IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 10th OF FEBRUARY, 2025

MISC. PETITION No. 3568 of 2022

ROHIT AND OTHERS

Versus

SHAKTI PUMP INDIA LIMITED AND ORS. AND OTHERS

Appearance:

Shri Rajendra Singh Suryavanshi - Advocate for the petitioners.

Shri Piyush Mathur - Senior Advocate with Shri Shashank Sharma and Shri Dharmendra Kumar Sharma, learned counsel for the respondent No.1.

Shri Arvind Parmar with Shri Amit Raj - learned counsel for the respondents No.2 and 3.

ORDER

Per*: *Justice Sushrut Arvind Dharmadhikari

Heard finally at motion stage with consent of the parties.

2. That, the petitioners have filed the present petition under Article 227 of the Constitution of India being aggrieved by the Order dated 24.06.2022 passed by Industrial Tribunal in Reference No. 04/1.D./2019, Indore whereby claim of the petitioners that the respondent no. 1 has violated the mandatory provisions of section 25(N) of the I.D. Act, 1947 before retrenchment, has been dismissed.

3. Draped in Brevity, facts of the case are as hereunder:-

i) Petitioners are authorized by 209 workers under section 36(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). As per the petitioners, the respondent no. 1 Company on account of various demands by the workers have illegally retrenched 209 workers on

08.01.2019. The workers had submitted complaint under section 10 of the Act before the Conciliation Officer, Pithampur, District Dhar. The Conciliation Officer failing conciliation has made a reference of the dispute to the learned Industrial Tribunal under the Act by order dated 29.05.2019. The terms of reference dated 29.05.2019 are as under:

1. क्या श्री रोहित पाटीदार पिता श्री कृष्णलाल पाटीदार एवं अन्य 9 को उनके द्वारा प्रस्तुत आवेदन दिनांक में उल्लेखित सेवानियुक्तगणों का प्रतिनिधित्व करने की नियमानुसार पात्रता है ?

2. यदि हॉ तो क्या आवेदक श्री विजय चौहान पिता श्री रामकिशन चौहान एवं अन्य 208 सेवानियुक्तगणों (संलग्न सूचि अनुसार) एवं अनावेदकगण 1. कारखाना प्रबंधक, शक्ति पंप (इंडिया) लिमिटेड पीथमपुर या 2. श्री रविन्द्र केलोत्रा, ठेकेदार या 3. श्री देवेन्द्र पाटीदार के मध्य नियुक्त–नियुक्ता के संबंध थे ?

3. यदि हॉ तो क्या उक्तानुसार निर्णित उनके सेवानियोजक द्वारा ठेका कार्य समाप्त कर उनके सेवानियुक्तगणों की छटनी करते हुए सेवा समाप्त की गई है ?

4. यदि हॉ तो क्या उक्तानुसार छटनी करते हुए सेवा समाप्ति की जाना उचित एवं वैध है ?

5. यदि नहीं तो उक्त सेवानियुक्तगण किस सहायता के पात्र है एवं इस संबंध में उनके सेवानियोजकों को क्या निर्देश देने चाहिए ?

ii. The reference bearing reference no. 04/ID/2019 was tried by the learned Industrial Tribunal, wherein the petitioners have examined five witnesses namely, (1) Rohit s/o Krishnalal Patidar (PW/1), (2) Manoj s/o Shyam Singh Chouhan (PW/2), (3) Akash s/o Suresh Dhibar (PW/3), (4) Prahlad s/o Purushottam Vishwakarma (PW/4), and (5) Shantaram s/o Dayaram Patil (PW/5) and exhibited 31 documents.

iii. The respondent no. 1 Company has examined six witnesses namely, (1) Mahesh Tiwari (DW/1), (2) Sanjay Kumar Jha (DW/2), (3) Rohit s/o

Yadunandan Patidar (DW/3), (4) Dharmendra Singh Gaur (DW/4), (5) Mahendra Gadning (DW/5)-(Accountant, Provident Fund Authority), and (6) Gangadhar Paratey (DW/6) – (Service Manager, State Bank of India) whereas Respondent no. 2 Ravindra Kalotra (Defendant no. 2/DW/1) and Respondent no. 3 Devendra Patidar (Defendant no. 3/ DW/1) have themselves stepped into the witness box in rebuttal and have exhibited 285 documents.

