



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.873 OF 2024

Shri. Aniruddh Kumar Dhaniram Upadhyay

....Petitioner

V/S

M/s. Emeresons Process Management (India) Pvt. Ltd.Respondent

Mr. Mahesh Shukla with Mr. Niraj Prajapati and Mr. Siddhikesh Shinde
for the Petitioner.

Mr. Anand Pai with Mr. Pratik Kothari and Ms. Lavanya Panicker *for*
Respondent.

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 13 AUGUST 2026.
PRONOUNCED ON : 27 AUGUST 2026.

J U D G M E N T :

1. The issue that arises for consideration in the present Petition is whether the issue as to status of the Petitioner as workman under Section 2(s) of the Industrial Disputes Act, 1947 can be decided as preliminary issue or not.

2. **Rule.** Rule is made returnable forthwith. Since pleadings in the Petition are complete, the same is taken up for final hearing with the consent of the learned counsel appearing for parties.

3. By this Petition, Petitioner has challenged order dated 3 May 2023 passed by the learned Member, Industrial Court, Thane, in Revision (ULP) No.18 of 2021. The Industrial Court has allowed the Revision preferred by the Respondent-employer and has set aside order dated 29 February 2020 passed by Labour Court, Thane in Complaint (ULP) No.128 of 2013 under Application at Exhibit U-18. The Industrial Court has directed the Labour Court to decide the issue of status of the Petitioner as workman as a preliminary issue. The Industrial Court has further directed that in the event the Petitioner is held to be a workman and the complaint is found to be maintainable, the Respondent-employer would be at liberty to challenge even Part-I order dated 22 February 2021. It has further directed that if the Petitioner is found to be not a workman and the Complaint is found to be not maintainable, the Part-I order dated 22 February 2021 shall automatically cease to exist.

4. The Petitioner was initially appointed as Technician with the Respondent-establishment. According to the Respondent, he was promoted as Senior Technician and later as an Engineer. Respondent was served with charge-sheet dated 17 October 2012 and disciplinary enquiry was initiated against him. At the end of the enquiry, Petitioner came to be dismissed from service on 12 September 2013. Petitioner has filed Complaint (ULP) No. 128 of 2013 in the Labour Court, Thane, challenging the termination order dated 12 September 2013. The Complaint is resisted by the Respondent-employer by filing Written Statement. The Labour Court framed issues on 20 April 2016 and directed that the first three issues relating to status of Petitioner as

workman, fairness in the enquiry and perversity in the findings of the Enquiry Officer shall be treated as preliminary issues. The Petitioner however filed application at Exhibit-U-18 for deciding only the issue of fairness in the enquiry as preliminary issue and for decision on the issue of status alongwith other issues. The Application at Exhibit U-18 was allowed by the order dated 29 February 2020 and the Labour Court directed that only the issue of fairness in the enquiry shall be decided as preliminary issue and that issue relating to status of the Petitioner as workman shall be decided with other issues. Aggrieved by order dated 29 February 2020, Respondent filed Revision (ULP) No.18 of 2021. During pendency of the Revision, the Trial Court proceeded to decide the preliminary issue relating to fairness in the enquiry and by order dated 22 February 2021 it has held that the enquiry is not conducted fairly and properly and that the findings recorded by the Enquiry Officer are perverse. Thereafter, the Industrial Court has decided Revision (ULP) No.18 of 2021 by order dated 3 May 2023 in which following operative directions are issued:

- i. Revision Application (ULP) No. 18 of 2021, is hereby Partly Allowed.
- ii. The Impugned Order dated 29-02-2020 passed by the Ld. First Labour Court, Thane in the Complaint (ULP) No. -128 of 2013, Below Application Exh. U-18 is hereby quashed and Set Aside and the Matter is remanded to the Ld. First Labour Court, Thane.
- iii. Ld. Labour Court to decide the issue of 'Workman' Firstly as Preliminary Issues, and if the parties so desire, to allow the parties to adduce evidence in support of their respective contentions, limited to the Issue Of Workman.
- iv. Parties to appear before the Ld. First Labour Court, Thane on 28-06-2023.

v. In case, the Ld. Labour Court holds Complainant Employee to be the 'Workman' and the Complaint is found to be Maintainable, then the Revision Petitioner i.e. Respondent Employer shall be at liberty to Challenge the Order on issue of 'Workman' and also the Order on Part-I Judgment, dated 22-02-2021.

vi. In case, the Complainant Employee is Not Found to be the 'Workman' and Complaint is Not Found to be Maintainable, then the Order dated 22-02-2021, Judgment on Part-1 will automatically cease to exist.

vii. No Orders as to Costs.

viii. R & P of Complaint (ULP) No.- 128 of 2013 be sent back to the First Labour Court, Thane along with Copy of this Order.

