(2024) 12 GUJ CK 0016

Gujarat High Court

Case No: Special Civil Application No. 9693 of 2021

Shah And Company Through Proprietor Paresh H Shah & Ors.		APPELLANT
	Vs	
Vs Gujarat Mazdoor Sabha Through Secretary & Ors.		RESPONDENT

Date of Decision: Dec. 5, 2024

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(A), 2(k), 10, 10(c), 24, 25, 33

Hon'ble Judges: M. K. Thakker, J

Bench: Single Bench

Advocate: R D Dave, Surbhi Bhati, Harsh K Raval

Final Decision: Allowed

Judgement

M. K. Thakker, J

1. The present petition is filed under Article 226 of the Constitution of India for following prayer:-

â€œ9) The petitioners, therefore, most respectfully pray that :-

A) This Hon'ble Court may be pleased to issue writ of mandamus and/or any other appropriate writ, order or direction to quash and set

aside the order of reference made by respondent No. 3 dated 24.02.2021 to the Industrial Tribunal, Ahmedabad (Annexure-A) and all

consequential proceedings before the Industrial Tribunal being Reference (IT) No. 48 of 2021 be quashed and set aside.â€

2. Brief facts arising for the consideration of the present petition is that the respondent No.1-Union is registered under the Trade Union Act and

respondent No.2-company is duly registered and incorporated under the Provisions of the Companyâ€™s Act and engaged in the business of

manufacturing life saving drugs and pharmaceutical products. The petitioners are labour contractors engaged by respondent No.2 to supply contractual

labourers for work as per the agreement between the respondent-company and the petitioner. From 26.02.2020, certain contractual labourers working

in the first shift collusively refused to work as per the instructions given to them by their supervisor, therefore, notices were placed on notice board on

26.02.2020, 27.02.2020 and 29.02.2020. Thereafter, disciplinary proceedings were initiated by placing the respective employees under suspension

impending inquiry and has issued show-cause notice-cum-chargesheet on 06.03.2020. Disciplinary proceedings and departmental inquiry against the

said erring employees who committed misconduct is pending as on date.

2.1. The petitioner has also served the suspension order on 02.03.2020 to the respective erring employees, departmental proceeding is pending and

legal action is initiated in accordance with the applicable standing orders against the employees who has stopped working all of a sudden. Respondent

No.1-Union vide communication dated 04.07.2020 has demanded to revoke the suspension order and to cancel the show-cause notice-cum-charge

sheet against the erring officers.

3. The name of the workers who resorted to illegal strike/stoppage of work upon the instigation of one Mr.Gautam D.Makwana are stated herein

below:-

1. Nirmalaben R.Parmar

2. Minaben V.Bhabhariya

3. Sangitaben V.Parmar

4. Gitaben B.Chauhan

5. Ritaben L.Solanki

6. Minaben R.Suvar

7. Savitaben D.Solanki

8. Kundanben M.Dhabi

9. Divyaben B.Parmar

10. Bhavnaben G.Vaniya

11. Pushpaben A.Lakum

3.1. On the basis of such demand letter Union has raised Industrial Dispute before the Conciliation Officer for which the petitioner received the notice

on 07.09.2020 from the Conciliation Officer informing to attend the hearing on 29.09.2020. Petitioner also received the notice of hearing in respect of

demand made by the Union from Conciliation Officer on 06.11.2020, petitioner submitted the reply-objection to Conciliation Officer on 16.12.2020.

Thereafter, on submitting the failure report on 27.01.2021 to the Deputy Labour Commissioner the written objections were filed by the present

petitioner raising the issue of maintainability of the proceedings because the demand of the Union is premature, illegal and not justified. The Labour

Commissioner, vide order dated 24.02.2021 made a reference to the Industrial Tribunal for adjudication which was registered at Reference IT No.48

of 2021 and the petitioner received the notice in form of No.8 & 9 on 15.03.2021 from the Industrial Tribunal, which is subject matter of challenge

before this Court.

