rendered in the aforesaid case have emanated in some later judgments of the Supreme Court.

14. With a view to overcome the wide amplitude given to the term 'Industry' by Supreme Court and to give an ambiguous definition of Industry for the purpose of ID Act, the Industrial Disputes Amendment Act, 1982 (46 of 1982) came to be promulgated by the Central Government. However, the amendment made to Section 2(j) of the ID Act has not been notified so far. It is the stand of the Union of India that it could not bring into force the amended definition of the 'Industry', as given in Section 2(j) of the ID Act, for the reason that absent an alternative legal machinery created at the Central level to substitute the triple test re-affirmed by Hon'ble the Supreme Court in Bangalore Water Supply case (*supra)*, the millions of workers would be rendered vulnerable and without any legal framework for protection of their employment rights.

15. This was the stand put forth by the **Union of India in State of UP vs. Jai Bir Singh, (2005) 5 SCC 1** in which a Bench of the Supreme Court has sought reference to a Nine Judge Bench to revisit the Bangalore Water Supply case judgment.

16. Be that as it may, when we analyze the facts of the instant case, we find that there is a Standard Operating Procedure (SOP) between Directorate of Defence Labour Procurement Department of Government of J&K (DLPD) and Army and BSF in Northern Command Zone, which provides

for meeting the requirements of the Army/BSF. The porters and ponies required by Army and BSF for assisting in their operational duties are not engaged by them on their own but are provided by DLPD. As per the SOP, these porters are engaged to perform the following duties:-

> " (a) Conveyance of military stores where roads do not exist or when Motor Transport cannot reach due to disruption of traffic.
> (b) Collection of water for troops where piped water is not available.
> (c) Winter stocking of posts not connected by road.
> (d) Evacuation of serious cas in hilly terrain.
> (e) Conveyance and replenishment of amn.
> (f) Conveyance of private mail."

17. As is evident from the aforesaid enumeration, the primary task of the porters engaged by the appellants is to perform different types of menial duties to aid and assist the Army for performance of its plenary duties. They are not engaged to perform any systematic activity carried by the Army with the aid of these porters. Undoubtedly, the porters perform the labour job and render assistance to the Army Units working on different fronts. The only and primary function of the Army is to protect the borders against any external aggression/invasion. The Army does not perform any duty other than protecting the security, integrity and sovereignty of the nation. There should be no manner of doubt that the predominant rather the only duty that is performed by the Army partakes the character of sovereign function. The duties entrusted to the Army cannot be performed by any person, public or private. The security of borders from external aggression is thus undoubtedly an inalienable function of the Army, and, therefore, a sovereign activity.

18. It is not the case of writ petitioners that the Units, in which they are engaged, are not engaged in the activities which are sovereign in nature and,

therefore, severable. The Army functions as a single Unit with the sole aim and objective of protecting the borders of the country against external aggression. The porters which are engaged as labour for activities, like carrying ration and ammunition to inaccessible and difficult terrains, definitely contribute immensely to the duties which the Army is required to perform in the exercise of its sovereign functions.

19. Viewed from any angle the Indian Army, or for that matter, the 15 Corps, Head quartered at Badami Bagh, cannot be termed as 'Industry' as defined under Section 2(j) of the ID Act. Neither the Labour Court nor the Writ Court has considered this aspect of the matter in the light of legal position settled by a Seven Judge Bench judgment of Hon'ble the Supreme Court in **Bangalore Water Supply** case (*supra*).

20. This answers the first question which has arisen for determination in these proceedings.

21. In view of the answer which we have given to Question No.1, the determination of Question No.2 is rendered academic.

22. We have gone through the proceedings which were filed before the Labour Court and we are of the considered opinion that the writ petitioners had not approached the competent authority for adjudication of their dispute. Since ALC, Srinagar, a Conciliation Officer appointed by the Government of Jammu and Kashmir, was not an authority competent to hold the conciliation proceedings between the writ petitioners and the appellants, as such, failure of the ALC, Srinagar, to conclude the Conciliation Proceedings within 45 days did not give any cause of action to the writ petitioners to invoke sub Section (2) of Section 2-A of the ID Act

and approach the Labour Court directly without there being any reference from the 'appropriate government'.

23. With a view to understand the issue, we need to advert to the definition of 'appropriate government' as given in Section 2 (a) of the ID Act, which, for facility of reference, is set out below:-

> "(a) appropriate Government means--
>
> (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3 or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994),or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India the National Housing Bank

> established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board,] or a major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and
>
> (ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government: Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment;"

24. From reading of Clause (a) (i) of Section 2, it is abundantly clear that the Indian Army, even if it is to be construed as an Industry for the purposes of Section 2 (j) of the ID Act, yet the same would be an Industry carried on by or under the authority of the Central Government. That being the clear position emerging from above definition, the 'appropriate government' in relation to the industrial dispute, if any, between the writ petitioners and the appellants would be the Central Government. The Conciliation proceedings with respect to the industrial dispute between the employer and the workman are required to be conducted by a Conciliation Officer appointed by the 'appropriate government' by notification in the official gazettee. Nothing has been brought to our notice to show that ALC, Srinagar, was ever appointed by the Central Government to act as Conciliation Officer under Section 4 of the ID Act. Similarly, there is nothing on record to show

that the Labour Court constituted by the Government of Jammu and Kashmir is also appointed by the Central Government as Labour Court in terms of Section 7 of the ID Act. In terms of Section 7 of the ID Act, the Labour Courts are to be appointed by the appropriate government for adjudication of industrial disputes. The expression 'appropriate government' used in Section 7, in the context of controversy before us, would mean the 'Central Government'.