5. Petitioner is aggrieved by the Order dated 3 May 2023 which envisages decision on the issue of status of the Petitioner as a preliminary issue.

6. I have heard Mr. Shukla, the learned counsel appearing for the Petitioner, who submits that the Industrial Court has grossly erred in reversing well considered decision dated 29 February 2020 passed by the Labour Court. He submits that the Labour Court had rightly directed trial of all the issues together except the issue relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer in accordance with ratio of the judgment of the Apex Court in **D. P. Maheshwari vs. Delhi Administration and others**¹. He submits that by now the law is well settled that issue as to status of an employee as workman under Section 2(s) of the Industrial Disputes Act, 1947 (**ID Act**) cannot be decided as a preliminary issue and that all issues must be tried and decided together to avoid delay. He relies on judgments of this Court

1 (1983) 4 SCC 293

in **Hind Kamgar Sanghatana vs. L.G. Electronics (I) Pvt. Ltd. and Another²** and **Sadguru Daskishan Sai Baba Mandal vs. Vaishali More³**.

He therefore prays for setting aside the impugned order.

7. Mr. Pai, the learned counsel appearing for the Respondent opposes the Petition. He submits that the Labour Court itself had directed on 20 April 2016 that the issue of status of Petitioner as 'workman' under Section 2(s) of the ID Act shall be decided as a preliminary issue. That the Labour Court erroneously changed its decision on 29 February 2020. That the Industrial Court has rightly set aside order dated 29 February 2020 which runs contrary to the earlier order dated 20 April 2016.

8. Mr. Pai further submits that there is no inflexible principle that the issue of status of person can never be decided as a preliminary issue. He relies on the judgments of the Apex Court in **V.G. Jagdishan vs. Indofos Industries Limited⁴** contending that the judgment of the Apex Court in **D.P. Maheshwari** (supra) is distinguished in the said judgment. He also relies on judgment of this Court in **H.S. Rawat vs. Voltas Ltd.⁵** and **Sarika Hemchand Pradhan vs. Deccan Gymkhana⁶**. He also relies on judgment of the Apex Court in **Sonepat Co-operative Sugar Mills Ltd. vs. Ajit Singh⁷**, in support of his contention that jurisdiction of Labour/Industrial Court to make an award in the dispute would depend upon a finding as to whether the employee concerned is a workman or not. He submits that when such an issue is raised, the same being

2 Writ Petition No.1614 of 2020 decided on 11 January 2024

3 Writ Petition (L) No.35633 of 2025, decided on 26 November 2025

4 (2022) 6 SCC 167

5 2005 (1) Mh.L.J. 904

6 2026 SCC OnLine Bom 5978

7 (2005) 3 SCC 232

jurisdictional one, the same needs to be decided as a preliminary issue. He submits that in pursuance of the impugned order dated 3 May 2023, Petitioner has already filed his evidence on the issue of his status as workman. He therefore prays for dismissal of the Petition.

9. Rival contentions urged on behalf of the learned counsel appearing for the parties now fall for my consideration.

10. Petitioner has filed Complaint (ULP) No. 128 of 2013 in the Labour Court, Thane challenging the termination order dated 12 September 2013. At the time of framing of issues, the Labour Court had directed that even the issue relating to status of the Petitioner as 'workman' shall be decided as a preliminary issue. It would be apposite to reproduce order dated 20 April 2016 which reads thus:

1. Whether the complainant proves that he is a workman as per Sec.2(s) of the Industrial Disputes Act, and as per Sec. 3(5) of the MRTU & PULP Act?
2. Whether the complainant prove that the enquiry conducted by the respondent was held in utter disregard of principles of natural justices?
3. Whether the findings drawn by the Enquiry Officer are perverse?
4. Whether the respondent justify its action before the court?
5. Whether the punishment is shockingly disproportionate to the proved misconduct?
6. Whether the complainant is entitled for relief claimed?
7. What order?