4. Heard learned advocate Mr. R.D.Dave for the petitioner and learned advocate Mr.Amresh Patel for the respondent.

5. Learned advocate Mr.Dave submits that demand of the respondent-workmen is premature at this stage. In view of the fact that show-cause

notice-cum-charge-sheet in accordance with the applicable standing orders upon the contract employees and the departmental proceedings of inquiry

is already initiated and same cannot be challenged at this stage so as to intercept and obstruct the legitimate and legal right of the petitioner in

accordance of law. Learned advocate Mr.Dave submits that suspension of the respondent-workmen cannot be said as a punitive action therefore,

departmental proceedings cannot be termed as Industrial Disputes as defined under section 2(k) of the ID Act and therefore, referring the demand

and issuance of the notice by Industrial Tribunal against the petitioners submitted that, same are illegal and unauthorized and without jurisdiction.

Learned advocate Mr.Dave submits that under section 10 of the Act, dispute raised by the Union challenging the propriety and legality of the order

passed by the employer under standing order is matter within the jurisdiction of labour court as per schedule 2 of the Act which is concerning only few

workers name in the demand notice and not affecting hundred or more workers, therefore, reference to the Tribunal instead of labour court regarding

so called actions of the petitioner under this standing order is without the jurisdiction and contrary to the provisions of section 10 of the ID Act.

5.1. Learned advocate Mr.Dave submits that learned Commissioner of Labour has failed into discarding the judgment of the Apex Court as well as

the submission of the present petitioner and the respondent-company to the effect that premature issue cannot be termed as Industrial Dispute and

cannot be referred for adjudication when the departmental proceedings are still pending, therefore, whole exercise of referring the alleged dispute for

adjudication is not justified, illegal, arbitrary and same is the misuse of the authority and depriving the petitioner from their legitimate right to take legal

actions against the employees who committed misconduct. Learned advocate Mr.Dave submits that action of Union intercepting and interfering with

the statutory right of the petitioner, under standing orders to take actions amounts to unfair labour practice which is prohibited under section 25 of the

Act as well as, as per the 5th schedule of the Act. Learned advocate Mr.Dave submits that the manufacturing process of the life saving drugs for

which the respondent-company is engaged is carried out with sense of responsibility and high skill in tempering with or in negligent or intentional

inaction of stoppage of work all of a sudden, causes huge damage to the company. Under such circumstances action of misconduct by group of

employees cannot be tolerated and therefore, the petitioners are justified in proceeding with the actions.

5.2. It is submitted by the learned advocate Mr.Dave that it is an abuse of process of law by the Union to raise the demand at such a premature stage

when the departmental proceedings are pending and get the dispute referred to the adjudication of premature issues only with an intention to invoke

the provisions of section 33 of the Act at premature stage which provides that during the pendency of the proceedings before the Industrial Tribunal,

the petitioner may be restrained from taking any punitive actions against the workman concerned, same shall only be done with the express permission

in writing of the Tribunal where the proceedings are pending. Thereby, to prevent legal and legitimate immediate action and prolonged and delayed

action if any, the reference was made which is nothing but an abuse of process of law with a view to refrain the petitioner from taking legal and

legitimate action in accordance with law. Learned advocate Mr.Dave submits that two parallel proceedings cannot be permitted to continue and

therefore, also the reference is premature and the order to refer the dispute to the learned Industrial Court is bad in law. With the above submissions,

it is prayed to set aside the impugned order and requested to allow the petition.

6. On the other hand, this petition is vehemently opposed by the learned advocate Mr.Amresh Patel assisted by learned advocate Mr.Harsh K. Raval.

Learned advocate for the respondent submits that terms of reference envisaged the action of refusal of work by the employer and entitlement of

wages of refusal of work by the workman which is well within the jurisdiction of the Industrial Tribunal and therefore, opinion formed by the

appropriate Government for referring the dispute under section 10 of Industrial Disputes Act, 1947 cannot be challenged under article 226 of the

Constitution of India.

6.1. Learned advocate Mr.Amresh Patel for the respondent further submits that the second term of reference referred by the appropriate

Government is in respect of challenge of the action of order of suspension and charge sheet for alleged misconduct which is connected with the first

item of the terms of reference i.e. connected with refusal of work by the employer to the concerned workman. Therefore, the action of refusal of

work by the employer is illegal and so-called allegation that the workman has refused to work in other department which is not part of the service

condition does not constitute misconduct as per the standing orders and the terms of reference referred for adjudication is well within the power of

appropriate Government to refer the said dispute to the Industrial Tribunal.

