

Exh.O-5

IN THE INDUSTRIAL TRIBUNAL AT JALGAON
(Presided over by S. E. Bangar, Incharge Member)

REFERENCE (IT) No.1/2018

MHIC 19-000012-2018

President,
Jalgaon Jilha Majdoor Congress (INTUC)
Sanghtana, Jalgaon.

...First Party.

Vs.

Managing Director,
Jalgaon District Co-operative Milk Producers Federation Limited,
Jalgaon.

...Second Party.

C O R A M : S. E. BANGAR, Incharge Member,...

**(In the matter of Reference under Section 12(5) of the
Industrial Disputes Act, 1947)**

Appearances :-

Shri. C. B. Lohar, Ld. Advocate for the First Party.

Shri.Vikram A. Pawar, Ld. Advocate for the Second Party.

ORDER BELOW EXH.C-11

(Dated- 31st January, 2019)

This is an application filed by an employer – second party raising Preliminary Objection, regarding the tenability of Reference, made under Section 12(5) of the Industrial Disputes Act, 1947 by Deputy Commissioner for Labour, Nashik Division, Nashik and for decision whether this Court has jurisdiction to entertain and decide the Reference in view of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

(2) The facts leading to the Reference and giving rise to this application are as under:-

[i] The First Party to the reference is a Registered Labour Union namely; “Jalgaon Jilha Majdoor Congress (INTUC) Sanghtana, Jalgaon” whereas the Second Party is; “The Jalgaon District Co-operative Milk Producers Federation Limited, Jalgaon”, the Principal Employer.

[ii] The First Party, through its President, made a representation to the Deputy Commissioner for Labour, Nashik

Division and Assistant Commissioner for Labour, Jalgaon informing them, that, it is representing the Workmen employed with the Second Party on contractual basis since about past ten years on daily rates. It has been submitted that, the Second Party is engaged in the 'industry' of collection of milk and processing it for being sold to the consumers and that, it has achieved the annual turnover upto Rs.365 crores till the year 2015-16. The Second Party has its main milk processing unit at Jalgaon, while milk chilling units at Parola, Pachora, Faijpur and Chopada. The Second Party runs cattle feed manufacturing factory at village – Bhadali, within Jalgaon District. It is claimed that, the staffing pattern for second party is of 334 workmen, but only 138 workmen have been employed on permanent basis, while 500 workmen have been working on daily wages on contractual basis.

[iii] The First Party relied upon a judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Jagjeet Singh and Ors** (Petition No.213 of 2013), whereby it has been held by the Hon'ble Supreme Court that, the principle of 'equal pay for equal work' has to be made applicable to those engaged as daily wagers, casual and contractual employees, but

perform the same duties as the regulars. It has been observed that, “in our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid lesser than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity.”

[iv] The first party has contended that, the second party has not been paying the daily rated - contractual workmen the equal pay, as like the permanent/regular workmen, though the contractual workmen have also been doing the similar work, since ten years. It is alleged that, the second party has with malafide intention discriminated, by classifying the workmen in categories of skilled, semi-skilled and unskilled labour and have been committing exploitation of the contractual labour. Therefore, directions were sought to the second party for implementing the principle of equal pay for equal work in the light of the observations of the Hon'ble Supreme Court.

[iv] Before approaching to the Deputy Commissioner of Labour, Nashik and Assistant Commissioner of

Labour, Jalgaon, the first party informed the second party on 11/11/2016, but their request was not considered and acceded to.

[v] The Assistant Commissioner of Labour, Jalgaon took cognizance of the representation and considering that, there is 'an industrial dispute' arising between the first and second parties, the second party was called upon by notice to appear and respond to the representation and to participate in the conciliation proceedings. Despite service of notices of meeting for discussion of an amicable settlement, issued on 04/01/2017, 4/2/2017, 17/03/2017, 11/04/2017, 12/06/2017 and 05/07/2017, the second party did not respond to the representation of the first party and repeatedly sought extension of time for filing written submission and for participation in the meeting. Therefore, by notice bearing outward No.सकाआ/जळ./१८१७ dated 16/08/2017 the Assistant Commissioner of Labour, Jalgaon called upon the second party to show cause as to why it should not be held that, it doesn't have any say to the representation of the first party and as to why further orders upon the representation should not be passed. The second party had then submitted written reply

through its Managing Director on 03/10/2017 and opposed the demands of the first party.