iv. The learned Industrial Tribunal on the basis of evidence led by the parties passed the impugned order answering the reference in negative, holding that the petitioners have been employees of respondent no. 2 & 3, and the services of the employees have been terminated on the account of termination of contract by respondent no. 2 & 3 and there is no Employer-employee relationship between the petitioners and respondent no. 1.

v. Aggrieved by the impugned order dated 24.06.2022 passed by the Industrial Tribunal, the present petition has been filed before this Court by the petitioners averring that the petitioners were in employment of the Respondent No. 1, and were engaged in jobs of a perennial nature, and were working under the supervision of supervisors of Respondent No. 1. It has been further averred that the petitioners were not aware of the fact that their services were being taken as employees of Respondent No. 2 & 3 and were working as regular employees for many years. It has been further averred that the Respondent No. 2 & 3 are creation of the Principal employer who have been put up as a screen to avoid his own responsibility, and the petitioners have illegally been shown as employees of the Respondents No. 2 & 3, and the contract between the Respondent No. 1 and Contractors Respondents No. 2 & 3 was a sham. It has been further averred that the Respondent No.1 Company has

illegally retrenched 209 workers on 08.01.2019 claiming setting aside of the impugned order dated 24.06.2024 and a direction of reinstatement with back wages.

vi. The Respondents have filed Reply supporting the order passed by the learned Industrial Tribunal averring that the Petitioners who were never in service of the Respondent No. 1 and were always under employment of Respondents No. 2 & 3 Contractors. The Respondents No. 2 & 3 have also clearly contended that the Petitioners Employees were under their employment and on account of unlawful activities of the petitioners the respondent contractors had to terminate their contract with respondent No.1. It has been averred that as the termination of contract by the Contractors automatically terminated the employment of the petitioners it will not fall under the definition of "Retrenchment" defined under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

vii. Petitioners have submitted rejoinder and brought in additional documents. The petitioners in the rejoinder have annexed passbooks, job tickets, accidents reports, some salary slips, gate passes, performance certificates, etc. to show and prove the factum of employment. These documents have not been part of the original record and have not been produced or proved before the learned Industrial Tribunal.

4. Learned counsel for the petitioners in order to demonstrate employment of the petitioners with the Respondent No. 1 drew attention of this court on the bank statement of the petitioners with State Bank of India showing address of the petitioners as that of the Respondent No. 1 (Exhibit P/10), the attendance marked in SAP System by the Respondent No. 1 with regular employees, leave application, certificate of appreciation etc. It has been argued that petitioners were employed as machine operators, assembly

operators which are jobs of perennial nature and the said work is not included in the work of loading, unloading, housekeeping and gardening for which Registration under Section 7 (2) of the Contract Labour (Regulation & Abolition) Act, 1970 was taken by the Respondent No. 2 & 3. It has been further argued that their ESI contribution has been deposited by the Respondent No. 1 in its own code which is evident from Exhibit P/11, P/13 and P/18. Learned Counsel for the petitioners has relied on Exhibits P/12, 14 to 17, salary slips and Exhibit P/29 to P/30 to prove the control and supervision of Respondent No. 1. Learned Counsel for the petitioners has relied upon Exhibit P/9 which is alleged to be an offer letter by the Respondent No.1 Company to employment between petitioners and Respondent No. 1. Learned Counsel for the petitioners has also relied on Exhibit P/10, P/20 & P/31 which are bank passbooks of the petitioners having address of Respondent No. 1 and other documents such as Certificate (Exhibit P/21) and leave application (Exhibit P/22). The petitioners have further relied on the fact that the attendance summary report of petitioners (Exhibit D/178) are mentioned in the same list as that of the regular employees.