6.2. It is submitted by the learned advocate Mr.Amresh Patel for the respondent that against the demand notice dated 04.07.2020 no reply was given

by the respondent and for the first time in his petition as an after thought, the contentions are raised to create false and concocted defence. Order of

suspension also do not reveal any reasons and therefore, so called allegations were created for issuance of charge-sheet. In the charge-sheet

petitioner has created so-called allegation against the concerned workman, as the workman were demanding to treat them as direct workmen of the

company and pay equal wages as they were performing the same work of the principal employer. That workmen from inception of their employment

were engaged in tablet department and with ulterior motive the petitioner wanted to replace the concerned workmen by new sets of workmen thereby

the permanent post and the place of concerned workmen was altered with a view to frustrate the adjudication of terms of reference which has been

referred for adjudication before the Tribunal. The same actions of the petitioner was protested by the concerned workmen and therefore, so-called

allegations were created by the petitioner. Allegation in the charge-sheet that the concerned workmen has refused to work in the transfer department

and the said act of concerned workmen constitute to misconduct. The concerned workmen never refused the work which they were performing from

their engagement in their company and the actions of the petitioner to provide work is in question being illegal and void ab-initio. Besides this, alteration

by the petitioner in nature of work and department which they are performing from the inception of their employment cannot be altered without

section N(a) notice of the ID Act and therefore, aforesaid action of the petitioner is illegal and void and can be adjudicated by the Industrial Tribunal.

6.3. It is submitted that Union has categorically raised the issue that the petitioner has no right to issue an order of suspension and charge sheet as

they are not employer and therefore, whole action of the petitioner is illegal. It is submitted by the learned advocate for the respondent that

respondent-Union and the concerned workman has all the rights to challenge order of suspension and charge-sheet, as said act of the employer is

without authority of law and action of the petitioner is bonafide exercise of powers. As per the allegation of the petitioner, act of the concerned

workman is an illegal strike and on other hand concerned workman has demanded alleged act of the petitioner is illegal and void and so-called

allegation does not constitute misconduct is an Industrial Dispute, therefore, formation of opinion by the Government for referring the dispute for

adjudication is well within the authority of Government and dispute is an Industrial Dispute which falls within the jurisdiction of the Industrial Tribunal

to adjudicate. It is further submitted that formation of opinion by the Government for referring the dispute under section 10 of the Act of 1947, is just

and proper and based on just and proper consideration and on the basis of material available with the appropriate Government. It is submitted that

whether the reference is right or wrong is needed to be determined by the Industrial Tribunal in which the statue had provided specific remedy and

exercising the power under article 226 of the Constitution of India, 1950 would amount to fact finding in the issue which needs to be examined by the

Industrial Tribunal. Hence the petition is required to be rejected on that ground too.

6.4. It is submitted that prima facie formation of opinion by the Government cannot be be gone into and ordered to be altered by this Court while

exercising the power under article 226 of the Constitution of India. Learned advocate Mr.Amresh Patel submits that whether there was any strike as

alleged, or whether the company and its proper arrangement system i.e. the petitioner have indulged in unfair labour practice which are the aspects

which deal with the facts and this Court while exercising the power under Article 226 of the Constitution of India must not convert the reference

referred to Industrial Court into futile exercise as the Industrial Tribunal has jurisdiction vested by the law and the remedy is also available under the

ID Act. Therefore, exercising the power would be useless unless the Court examines the fact of the case by taking evidence which is not permissible

wherein, the law had laid down the different procedures altogether. Learned advocate submits that refusal of work and not permitting the work to

workman cannot by any stretch of imagination considered as the alleged misconduct and therefore, the allegation of misconduct which is prima facie

incorrect and same was opined by the appropriate Government while forming prima facie opinion, cannot be overruled by this Court without exercising

the action of fact finding or examining the evidence. Learned advocate Mr.Amresh Patel submits that respondent denies there being any strike infact

the refusal of the work on the part of petitioner and respondent No.2 is unfair labour practice and therefore, the Industrial dispute arose. Issuance of

the show cause notice itself is a malafide act on the part of the petitioner and respondent No.2 which cannot be permissible in the eye of law. The

dispute which was present and which was referred under section 10 of the ID Act and therefore, presence and existence of industrial dispute was

sufficed to refer the dispute for adjudication to the industrial Tribunal.