First three issues are treated as preliminary issues.

11. The Petitioner got aggrieved by the direction for decision of issue relating to status as preliminary issue and filed Application at Exhibit U-18 seeking a direction that the issue of status be decided together with the other issues. The Labour Court referred to the judgment of the Apex Court in ***D.P. Maheshwari*** (supra) and held, by its order dated 29 February 2020, that only Issue Nos.2 and 3 shall be tried as preliminary issue and that the issue as to status of the Petitioner shall be decided while answering remaining issues.

12. Respondent-employer challenged order dated 29 February 2020 before Industrial Court by filing Revision (ULP) No.18 of 2021. It appears that on account of Covid-19 pandemic, there was some delay on the part of Respondent in filing the Revision and the same was filed on 8 April 2021 challenging order dated 29 February 2020. Be that as it may. The Revision remained pending for over two years before the Industrial Court. In the meantime, the Labour Court continued with the proceedings. The Labour Court took up Issue Nos.2 and 3 for decision. The Respondent-employer participated in decision of Issue Nos.2 and 3. During pendency of Revision filed by the Respondent, the Trial Court answered Issue Nos.2 and 3 vide order dated 22 February 2021 holding that the enquiry is not fair and proper and that findings of the Enquiry Officer are perverse. After Issue Nos.2 and 3 were decided on 22 February 2021, Revision preferred by the Respondent has been allowed by the Industrial Court by order dated 3 May 2023 directing that issue of status of the Petitioner be decided as a preliminary issue.

13. One of the factors considered relevant by the Industrial Court in setting aside the order passed on the application at Exhibit U-18 dated 29 February 2020 is the decision of the Labour Court to decide Issue Nos. 1 to 3 as preliminary issues, vide order dated 20 April 2016. In my view, merely because the Labour Court had issued directions for decision of Issue No.1 relating to status of the Petitioner as preliminary issue, the same does not preclude it from subsequently directing that the issue relating to status can be tried alongwith the other issues. Therefore, directions in the order dated 20 April 2016 cannot be treated as an estoppel for the Labour Court.

14. Perusal of the order passed by the Industrial Court indicates that, after taking into consideration the ratio laid down by the Apex Court in *D.P. Maheshwari* (supra), it has held that where the enquiry involves the issue of status along with the issue of the validity of the enquiry, it is necessary to decide the issue of jurisdiction (status) as a preliminary issue. This finding is recorded twice by the Industrial Court in paragraphs 10 and 12 of the judgment as under:

10. I find that the Hon'ble Supreme Court have laid down the principal that all issues should be Decided Together. However, I find that in the case of D. P. Maheshwari, there was No Situation of Deciding the issue of Inquiry as a Preliminary Issue. In view the law laid down by the Hon'ble Bombay High Court, the issue of Inquiry has to be decided as a Preliminary Issue. However, I am of the view that in the matters, wherein the issue of Inquiry is involved along with the issue of Jurisdiction, i.e. the issue like that of 'Workman' (Section 2 (s) of the Industrial Disputes Act, 1947) or the issue of 'Industry' (Section 2 (j) of the I. D. Act) is involved, in such matter, it is necessary to first decide the issue of Jurisdiction i.e. the issue of 'Workman', issue of 'Industry', Etc. Because while dealing the matter on Merit, the Ld. Labour Court should have ascertained itself, whether

the Complainant Employee is a 'Workman' Or Not and after deciding the issue of 'Workman', the Ld. Labour Court could have proceeded to decide the issue of Fairness of Inquiry and Findings of Inquiry Officer, in case the Complainant is found to be a 'Workman' and Complaint is found to be Maintainable.

12. With due respect to the ratio laid down by the with Hon'ble Bombay High Court and Hon'ble Supreme Court, in the Authorities cited Supra, I am of the view that even if the Hon'ble Supreme Court have directed to decide all issues together (D. P. Maheshwari's case), **yet, in the matters wherein the issue of Inquiry and issue of Jurisdiction is involved, the Ld. Labour Court should have First Decided the issue of Jurisdiction i.e. the issue of 'Workman' as a Preliminary Issue.** Thereafter, the issue of Inquiry should have been decided, in case the Complaint is found to be maintainable or at the most, the Ld. Labour Court could have decided all the three issues together.