[vi] The second party denied to have been discriminating the contractual labour from the permanent labour in any manner and denied to accept that, the first party is the recognized union of the labour employed on its establishment. It is alleged that, none of the employees of the second party are members of the first party. Therefore, the first party didn't have any authority, locus standi or right to make any representation for the workmen employed with the second party. It is also denied that, the contractual labour have been also doing the same work as that is being discharged by the permanent employees. It is the claim of the second party that, the contractual labour are being paid the wages according to the work discharged by them and that even their wages have been raised in the year 2015-16 and that there have been no grievances from any of the employees of the second party in that regard. The representation of the first party was prayed to be rejected and proceedings to be closed.

[vii] The Conciliation / Settlement Officer directed Inspector – Shri. R.G. Ilave to inspect the records of the First Party

to ascertain its membership of the employees of the Second Party. It has been reported by the Inspector to the conciliation officer- Assistant Commissioner for Labour, Jalgaon that, upon verification of the records of the First Party, it was found that, there were 500 workmen employed with the Second party and out of them 350 were the members of the First Party Labour Union between July-2016 and December-2016.

[viii] After the failure of the conciliation proceedings, the Conciliation Officer- Assistant Commissioner for Labour, Jalgaon reported to the Deputy Commissioner for Labour, Nashik Division, Nashik, on 20/11/2017 that, the Industrial Dispute that has arisen between the First and Second Parties could not be amicably settled through conciliation and the attempts have failed.

(3) The Deputy Commissioner for Labour, Nashik Division, Nashik has upon considering the report passed an order dt.21/02/2018 that the dispute was fit for being referred to the Industrial Court, Jalgaon by exercising the powers under Section 10(1)(d) of the Industrial Disputes Act, 1947. Reference has been therefore made under Section 12(5) of the said Act to this Court

by the Deputy Commissioner of Labour, Nashik Division, Nashik by letter bearing outward No. काउआ/नाशिक/औविअ/१८०९/२०१८ dated 21/02/2018.

[ix] The reference has been made for deciding the Question mentioned in schedule "A" to the reference which reads as below -

“ कंत्राटी कामगार हे व्यवस्थापनाकडे सुमारे १० वर्षांपासून काम करीत असून सदर कंत्राटी कामगार हे कायम कामगार करीत असलेलेच काम करत आहेत. सर्वोच्च न्यायालयाने याचिका क्रमांक २१३/२०१३ प्रकरणी दिलेल्या न्यायनिवाड्यानुसार कंत्राटी पद्धतीने काम करणा-या कामगारांना समान कामासाठी कायम कामगारांप्रमाणे वेतन मिळाले पाहिजे ” या बाबतचा औद्योगिक विवाद.

[x] Upon receipt of the reference, the erstwhile Ld. Member of this Court issued notice to the parties for appearance and showing cause.

(4) The First party has appeared and filed the **Statement of Claim** at **Exh. U-4** while the Second Party has filed the **Written Statement** at **Exh.C-9**.

(5) The First Party has reiterated the claims and contentions as made in the representation made to the Deputy and Assistant Commissioners for Labour and have given details regarding the profits earned by the Second party, number of workers employed by it and other aspects in support of its claim for 'equal pay for equal work'. The First Party has prayed for directions to the Second party for implementing 'the principles of equal pay for equal work' to the member workmen of the first party, employed with the second party on contractual basis, as like the pay for permanent workmen. It has also prayed for directions to pay the arrears of the difference in wages from January 2009 till date.