6.5. It is submitted that demand which was raised cannot be considered as premature, and whether it is being premature or illegal is to be decided by

the Industrial Tribunal after examining the evidence. Learned advocate Mr.Amresh Patel submits that refusal of work by the petitioner and the

respondent No.2 is the matter which creates the industrial disputes independently which also culminated in alleged departmental inquiry which is illegal

and with malafide intentions as the same was after refusal of work. Therefore, continuation of the action of refusal of work cannot be considered as a

different dispute altogether and therefore, it is required to be examined by the Industrial Tribunal and the order of reference is therefore, just and

proper.

6.6. Learned advocate Mr.Amresh Patel has relied on the decision rendered by the Apex Court in the case of GLaxo Laboratories (I) Limited versus

Presiding Officer, Labour Court, Meerut and Others reported in 1984 1 SCC 1 and submitted that while misconduct is enumerated in standing order 22

and the punishment prescribed in standing order 23, the expression misconduct in standing order 23 would comprehend any misconduct irrespective of

fact whether it is enumerated in standing order 22 or not.

6.7. Learned advocate Mr.Amresh Patel submits that in view of the above decision absence of there being any misconduct a show cause notice is

noting but inverted tool of harassment to the workmen and malafide exercise of powers without authority of law.

6.8. Learned advocate Mr.Amresh Patel further relied on the decision rendered by the Apex Court in the case of Prabhakar vs Joint Director

Sericulture Department reported in 2015 15 SCC 1 and 1979 1 SCC 1 and submitted that satisfaction of the existence of industrial dispute or the

satisfaction that industrial dispute is apprehended, is condition precedent to order of reference.

7. Learned advocate Mr.Amresh Patel at the end submitted that no error is committed in referring the dispute to the Industrial Tribunal under section

10 of the ID Act and therefore, the petition is required to be dismissed and reference proceedings is required to be concluded.

8. In the rejoinder, learned advocate Mr.Dave has submitted that respondents are governed by the standing orders prescribed under the Industrial

employment (standing orders) Act and they are liable for disciplinary actions as per the provisions of model standing orders section 24 of the standing

orders specifically prescribed there under:-

â€œ24. The following acts and commissions on the part of a workman shall amount to misconduct:-

(a) wilful insubordination or disobedience, whether or not in combination with another, or any lawful and reasonable order of a superior;

(b) going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof;

(c) wilful slowing down in performance of work, or abetment or instigation thereof;

(d) theft, fraud or dishonesty in connection with the employersâ€™ business or property or the theft or properly of another workman within

the premises of the establishment;

(e) taking or giving bribes or any illegal gratification;

(f) habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without

sufficient grounds or proper or satisfactory explanation;

(g) late attendance on not less than four occasions within a month;

(h) habitual breach of any Standing Order or any law applicable to the establishment or any rules made thereunder;

(i) collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law

for the time being in force;

(j) engaging in trade within the premises of the establishment;

(k) drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment.

(l) commission of any act subversive of discipline or good behaviour on the premises of the establishment;

(m) habitual neglect of work, or gross or habitual negligence;

(n) habitual breach of any rules or instruction for the maintenance and running of any department, or the maintenance of the cleanliness of

any portion of the establishment;

(o) habitual commission of any act or omission for which a fine may be imposed under the Payment of Wages Act, 1936;

(p) canvassing for union membership, or the collection of union dues within the premises of the establishment except in accordance with any

law or with the permission of the Manager;

(q) wilful damage to work in process or to any property of the establishment;

(r) holding meeting inside the premises of the establishment without the previous permission of the Manager or except in accordance with

the provisions of any law for the time being in force;

(s) disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the

possession of the workman in the course of his work;

(t) gambling within the premises of the establishment;

(u) smoking or spitting on the premises of the establishment where it is prohibited by the employer;

(v) failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the

establishment;

(w) distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters, and such other things or causing to be

displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Managerâ€™

(x) refusal to accept a charge-sheet, order or other communication served in accordance with these Standing Order;

(y) unauthorised possession of any lethal weapon in the establishment;

(z) sexual harrasment which includes unwelcome sexual determined behaviour (whether directly or by implication) such as:-

(i) physical contact and advances; or

(ii) a demnad or request for sexual favours; or

(iii) sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.â€

9. The model standing order provides for disciplinary actions for having committed misconduct, enumerated thereunder and to impose the punishment.