5. Per-contra, Learned Senior Counsel appearing on behalf of the Respondent No. 1 has argued that although, the petitioners have alleged themselves to be working as “Machine Operator” but they have not produced any appointment letter or any other document to prove the same. Infact, the documents brought on record and proved by the respondents clearly prove the employment of the petitioners with Respondent No.2 and Respondent No.3. Learned Senior Counsel for the Respondent No. 1 has further contended that the so called offer letter Ex P/9 alleged to have been issued by the respondent No.1 relied on by the petitioners is false and is unsigned and has not been duly proved by way of cogent evidence and the said employee has admitted

in cross examination that he has been working since 2007 till 2019. Thus, there is no question of any offer letter being made in 2009.

6. Learned Senior Counsel appearing on behalf of the Respondent No.1 has argued that the Respondent No.1 has taken registration under Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "CLRA Act") since 2006 by Ex.D/65 and D/66. Similarly, respondents No. 2 & 3 are licensed contractors under CLRA Act and the salary, ESI and PF contribution of the petitioners has always been paid by the Respondents No. 2 & 3 only. It has been further argued that the contribution alleged to have been made by Ex. P/11, P/13 and P/18 are prior to 2010 which were made under Code of Respondent No.1 till 2010, the said Contractors did not have his individual ESI Code, thus, the Respondent No. 1 being a principal employer, the ESI contribution was being deposited under the Code of the Respondent No. 1 and as soon as the Respondents no. 3 got his individual code from 2010, the ESI contribution was deposited by the Contractors under his own code which fact is evident from Ex. D/243 which is a communication by Contractor to ESIC Department. It is further argued that from perusal of Ex D/13, D/14, D/16, D/17, D/21, D/25, D/26, D/28, D/34, D/35, D/43, D/44 and D/60 it is evident that contributions of P.F. was made by the Contractors after their registration. Learned Senior Counsel for the Respondent No. 1 has further relied on evidence of DW/5 Mahendra Gadning who is Accountant in Provident Fund Authority and the said witness has exhibited Document Ex. D/179 to D/184 which are ledger of contribution made by Contractors for the employees.

7. It has also been contended by Learned Senior Counsel that the documents such as Exhibit P/12 and P/14 to P/17 which have been alleged to

be Salary Slips are fake documents which have not been duly proved as the said employees were under employment of the Contractor. It has been argued that the petitioners themselves have produced document Ex.P/13 which shows the code of Contractor Dharmendra Yadav. The Code of said Contractor is also mentioned in Document Ex. D/67. As regarding the address in Bank Passbook it was contended that the address of an account holder in the passbook of the bank could not be a proof of employment. The salary received by the employees have clearly received from the contractors as proved by Bank Statement of the Contractors Ex. D/223, Ex. D/275 and Ex. D/276. It has further been contended that the SAP attendance summary report (Exhibit D/178) marked the presence of each employee wherein the attendance of the contracted employees were also duly marked so as to verify the attendance of the workers for payment to the Contractors, in fact, Exhibit D/178 clearly marked the attendance of the regular employees as regular employees and the attendance of contractual employees were clearly being marked as contracted employees only. Senior Counsel for Respondent No. 1 has also relied on communications Ex. D/2, D/11, D/31, D/36 to D/41, D/46, D/48, D/49, D/50 and D/53 which are applications by the employees to the Contractors to demonstrate their employment and supervision by the Contractor. Further, Learned Senior Counsel for Respondent No.1 has relied on orders passed by the Labour Commissioner (Exhibit D/129, D/137 & D/140) to prove that the Petitioners are the Employees of the Respondent No. 2 & 3 Contractors and their services are automatically terminated after withdrawal of the services of the Contractors.

8. Learned counsel for the Respondent No. 2 & 3 has contended that the Petitioners were employees of the Respondent contractors and their employment, wages, ESI and PF contributions were always paid by the

Respondents No. 2 & 3. Learned Counsel for Respondents No. 2 & 3 have contended that they have been granted a valid license under Section 12 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 vide Exhibit D/190 to D/193 and D/228 to D/231 and have also been granted registration under the Employee State Insurance Act, 1948 and the Provident Funds Act, 1952 by Ex. D/194, D/240, D/241 and D/242. Learned counsel for the Respondent No. 2 & 3 drew attention of this court to Ex.225 and Ex.243 which is list of employees issued by them to the ESIC and PF Department which are also duly exhibited. It is also further stated that the Respondents No. 2 & 3 have duly proved the payment of wages to the employees from their own account by bank statement (Exhibit D/223, D/275 and D/276).