(6) The Second Party has refuted the claims and contentions of the first party made in the statement of claim regarding the discrimination allegedly made between the permanent and contractual workmen in the matter of payment of wages. It has been submitted by the second party that, the members of the first party have not been appointed by the second party by issuance of any appointment orders and that it is not paying their salaries or deducting the subscription for contribution

towards provident fund and E.S.I.C. It has no control over the working of the members of the first party neither have been they transferred nor terminated by the second party. Therefore, there is no relation of employee/workmen and employer between the first and second parties. Since the first party has claimed that, its members- workmen are working on contractual basis with the second party, the provisions of the contract labour (regulation and abolition) Act, 1970 are attracted to the dispute between them and that this Court doesn't have jurisdiction to entertain the reference because the appropriate Government i.e. the State Government of Maharashtra represented through the Deputy Commissioner Nashik Division, Nashik, doesn't have the authority under any provisions of the said Act to make such a reference.

(7) The Second Party has contended that, the dispute between the First party and itself, is not '**an industrial dispute**' under **Section 2(k)** of the I.D.Act, 1947, since the contractual labour do not fall within the purview of the definition of 'workmen' under Section 2(s) of the I.D.Act, 1947. Unless, there is a relationship of employer-employee or employer-workman and there is an industrial dispute between them, this

Court is contended to have no jurisdiction to entertain any Reference made between them. Therefore, an objection has been raised to the jurisdiction of this Court and it has been prayed that, the nature of the employment between the First and Second party be decided under Section 10(4) of the I.D.Act, 1947

(8) The Second Party has also raised an objection about the Locus standi of the First Party to make a representation against itself, to the labour authorities who have further made a Reference thereof to this Court. It is alleged that, the first party is not having sufficient number of members for being recognized as a labour union for the establishment of the Second party and that no record showing membership, recovery of membership fee, holding of meetings, proceedings of meetings etc. having been produced by the First Party, it cannot be recognized as an authorized labour union for representing contractual labour working with the second party, through the various registered licensed labour contractors. Therefore, it is alleged that, the first party has no locus standi to submit a statement of claim in this reference.

(9) The Second Party has further raised a ground that, the Reference would be bad in law for want of necessary parties. It is contended that, the workmen employed on contractual basis with the First party are so employed through two contractors namely; Modern Facilities Management Services Pvt. Limited, Aundh, Pune, and Sai Jeet Associates, Jalgaon, supplying man power. Since the said labour contractors having enrolled the workmen, allegedly members of the First party, have not been arrayed as parties to the reference, it is bad for non-joinder of necessary parties.

(10) The second party has alleged further that, the reference is barred by law of limitation, it being made after a delay of more than 10 years, since the claim for arrears of alleged difference in wages is made from the year 2009. It is also prayed that, the Preliminary Issue regarding bar of limitation be framed along with the issues of non-joinder of necessary parties and that of the tenability of Reference and jurisdiction of this Court.

(11) There are several other submissions and grounds raised by the Second party in regard

with the payment of wages made to the contractual labour in view of the decision of Hon'ble Supreme Court in Civil Appeal No.213/2013, the membership of the First Party, nature of work discharged by the contractual labour etc. However, the rest of the contentions and objections are regarding the merits of the statement of claims made by the First Party, can be considered and decided on merits, if the Preliminary Issues regarding jurisdiction and tenability of the Reference are decided favourably to the First Party. Now, it would be necessary to consider and decide the Preliminary Issues, as has been prayed for by the Second Party in this application (**Exh.C-11**).

(12) It would be convenient, to formally set out the Preliminary Issues herein below for being answered with the reasons to be mentioned against each of them :

Sr. No.	Preliminary Issues	Findings
[1]	Whether the Reference (IT) No. 1 of 2018 made under Section 12(5) of the Industrial Disputes Act, 1947 is tenable before this Industrial Tribunal ?	..In the affirmative.
[2]	Whether this Industrial Tribunal has the jurisdiction to entertain and try the said Reference ?	..In the affirmative.

[3]	What order and reliefs ?	Application, Exh.C-11, is partly allowed.
-----	--------------------------	---

REASONS

(13) Before adverting to the facts of the dispute, it would be necessary to refer and reproduce the provisions relating to the questions which have arisen before this Tribunal/Court. The laws relating to the dispute are the Industrial Disputes Act, 1947, the Contract Labour (Regulation and Abolition) Act, 1970, The Industrial Employment (Standing Orders) Act, 1946, The Minimum Wages Act, 1923, the Payment of Wages Act, 1952, The Employees' Provident Fund Act, 1952, The Employees' State Insurance Act, 1948, The Maharashtra Contract Labour (Regulation and Abolition) Rules- 1971, The Industrial Disputes (Central) Rules 1947 and the Industrial Disputes (Bombay) Rules, 1947.