The misconduct committed by the workers engaged by the petitioner for which the notices were served, despite that misconduct continued for which

the charge sheet were individually served upon the defaulting workers and departmental inquiry has been initiated upon them. Despite repeated

requests made on behalf of the petitioner, the said workers did not reported on duty, ultimately they were placed under suspension by legal and valid

orders by the petitioner and due to non-cooperation by the respective delinquent workers, inquiry is still pending against them. The demand raised by

the Union against the Conciliation Officer and ultimately so called dispute was referred to the Labour Court for adjudication as per the order of the

reference dated 24.02.2021 is premature at this stage. There was no question of refusal to give work by the notices specifically provide that delinquent

workers repeatedly refused to work at the place in the same compound where they were offered work being contract workers. There was no

justification in repeatedly refusing to work as per the order of superior, therefore, the said action amounts to serious misconduct for which they are

liable to face the departmental inquiry.

9.1. It is further submitted that it is a part of the service of contractual labourers who work at the places where they were asked to work by the

petitioner as per the requirement of the respondent No.2-company. There is no right of the contract labourers to insist on working at a particular place

and the demand made in the reference for which the petition is pending before this Court filed by the manager of the respondent No.2-company in

which stay is also granted, the Union has deliberately attempted to connect the issue of regularization with the present dispute which has nothing to do

earlier adjudication before the Industrial Tribunal. The place of work assigned to the concerned workers by the superior does not amount to change in

service condition and there are no right s of the concerned workmen who are engaged by the petitioner-contractor to perform work only at a

particular place, and refusing the same the delinquent workers are required to face the inquiry.

9.2. It is submitted that the order of reference can be challenged only before this Court under WRIT jurisdiction, and Industrial Tribunal or the labour

court has no jurisdiction to decide the validity and legality of reference and for the allegation of the charge sheet that delinquent workers have refused

to work under the instigation of the leader for which they are liable to face the departmental inquiry. Learned advocate Mr.Dave submits that by

referring the disputes, the proceedings pending in the departmental inquiry is frustrated, labour court should not have interfered with the departmental

inquiry and therefore, the petition is required to be allowed.

10. Having considered the submission made by the learned advocates for the respective parties, moot question arises for consideration before this

Court is that whether the reference can be made before any punitive action is taken.

11. Before discussing the merits, this Court would like to refer the preamble of ID Act, 1947 which states that that, Actâ€™s purpose is to investigate

and settle industrial disputes. The Actâ€™s objective is to safeguard the rights of both workers and industrial establishment. The industrial disputes

Act covers the number of topics including (a) when a strike or lockout is lawful, (b) when a strike or lockout is illegal or unlawful, (c) conditions for

laying of, retrenching, discharging or dismissing a worker and (d) circumstances under which the Industry can be closed down. The Act applies to all

industries and sectors regardless of size it also provides safeguard for workers.

12. Keeping in mind the above object, relevant provisions of the Act for reference by an appropriate Government on any industrial dispute between

employers and employees for adjudication to competent Industrial or labour court as the case may be is required to be referred. Section 2(k) of the ID

Act defines the industrial dispute which is referred herein below:-

â€œSection 2(K):

(k)""industrial dispute"" means any dispute or difference between employers and employers, or between employers and workmen, or between

workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of

labour, of any person;

13. For adjudication to the competent authority as per section 10, if the person is applying for reference, then he has to satisfy to the authority that the

industrial dispute exists or is apprehended and section 10(c) provides to refer the disputes or any matter appearing to be connected with, or relevant to

the dispute, if it relates to any matter specified in second schedule to a labour court for adjudication. This Court would refer the second schedule then,

it provides for six different situations when the dispute can be said to be arrived as an industrial dispute which reproduced herein below:-

â€œSchedule 2

1. The propriety or legality of an order passed by an employer under the standing orders;

2. The application and interpretation of standing orders;

3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;

4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lock-out; and

6. All matters other than those specified in the Third Schedule.â€

13.1. Item one of the second schedule provides legality and propriety of an order passed by the employer under the standing orders. Under the

standing orders, governing the industries concerned, before the employee can be discharged or dismissed on the ground of the misconduct,

departmental inquiry has to be held. Consequently, taking initial step towards direction of discharge or dismissal of an employee on the ground of any

misconduct, by issuing a charge sheet can be said to be the first action taken by the employer towards the disciplinary proceedings of an employee.