(emphasis added)

15. In my view, the above findings recorded by the Industrial Court are in the teeth of law settled by the judgment of the Apex Court in ***D. P. Maheshwari***, in which the Apex Court has held that there cannot be piecemeal adjudication of different issues involved in a reference. The Apex Court took into consideration the effect of delay caused by the piecemeal adjudication of different issues and has held that, when such delay is likely to jeopardize industrial peace, all the issues arising in the dispute must be decided at the same time. The Apex Court has held in ***D.P. Maheshwari*** (supra) in paragraph 1 as under:

1. It was just the other day [See (1983) 4 SCC 214] that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case

where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is preliminary supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

16. In **Ramesh Chandra Sankla & Ors. vs. Vikram Cement & Ors.**⁸ the Apex Court has highlighted the need to decide all issues simultaneously by referring to the provisions of the Code of Civil Procedure 1908. Holding that though the provisions of the Code do not strictly apply to industrial adjudication, yet the normal rule is to decide all the issues together. The Apex Court has held thus:

8 (2008) 14 SCC 58

75. In our considered opinion, in the present case, it cannot be said that the courts below have committed any error of jurisdiction in not deciding the issue as to the maintainability of claim petitions as preliminary issue. It is well settled that generally, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues. Before more than hundred years, the Privy Council in *Tarakant Bannerjee v. Puddomoney Dossee* [(1866) 10 Moo IA 476] favoured this approach. Speaking for the Judicial Committee, Lord Turner stated: (Moo IA p. 488)

“... The courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the courts below should, as far as may be practicable, pronounce their opinions on all the important points.”

The above principle has been consistently followed.

76. This Court dealing with the provisions of Order 14 Rule 2 (prior to the Amendment Act of 1976) in *Major S.S. Khanna v. Brig. F.J. Dillon* [AIR 1964 SC 497 : (1964) 4 SCR 409] stated: (AIR pp. 502-03, para 18)

“18. ... Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

77. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order 14 (before the amendment), the Commission stated:

“This Rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue, the decision of the court on that issue is reversed, the case has to be remanded to the court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a court must give judgment on all issues, excepting, of course, where the court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.”

78. Apart from the fact that the provisions of the Code do not stricto sensu apply to “industrial adjudication”, even under the Code, after the Amendment Act, 1976, the normal rule is to decide all the issues together in a civil suit.

(emphasis added)

17. In *Hind Kamagar Sanghatana* (supra) a coordinate Bench of this Court has referred to the judgments of the Apex Court in *D. P. Maheshwari* and *Ramesh Chandra Sankla* and has held that the issue of status of employee as workman needs to be decided alongwith all other issues. This Court held in paragraphs 4, 8, 9 and 10 of the judgment as under:

4. The question, therefore, arises for consideration is whether the issue of status of employees as workmen needs to be decided as a preliminary issue or such issue needs to be decided along with all other issues.

8. In so far as the judgment relied upon by the respondent in *Hussan Mithu Mhasvadkar* (supra), the Apex Court was not considering an issue as to whether a particular issue needs to be decided as a preliminary issue or all the issues need to be decided along with all other issues. In the facts of said case, considering nature of dispute involved in the said case, the Apex Court observed that instead of embarking upon an adjudication in the first instance as to whether the respondent is an industry or not so as to attract the provisions of the Industrial Disputes Act, it ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the

appellant, refrained from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the Board, as and industry or not. On careful perusal of paragraph 5, it is evident that the observations made were restricted in the facts of the said case and no legal proposition of law is laid down by the Apex Court. Moreover, the judgment in **Ramesh Chandra Sankla** (supra) and **D.P. Maheshwari** (supra), the Apex Court was concerned with framing of preliminary issue. It is also important to note that the judgment in **D.P. Maheshwari** (supra) has been delivered by three Judges of the Apex Court and the judgment in the case of **Hussan Mithu Mhasvadkar** (supra) has been delivered by two Judges of the Apex Court. Hence, the view taken by three Judges of the Apex Court bind this court.

9. In so far as the judgment of learned Single Judge of this Court in **Siemens Ltd.** (supra) is concerned, this Court has not taken into consideration the judgment in **D.P. Maheshwari** (supra) or **Ramesh Chandra Sankla** (supra) and, therefore, the judgment will not support the respondent.