9. Heard learned counsel for the parties at length and perused the record.

10. The primary issue to be dealt with in the case at hand is whether the petitioners were successful in proving Employer Employee relationship before the Industrial Tribunal and only if the said relationship is found to be established and proved, the petitioners would become entitle to any relief from this court.

11. For the purpose of determining the relationship of an employer and an employee, factors to be considered have been enumerated by the Hon'ble Apex Court in the case of **Balwant Rai Saluja vs. Air India Limited (2014) 9 SCC 407** in which it has been held as hereunder: -

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(i) who appoints the workers;

(ii) who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] and Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] ."

12. Similarly, the Hon'ble Supreme Court in the case of **International Airport Authority of India– International Air Cargo Workers' Union** reported in **(2009)13 SCC 374** has held as hereunder:-

"35. As noticed above, SAIL did not specifically deal with the legal position as to when a dispute is brought before the Industrial Adjudicator as to whether the contract labour agreement is sham, nominal and merely a camouflage, when there is no prohibition notification under section 10(1) of CLRA Act.

36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the

workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

13. The Hon'ble Apex Court while relying on the above in the case of **Kirloskar Brothers Ltd. Vs. Ramcharan & Others** reported in **(2023) 1 SCC 463** has further held that:-

"13. In International Airport Authority of India v. International Air Cargo Workers' Union [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] , after considering the decision of this Court in SAIL v. National Union Waterfront Workers [SAIL v. National Union Waterfront Workers, (2001) 7 SCC

1 : 2001 SCC (L&S) 1121] , it has been observed and held by this Court that where there is no abolition of contract labour under Section 10 of the CLRA Act, but the contract labour contends that the contract between the principal employer and the contractor is sham and nominal, the remedy is purely under the ID Act. It is further observed that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like : who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direct control over the employee.

14. It is further observed that where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise. It has further been observed in paras 38 and 39 as under : (International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] , SCC p. 388)

> *"38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the*

directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

15. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and in the absence of any notification under Section 10 of the CLRA Act and in the absence of any allegations and/or findings that the contract was sham and camouflage, both the Industrial Tribunal as well as the High Court have committed a serious error in reinstating the contesting respondents and directing the appellant principal employer to absorb them as their employees. The parties shall be governed by the CLRA Act and relief, if any, could have been granted under the provisions of the CLRA Act and not under the MPIR Act.

> *16. In view of the above and for the reasons stated above, the present appeals are allowed. The impugned judgment(s) and order(s) [Kirloskar Brother Ltd. v. Ramcharan, 2018 SCC OnLine MP 1885] , [Kirloskar Bros. Ltd. v. Ramcharan, 2018 SCC OnLine MP 1884] passed by the High Court in WP (S) No. 1083 of 2004 and WA No. 813 of 2018 as well as the judgment and order passed by the Industrial Tribunal are hereby quashed and set aside. The judgment and award passed by the Labour Court is hereby restored."*

14. If we examine the case of the petitioners on the anvil of dictum of law laid down in the aforesaid cases, it is required to be seen whether the employees have been in employment of the respondent No.1 or in employment of Respondent No.2 and Respondent No.3 and resultantly whether an "Employer-Employee" relationship exists between the petitioners and Respondent No.1, as there is no prescribed ratio under law to determine employer-employee relationship, therefore facts and circumstances of each case are required to be dealt with individually.

15. Petitioners have produced various documents to prove their case but have not produced any letter of appointment issued by respondent No.1. The petitioners have not disputed in their cross examination that their salaries have been deposited in their accounts regularly by contractors. The respondents have on the other hand proved that the Respondents No. 2 & 3 are licensed contractors having work agreement for the said period which are exhibited as Exhibit D/68 to D/93 and the Respondent No. 1 Company has also taken a registration in 2006 as Principal Employer vide Exhibit D/65. The payment of wages by the contractor to the employees also has duly been proved by the bank statements of Respondents No. 2 & 3 vide Exhibit D/223,

D/275 and D/276 which clearly demonstrates the payment of wages to these employees in their account by the contractors. Exhibit D/178 clearly marked the attendance of the regular employees as regular employees and the attendance of contractual employees were clearly being marked as contracted employees.