14. At this stage, this Court would like to refer the relevant provisions of the standing orders wherein, the section 2(A) provides that, where this Act

applies to Industrial establishment, model standing orders for every matter set out in the schedule applicable to such establishment shall apply to such

establishment from such date as the state Government may by notification in the Official Gazette appoint in his behalf. It is further provided under

section 2(a) under the proviso that nothing in this section shall deem to affect any standing orders which are finally certified under this Act and have

come into operation under this Act in respect of any establishment before the date of coming into force of the Industrial employment (Standing

Orders)(Bombay Acmendment Act, 1947).

14.1. Rule 24 provides the Acts or omission on the part of workman which shall amount to misconduct. Rule 24(A) provides willful insubordination or

disobedience whether or not in combination with another, if any lawful and reasonable order of a superior and Rule 24(B) provides going on an illegal

strike or abetting or inciting or instigating or acting in furtherance thereof. In the event of guilty of misconduct, certain punishments specified, which

may be a warn or sensor, fine, suspension, punishment by way of holding an increment or promotion, reduce to a lower post in a time scale or to a

lower stage, discharge and dismiss.

14.2. Rule 25(2) provides that, no order under sub clause (b) of Clause 1 shall be made unless the workman concerned, has been informed in writing

of the alleged misconduct or given an opportunity to explain the circumstances alleged against him. Rule 25 (3) provides that no order of dismissal

under sub clause (b) of sub clause 1 shall be made except â€œafter holding an inquiry against the workman concerned in respect of misconduct in a

manner set forth in clause 4â€. Rule 25(4) provides that a workman against whom an inquiry has to be made shall be given a charge-sheet clearly

setting forth the circumstances appearing against him and require explanation. He shall be given opportunity to answer the charge and permitted to be

defended by a workman working in the same department as himself. Except for reasons to be recorded in writing by the officer holding the inquiry,

the workman shall be permitted to produce the witnesses in his defence and cross-examine any witnesses on whose evidence charge rests.

14.3. Rule 25(5)(a) provides that Where as a result of disciplinary proceeding against a workman any action is contemplated or is pending under any

of sub-clauses (b), (c), (d), (e), (f) and (g) of clause (1) or where any proceedings on a criminal charge are taken against him in respect of any

offence and the employer is satisfied that it is necessary or lesirable to place the workman under suspension, he may by order in writing, suspend him

with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the

workman within a week from the date of suspension. Rule 25(5)(b) provides for subsistence allowance during the period of such suspension and Rule

25(5)(c) provides that if on the conclusion of the inquiry or as the case may be, of the proceedings on a criminal charge, the workman has been found

guilty of the charges framed against him and it is considered, after giving the workman concerned, a reasonable opportunity of making representation

on the penalty proposed, that an order of dismissal or discharge or suspension or fine or stoppage of annual increment or reduction in rank would meet

the ends of justiice, the employer shall pass an order accordingly. Rule 25(5)(d) provides that if on conclusion of inquiry, or as the case may be, of the

proceedings on a criminal charge, the workman has been found to be not guilty of any charges framed against him, he shall be deemed to have been

on duty during the period of suspension and shall be entitled to the same wages as he would have received, if he had not been placed under

suspension, after deducting the subsistence allowance paid to him for such period.

15. Admittedly the reference is not made under the allegation of unfair labour practice. If the terms of the reference is to be looked into, then the

reference appears to have been made for the employees who are named and alleged to have been went on strike on 25.02.2020, 26.02.2020 to

02.03.2020 after joining the duties and therefore, action for denial of payment of salary to the workman as well as the suspension order dated

02.03.2020 as well as the chargesheet dated 06.03.2020 was sought to be set aside. The terms of the reference are reproduced herein below:-

â€œ(1) Whether the action for denial to assign the regular duties to Nirmalaben R. Parmar, Minaben V. Bhabhariya, Sangitaben V. Parmar,

Gitaben B. Chauhan, Ritaben L. Solanki, Minaben R. Suvar, Savita D. Solanki, Kundan M. Dabhi, Divya B. Parmar, Bhavna G. Vaniya and

Pushpaben A. Lakum for the period of 25/02/2020, 26/02/2020 to 02/03/2020 after joining the duties and the action of alleged strike and

the action for denial of payment of salary to the workmen as a part thereof is illegal and void-ab-initio and whether all the workmen should

be paid salary with 12% interest or not?