(14) Following are the relevant provisions of Section 2(j), Section 2(s), Section 2(aaa), Section 2(k), Section 2(rr), Section 10, Section 12, Section 15, Section 33(c) Section 36, Items 9 and 10 of Schedule V of the Industrial Disputes Act, 1947 and the Rules thereunder :-

Section 2(aaa) “average pay” means the average of the wages payable to a workman -

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days.

Preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

Section 2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workman;

Section 2 (k) “industrial dispute” means any dispute or difference between employers and employees, 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 ;

Section 2(rr) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes –

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical, attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession,

(iv) any commission payable on the promotion of sales or business or both;

but does not include -

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

Section 2(s) “**Workman**” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Section 10. Reference of disputes to Boards, Courts or Tribunals

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing -

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute, to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c);

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute any have commenced :

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the

Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal, or National Tribunal, the Appropriate Government, on such application being made by a union recognized for any undertaking under any law for the time being in force, and in any other case, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the Presiding Officer of

such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Section 12. Duties of Conciliation Officers:

(1) Where an industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute without delay investigate the dispute and all matter affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the Conciliation Officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a

memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after close of the investigation, send to the appropriate Government a full report setting forth steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that, subject to the approval of the Conciliation Officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

Section 15. Duties of Labour Courts, Tribunal and National Tribunal :

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2-A) of Section 10, submit its award to the appropriate Government.

Section 33 C. Recovery of money due from an employer-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in his behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to

recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be under this Act, be decided by such Labour Court as may be specified in this behalf by the Appropriate Government within a period not exceeding three months.

Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(c) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a

Commissioner who shall after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Section 36. Representation of parties :

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed.

Provided that, where there is a recognized union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognized union.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any

other employer engaged in, the industry in which the employer is engaged and authorized in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal, or National Tribunal as the case may be.

THE FIFTH SCHEDULE

Item 9. To show favouritism or partiality to one 'set' of workers regardless of merit.

Item 10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

(15) The provisions as contemplated in Rules (9),(10) and (10 B) of the Industrial Disputes (Central) Rules, 1957 are as under :

Rule 9. Conciliation proceeding in public utility service:

(1) The Conciliation Officer, on receipt of a notice of a trike or lock-out given under Rule 71 or Rule 72, shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

(2) Where the Conciliation Officer receives no notice of a strike or lock-out under Rule 71 or Rule 72 but he considers it necessary to intervene in the dispute he may give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

Rule 10. Conciliation proceedings in non-public utility service.

Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considered it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation

proceedings with effect from such date as may be specified therein.

Rule 10 B . Proceeding before the Labour Court, Tribunal or National Tribunal :

(1) While referring an industrial dispute for adjudication to a Labour Court, Tribunal or National Tribunal, the Central Government shall direct the party raising the dispute to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court, Tribunal or National Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

(2) The Labour Court, Tribunal or National Tribunal after ascertaining that copies of statement of claim are furnished to the other side by party raising the dispute shall fix the first hearing on a date not beyond one month from the date of receipt of the order of reference and the opposite party or parties shall file their written statement together with documents, list of reliance and witnesses within a period of 15 days

from the date of first hearing and simultaneously forward a copy thereof to the other party.

(3) Where the Labour Court, Tribunal or National Tribunal, as the case may be, finds that the party raising the dispute though directed did not forward the copy of the statement of claim to the opposite party or parties, it shall give direction to the concerned party to furnish the copy of the statement to the opposite party or parties and for the said purpose or for any other sufficient cause, extend the time limit for filing the statement under sub-rule (1) or written statement under sub-rule (2) by an additional period of 15 days.