10. In my view, therefore, the issue framed by the Industrial Court by the impugned order needs to be decided along with all other issues.

(emphasis added)

18. The law thus appears to be fairly well settled that ordinarily all issues must be tried together by an industrial adjudicator. Mr. Pai has however relied on judgment of the Apex Court in **V.G. Jagdishan** (supra), in which, according to him, the Apex Court has distinguished and, in any case, clarified the principles in **D. P. Maheshwari** by holding that no absolute proposition of law was laid down therein that even the issue touching the jurisdiction of the Court cannot be decided by the Court as a preliminary issue. The Apex Court has held in paragraph 15 as under:

15. In the case of **D.P. Maheshwari** (supra) is pressed into service by learned Senior Advocate appearing on behalf of the Appellant in support of the submission that the Labour Court ought not to have given the decision only on preliminary issue and ought to have disposed of all the issues, whether preliminary or otherwise at the same time. On facts the said decision is not applicable to the facts of

the case on hand. **In the aforesaid decision no absolute proposition of law was laid down by this Court that even the issue touching the jurisdiction of the court cannot be decided by the court as a preliminary issue and the court has to dispose of all the issues, whether preliminary or otherwise, at the same time. When the issue touches the question of territorial jurisdiction, as far as possible the same shall have to be decided first as preliminary issue.** Therefore, in the present case, the Labour Court did not commit any error in deciding the issue with respect to the territorial jurisdiction as a preliminary issue in the first instance.

(emphasis added)

19. In **V.G. Jagdishan** (supra) the issue before the Apex Court was about territorial jurisdiction and not about status of a person as a workman. The ratio of that judgment therefore would have no application in the present case.

20. Both the sides have relied on judgments delivered by me in support of their respective contentions about permissibility to decide the issue of status as preliminary issue. Mr. Shukla has relied on judgment in **Sadguru Daskishan Sai Baba Mandal** (supra). In that case, the employer had terminated the services without notice by presuming that the status was not of 'workman'. After taking into consideration ratio of judgments of the Apex Court in **D.P. Maheshwari** (supra), **Ramesh Chandra Sankla** (supra) and of this Court in **Hind Kamgar Sanghatana** (supra), this Court distinguished the judgment of the Apex Court in **V.G. Jagdishan** (supra) by holding in paragraphs 8 and 9 of the judgment as under:

8) Reliance by Mr. Shukla on judgment of V.G. Jagdishan (supra) does not cut any ice. In that case, the issue was with regard to

territorial jurisdiction. The workman therein was working as driver at Ghaziabad, whose services were also terminated at Ghaziabad. The workman thereafter shifted to Delhi and filed a claim before Conciliation Officer at Delhi. The dispute was referred to Labour Court at Delhi and the management raised preliminary objection of territorial jurisdiction of Labour Court at Delhi. In the light of above peculiar fact situation, the Supreme Court has made following observations in paragraph 15 of the judgment:-

XXX

9) Thus, in V.G. Jagdishan the Apex Court has held that the issue of territorial jurisdiction can be decided as a preliminary issue notwithstanding the ratio of the judgment in D.P. Maheshwari. In the present case, what Petitioner desired is determination of issue of status of the Respondent as 'workman' as preliminary issue. As held in D.P. Maheshwari and Ramesh Chandra Sankla the said issue cannot be decided in a piecemeal manner with a view to avoid delay in decision of the reference. In the present case, the Petitioner has taken a risk of terminating the services of the Respondent on the ground that she is not a 'workman'. If the issue of her status is decided as preliminary issue, the aggrieved party will challenge the decision on the issue of status before higher fora. This would delay decision on main issue relating to validity of termination. Therefore, it would be appropriate to avoid multiplicity of litigation and decide all the issues together.