(2) The action to place Nirmalaben R. Parmar, Minaben V. Bhabhariya, Sangitaben V. Parmar, Gitaben B. Chauhan, Ritaben L. Solanki,

Minaben R. Suvar, Savita D. Solanki, Kundan M. Dabhi, Divya B. Parmar, Bhavna G. Vaniya and Pushpaben A. Lakum under suspension

w.e.f. 02/03/2020 and to issue show-cause notice / cahrgesheet dated 06/03/2020 on the false and made up grounds of denial to perform

their regular duties for the period of 25/02/2020, 26/02/2020 to 02/03/2020, is unauthorised, beyond jurisdiction and against the

provisions of the model standing orders and it is illegal and void-ab-initio and therefore, whether canceling the the said actions, the

workmen should immediately be reinstated on the duty or not and whether full salary and all other benefits should be paid to them or not?

(3) Whether the action, to initiate punitive action against Gautam D. Makwana, who is under suspension w.e.f. 03/03/2020 pending inquiry

and for not performing the regular duties by the workmen shown above in the show-cause notice / chargesheet for the period of

25/02/2020, 26/02/2020 to 02/03/2020 and for alleged strike and such other relevant charges, is illegal and void-ab-initio and canceling

the same, Gautam D. Makwana be reinstated to his original duty and no further action is taken against him and whether full salary and all

other benefits should be paid to them or not?â€

16. As per the standing orders there are various stages, before passing the final order of punishment due opportunity would be provided. In the event

of non-compliance of the above standing orders learned labour court certainly would have jurisdiction to adjudicate the dispute, but the chargesheet

itself cannot be a ground for making the reference when disciplinary proceedings is yet to be concluded. It is not only the dismissal or the discharge is

punishment provided under the rules, there are minor punishments also which can be imposed and employees can be exonerated from the charges as

well. Therefore, at this stage mere the suspension order cannot be termed as a punitive action and the same cannot be referred to the industrial court

for adjudicating the dispute.

17. The disciplinary inquiry requires to have been initiated with regard to the correctness of the allegation made by the employee, however, in the

instant case the authority appears to have been passed mechanical order intercepting the proceedings of departmental inquiry.

18. At this stage, this Court would like to refer the decision rendered by the Apex Court in the case of Chanan Singh versus Registrar, Cooperative

Society, Punjab reported in 1976 SCC 361 :-

â€œ4. The first point raised in objection by the second respondent is that the writ petition is premature since no action has been taken

finally against the appellant, the disciplinary proceedings are still pending and the explanation of the appellant is under consideration. It is

only in the event of the appellant being punished that any grievance can arise for him to be agitated in the proper forum.

5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined

to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult

to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him

either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the

moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent

authority under the rules is the proper remedy, although these are issues which merit serious consideration.

6. We are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the

view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of

jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we

dismiss the appeal but, in the circumstances, without costs.â€

19. This Court is absolutely aggrieved with the decision relied by the learned advocate for the respondent. However, considering the facts of the

present case, this Court is of the view that employers have a right to take disciplinary actions and to hold the inquiry against any employee in

accordance with the standing orders which gives sufficient protection to the employees concerned against whom such departmental inquiries are

proceeded with. Before referring the dispute the allegation should have been meticulously scanned and only when a strong prima facie case is made

out by the complainant for appropriate interim orders for intercepting the inquiry, then and then only the reference could have been made. Mere asking

by the employees such orders should not be passed otherwise the purpose of holding the inquiry as per the standing orders would get frustrated.

20. As from the terms of reference, the learned court appears to have not investigated the allegations, the same deserves to be set aside and the

petition is required to be allowed.

21. The inquiry which is pending due to non-cooperation of the employee shall be concluded within a period of three months from the date of receipt

of the order and both the parties are directed to cooperate with the departmental proceedings.

22. Resultantly, this petition is allowed. The reference made by the Office of the Labour Commissioner dated 24.02.2021 is hereby, quashed and set

aside.

23. At this stage, learned advocate Mr.Amresh Patel requests for stay of the order. As this petition was pending since 2021, stay is granted for the

period of two weeks from the date of receipt of the order.