16. The petitioners have produced one offer letter Ex.P/9 which has been disputed by the respondent. If we examine Ex. P/9, it is only an offer letter which is not counter signed by the said employee. The said employee in his cross examination has admitted in para 24 that he has been in employment since 2007 and worked till 2019. If the said employee has come in employment with Ex. P/9 then such employee would have certainly received salary and other benefits after 2009. However, the employee has failed to produce any other document except offer letter. Thus, the offer letter itself does not prove the fact of employment. Similarly, the alleged salary slips Ex.P/12, P/14 to P/17 which have been disputed by the respondent as not genuine, are for the year 2008-09 relating to two employees only. Respondent No. 2 and 3 Contractors have shown these people as their employee and have paid salary and contribution from their own account. The employees have not produced any other document to further prove their employment. If these employees were in service of respondent No.1 then they would certainly be having their regular salary deposited by respondent No. 1 and could have proved the same by exhibiting their account statement. Similarly, these employees have not produced any other document regarding their contribution of ESIC or PF being paid by the respondent No.1. Thus only on the basis of disputed salary slips they cannot be held to be regular employee of respondent No.1.

17. As regards the contribution of ESI, even if ESIC contribution prior to 2010 has been deposited under Code of the respondent No.1 then it has also been brought on record that as the contractors did not have their own Employer Code till 2010, thus the contribution has been made till 2010 under the Code of the Principal Employer as the Principal Employer is liable for the said contribution. After 2010 the contractors have deposited the ESI contribution under their own Code. Similarly, Ex D/13, D/14, D/16, D/21, D/25, D/28, D/34 and D/60 clearly show contributions of PF made by the Contractors. The Respondents No. 2 & 3 have submitted documents Ex. D/225 & Ex. D/243 by which a list of employees has been submitted by the Respondents to the said departments.

18. Furthermore, the supervision and employment of the employees by contractors also clearly reflects from various communications exhibited as Respondents by Ex. D/2, D/10 to D/63 which are communications, applications for job, notices and other documents which clearly demonstrate the employment and regular supervision of the employment by the contractor. The fact regarding termination of employment has also been proved by Exhibit D/24, D/36 & D/58 which clearly shows that the Respondents No. 2 and 3 had shut down their businesses due to which the employment of the employees had come to an end. In this regard the orders passed by the Labour Commissioner (Exhibit D/129, D/137 & D/140) also hold that the Petitioners are the Employees of the Respondent No. 2 & 3 Contractors and their services are automatically terminated after withdrawal of the services of the Contractors.

19. In view of the above, in the considered opinion of this court, we do not find that there was any employer-employee relationship between the

petitioners and respondent No.1. Hence, we find that the petitioners do not have an Employer-Employee relationship with Respondent No.1 and were clearly employees of Respondent No.2 and Respondent No.3. As there is no relationship of the Petitioners with the Respondent No.1, the termination of employment due to termination of contract of Respondent No.2 and 3 cannot be held to be “retrenchment” within the meaning of Section 2(oo)(bb) of the Industrial Dispute Act, 1947. Thus there is no illegality in the order passed in reference by the Industrial Tribunal.

20. The Hon’ble Supreme Court of India in the case of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil,** reported in **(2010) 8 SCC 329** has explained the principles on exercise of jurisdiction under Article 227:-

> *“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*
>
> *(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.*
>
> *(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.*
>
> *(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution,*

interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross

and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial

control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

21. In view of the foregoing discussion, this Court does not find any perversity or illegality in the Impugned Order dated 24.06.2022 passed the by Industrial Tribunal, Indore in Reference No. 04/1.D./2019 and hence needs no interference of this Court under Article 227 of the Constitution.

22. *Ex Consequenti*, the petition filed by the petitioners sans merits deserves to be dismissed and is hereby **dismissed**.

23. No order as to cost.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(GAJENDRA SINGH)
JUDGE

HS