(emphasis added)

21. On the other hand, Mr. Pai has relied upon my judgment in ***Sarika Hemchand Pradhan*** (supra) in support of his contention that there cannot be any inflexible principle that issue as to status of a person as workman can never be decided as a preliminary issue. After referring to the judgment of the Apex Court in ***V.G. Jagdishan*** (supra) this Court held that there is some window open for the industrial adjudicator to decide the issue relating to territorial jurisdiction as preliminary issue. This Court further held in paragraphs 9 and 10 of the judgment as under:

9) Also, considering the peculiar facts and circumstances of the present case, I am not inclined to interfere in the impugned Award only on the ground that it decided the issue of status as a preliminary issue. In the present case, the Labour Court decided to try Issue No.1 as preliminary issue by order dated 3 January 2025. The order was passed on application preferred by the Respondent. There is nothing on record to suggest that the Petitioner opposed the said application relying on judgments of the Apex Court in D. P. Maheshwari or Ramesh Chandra Sankla. She permitted the Labour Court to pass order dated 3 January 2025. The Petitioner also did not challenge the order dated 3 January 2025 nor protested against the same and acquiesced in the same. After passing of order dated 3 January 2025, Petitioner participated in the further proceedings. She allowed the Labour Court to decide the issue of status as a preliminary issue. By that time, the evidence of the Petitioner was already on record. There was ample material available before the Labour Court to make adjudication of issue of status. Accordingly, the Labour Court proceeded with the enquiry into the issue of status. Petitioner's advocate advanced arguments on the issue of status. She took a calculated chance of inviting decision on the preliminary issue of status. It is only after the preliminary issue got decided against her that she has turned around and has assailed the Award dated 28 October 2025 contending that the issue of status could not have been tried as a preliminary issue. Considering this peculiar conduct of the Petitioner, I am not inclined to set aside the impugned award only on the ground that the same decides the issue of status as a preliminary issue.

10) It is also seen that in peculiar facts and circumstances of the present case, once Petitioner is held to be not a workman, nothing really survives to be adjudicated in the Reference. In that view, participation by the Petitioner in the enquiry into the status has resulted in final outcome of the Reference. Petitioner was aware of this position, and this appears to be the reason why she participated in the enquiry into the status without any demur. Now that the outcome of enquiry is not favourable to her, she has turned around and has questioned the propriety in deciding the issue of status as a preliminary issue. This is yet another reason why this Court is not inclined to interfere in the impugned Award only because a preliminary issue was taken up for decision by the Labour Court.

22. Thus, in *Sarika Hemchand Pradhan* (supra) this Court did not disturb the award of the Labour Court which had determined the issue as status of the Petitioner therein as a preliminary issue. Considering the

peculiar facts and circumstances of that case in ***Sarika Hemchand Pradhan*** (supra) the Labour Court therein had decided to try Issue No.1 as preliminary issue on the basis of application preferred by the employer. Petitioner therein did not oppose the said application and permitted the Labour Court to issue direction for decision on the issue of status as a preliminary issue. She further participated in determination of the issue and invited an adverse order of the Labour Court. It is only after the outcome of the enquiry was not favourable to her, she turned around and questioned the propriety of the Labour Court in deciding the issue of status as a preliminary issue. Thus, judgment of this Court in ***Sarika Hemchand Pradhan*** (supra) cannot be read to mean as an abstract principle that an industrial adjudicator can always decide the issue as to status as workman under Section 2(s) of the ID Act as a preliminary issue.

23. Mr. Pai has relied upon judgment of the Apex Court in ***Sonepat Cooperative Sugar Mills Ltd.*** (supra) in which it is held in paragraphs 21 and 22 of the judgment as under:

21. It is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of a conclusive evidence. The said question, thus, would require full consideration of all aspects of the matter.

22. The jurisdiction of the Industrial Court to make an award in the dispute would depend upon a finding as to whether the concerned employee is a workman or not. When such an issue is raised, the same being a jurisdictional one, the findings of the Labour Court in that behalf would be subject to judicial review.

24. The judgment nowhere lays down a law that issue as to status can be decided as a preliminary issue. All that is held by the Apex Court is that when issue about status of the employee is raised the same being jurisdictional one, the findings of the Labour Court in that behalf would only be subject to judicial review. Reliance on the judgment in ***Sonepat Cooperative Sugar Mills Ltd.*** (supra) on behalf of the Respondent is therefore misplaced.