25. For the foregoing reasons we are of the considered opinion that invocation of Sub Section (2) of Section 2-A by the writ petitioners was not permissible. Section 2-A, for facility of reference, is reproduced as under:-

> '**2A. 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 l0, 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)*.

26. From reading of Section 2-A, in particular sub Section (2) thereof, it clearly transpires that, any dispute in respect of discharge, dismissal, retrenchment or termination of services of an individual workman is an 'industrial dispute' and the same can be taken by such workman directly to

the Labour Court or Tribunal for adjudication after expiry of 45 days from the date he has made application to the Conciliation Officer of the appropriate Government for conciliation of the dispute. What is significant in sub Section (2) is approaching the Conciliation Officer of the appropriate Government for conciliation of the dispute. As has been held herein above, the Conciliation Officer, who was approached by the writ petitioners is ALC, Srinagar, who acts as a Conciliation Officer appointed by the Government of Jammu & Kashmir. The Central Government, which would be an 'appropriate government' in the instant case, has not appointed ALC, Srinagar, to be a Conciliation Officer to hold conciliation proceedings in respect of an industrial dispute between an employer and an employee.

27. This aspect of the matter, which had specifically risen for consideration before the Writ Court has not been considered by the Writ Court. The Labour Court had flagged this issue specifically but did not deal with it in right perspect.

28. In view of the aforesaid discussion, our answer to Question No.2 is clear and emphatic. The ALC, Srinagar was not a Conciliation Officer appointed by the Central Government ('the appropriate government'), and, therefore, the proceedings filed before him by the writ petitioners were without jurisdiction and non-existent. Failure of the ALC, Srinagar to conclude the proceedings within forty five days did not give any cause of action to the writ petitioners to approach directly to the Labour Court, that too, a Court not appointed by the Central Government (appropriate government). Neither the Conciliation proceedings before ALC, Srinagar nor the reference adjudicated by the Labour Court appointed by the

Government of Jammu & Kashmir were maintainable before the said authorities. The impugned award was, thus, vitiated for want of jurisdiction.

29. In view of the aforesaid, we are of the considered opinion that neither the award passed by the Labour Court nor the judgment passed by the Writ Court upholding the said award are in consonance with law.

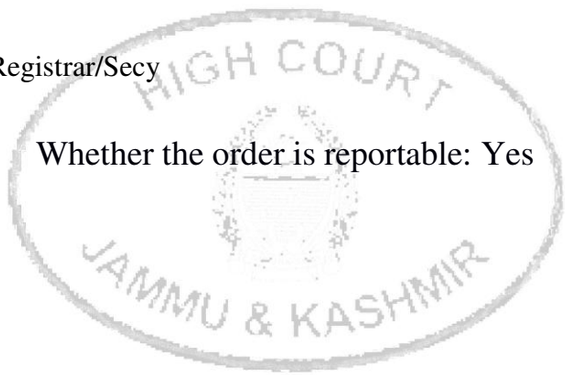
30. We, therefore, find merit in these appeals and the same are accordingly, allowed. The judgment of the Writ Court as also the award passed by the Labour Court are set aside. The writ petitioners shall, however, be at liberty to explore the permissible legal remedies available to them in law and nothing said herein above shall be an impediment for invoking such remedies.

31. Before parting with the judgment we would like to implore the Indian Army to take a compassionate view having regard to the services which are rendered by the porters. In view of the perennial nature of duties which are rendered by the porters to the Army, the engagement of porters in Indian Army, has become almost indispensable. It would, therefore, be not in the fitness of the things to permit the Army to follow an archaic practice of 'hire and fire'. Hon'ble the Supreme Court in the case of **Yash Pal and others v. Union of India and others, (2017) 3 SCC 272**, while holding the porters entitled to minimum wages, has ruled out issuance of mandamus to the Union Government for their regularization. During the course of hearing of the aforesaid case, it was though brought to the notice of Hon'ble Supreme Court that a scheme for regularization of porters was under consideration. Having regard to all these facts and circumstances, we deem it appropriate to call upon the Indian Army to ensure that services of these writ petitioners are re-engaged as porters provided there is nothing adverse found against

them and the need for such engagement persists. We are issuing this direction only having regard to the fact that the need of the porters in the formations of the appellants is perennial and continuous. We also direct the appellants to pay the writ petitioners pending wages, if any. Should the appellants decide not to re-engage the writ petitioners, the amount of Rs. 5 lakhs deposited in the Registry shall be paid to them in equal shares, to enable them to settle in life. The Registry shall release the amount deposited in favour of the appellants.

(Puneet Gupta) **(Sanjeev Kumar)**
Judge **Judge**

SRINAGAR:
20.03.2025
Anil Raina, Addl. Registrar/Secy



Whether the order is reportable: Yes