25. Lastly, Mr. Pai has relied upon judgment of this Court in ***H.S. Rawat*** (supra) in which this Court has held that the Labour or Industrial Court is not totally prohibited from deciding a preliminary issue by referring to judgment of the Apex Court in ***Express Newspapers Ltd. vs. Their Workers and Staff***⁹. The judgment is rendered in the peculiar facts of that case which are noted in paragraph 11 of the judgment as under:

11. In the present case, it is abundantly clear that there has been no effort on the part of the management in either delaying or protracting the proceedings in the courts below. On the other hand, the finding which has been recorded by the Labour Court is that it was the petitioner who had protracted the conduct of the proceedings. The facts show that several adjournments were sought on behalf of the petitioner, in fact, 30 of them as recorded by the employer in the application dated 18th June, 1996. When the employer moved for the dismissal of the application under section 33-C(2) on the ground that the petitioner was not diligent in conducting the proceedings, it was the petitioner who submitted that the employer must lead evidence first since the issue as to whether he is a workman must be decided as a preliminary issue. The order of the Labour Court dated 19th November, 1998 framing a preliminary issue was not challenged and was acted upon. The witnesses of the employer were cross-examined by the petitioner. It is only after the petitioner's turn came to lead his evidence, that an application was filed to the effect that all issues should be decided together. In the circumstances, I am of the view that

9 1962 (II) LLJ 227

the interference of this Court is not called for under Article 226 of the Constitution having regard to the conduct of the petitioner and the circumstances which have been adverted to above.

26. Thus, in ***H.S. Rawat*** (supra), the order passed by the Labour Court framing preliminary issue was not challenged and was acted upon. It was further held that the employee therein had protracted the conduct of proceedings. Therefore, even judgment in ***H.S. Rawat***, rendered in peculiar facts that case, cannot be read in support of the principle that Labour/Industrial Courts can decide the issue as to the status of the employee as a preliminary issue.

27. In the facts of the present case, deciding the issue as to status of Petitioner as workman under Section 2(s) of the ID Act as a preliminary issue would undoubtedly protract the proceedings. The complaint is pending since the year 2013 and by now period of 13 long years has elapsed and the only progress which is made in the complaint is about decision of two preliminary issues relating to fairness in the inquiry and perversity in the findings of inquiry report vide part I order dated 22 February 2021. If Industrial Court was not to pass the impugned order, the Complaint would have been long since decided as the Respondent would have led evidence to justify its action before the Labour Court. However, on account of passing of the impugned order dated 3 May 2023 by the Industrial Court decision of the Complaint is withheld. The Industrial Court ought to have been alive to the fact that its order would result in further delay in decision of the Complaint, which is pending for the last 13 long years. The reason why the Apex Court has directed

decision of issue as to status alongwith other issues has actually occurred in the present case. The Industrial Court has not applied its mind to this position and has mechanically directed that wherever issue of status is raised together with the issue of fairness in the inquiry, even the issue as to status must be tried as a preliminary issue. There is no such law laid down by any Court. The Industrial Court has thus recorded findings in the teeth of settled position of law. The order of the Industrial Court is thus clearly unsustainable and liable to be set aside.

28. The Labour Court has already decided issues relating to fairness in the inquiry and perversity in the findings of inquiry report by Part-I order dated 22 February 2021. The Respondent has so far not challenged the order dated 22 February 2021. In the peculiar facts of the present case, if Respondent-employer is intending to challenge Part-I Order dated 22 February 2021, such challenge needs to be postponed till final decision of the Complaint. This course of action is necessary to ensure that the Complaint is decided in an expeditious manner. Such course of action is also necessary since the issue of status of Petitioner also needs to be decided and decision thereon is directed to be taken while finally deciding the Complaint. Accordingly, liberty needs to be kept open to the Respondent to challenge the order dated 22 February 2021 together with final judgment and order of the Labour Court in case the same goes against it. Thus, the Respondent-employer can now justify its action by leading evidence before the Labour Court. While conducting the inquiry into remaining issues, the Labour Court shall also decide the issue as to whether Petitioner is a workman or not.

29. The Petition accordingly succeeds and I proceed to pass the following order:

- i. Judgment and order dated 3 May 2023 passed by the learned Member, Industrial Court, Thane in Revision (ULP) No.18 of 2021 is set aside.
- ii. The Labour Court shall proceed to decide the Issue No.1 about status of Petitioner as 'workman' under Section 2(s) of the ID Act while deciding issue Nos.4 to 7.
- iii. Respondent shall be at liberty to challenge part-I Order dated 22 February 2021 in the event the final judgment and order in Complaint (ULP) No.128 of 2013 is decided against it.
- iv. All contentions of parties on merits are expressly kept open.

30. With the above directions, the Writ Petition is **allowed and disposed of**. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)