(4) The party raising a dispute may submit a rejoinder if it chooses to do so, to the written statement(s) by the appropriate party or parties within a period of fifteen days from the filing of written statement by the latter.

(5) The Labour Court, Tribunal or National Tribunal, as the case may be, shall fix a date for evidence within one month from the date of receipt of the statements, documents, list of witnesses, etc. which shall be ordinarily within

sixty days of the date on which the dispute was referred for adjudication.

(6) Evidence shall be recorded either in Court or on affidavit but in the case of affidavit the opposite party shall have the right to cross-examine each of the deponents filing the affidavit. As the oral examination of each witness proceed the Labour Court, Tribunal or National Tribunal shall make a memorandum of the substance of what is being deposed. While recording the evidence the labour court, Tribunal or National Tribunal shall follow the procedure laid down in Rule 5 or Order XVIII of the First Schedule to the Code of Civil Procedure, 1908.

(7) On completion of evidence either arguments shall be heard immediately or a date shall be fixed for arguments/oral hearing which shall not be beyond a period of fifteen days from the close of evidence.

(8) The Labour Court, Tribunal or National Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time but in any case more than three adjournments in all the instance of the parties to the dispute.

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, for reasons to be recorded in writing, grant an adjournment exceeding a week at a time but in any case not more than three adjournments at the instance of any one of the parties to the dispute.

(9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference/application in the absence of the defaulting party:

Provided that the Labour Court, Tribunal or National Tribunal as the case may be, may on the application of either party filed before the submission of the award revoke the order that the case shall proceed ex-parte, if it is satisfied that the absence of the party was on justifiable grounds.

(10) The Labour Court, Tribunal or National Tribunal, as the case may be, shall submit its award to the Central Government within one month from the date of oral hearing/arguments or within the period

mentioned in the order of reference whichever is earlier.

(11) In respect of reference under Section 2-A, the Labour Court or Tribunal or National Tribunal, as the case may be, shall ordinarily submit its award within a period of three months:

Provided that the Labour Court, Tribunal or National Tribunal, may as and when necessary, extend the period of three months and shall record its reason in writing to extend the time for submission of the award for another specified period.

(16) The provisions in **Rule 10 and 11 of the Industrial Disputes (Bombay) Rules, 1957** are as under:

Rule 10. Conciliation proceedings in public utility service when a notice of strike or lock-out is given :

The Conciliation Officer, on receipt of a notice of strike or lock-out given under rule 76 or rule 77 shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such time as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

Rule 11. Conciliation Proceedings in other cases :

Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which relates to a public utility service but no notice of strike or lock-out is given under rule 76 or rule 77 or where the industrial dispute does not relate to a public utility service, and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceeding with effect from such date as may be specified therein.

(17) The relevant provisions from the Contract Labour (Regulation and Abolition) Act, 1970 and the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971 are as under :

Section(2)Definitions:

(1)In this Act, unless the context otherwise requires, -

(a)“**Appropriate Government**” means,-

(i) in relation to an establishment in respect of which the appropriate Government under

the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government.

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;

(c) “**Contractor**”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;

(g) “principal employer” means -

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment.

(h) “**Wages**” shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936);

(i) “**Workman**” means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person -

Section 9 “Effect of Non-registration”

No principal employer of an establishment, to which this Act applies, shall -

(a) in the case of an establishment required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section,

(b) in the case of an establishment the registration in respect of which has been revoked under section 8.

employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b) as the case may be.

Section 10 “Prohibition of Employment of Contract Labour”

(1) Notwithstanding anything contained in this Act, but, subject to the provisions of clause (c) of Sub-section (5) of Section 1 the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is perennial nature, that is to say, it is of sufficient duration, having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Section 21 “Responsibility for payment of wages”

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make the payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Section 29 “Registers and Other Records to be maintained”

(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rate of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

Section 30 “Effect of Laws and Agreements inconsistent with this Act”

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act;

Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

The Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971

Rule (46) Payment of wages, how made

Wages of every worker shall be paid within three days from the end of the wage period in case the wage period is one week or a fortnight and in all other cases before the expiry of the tenth or the seventh day from the end of the wage period according to the number of workers employed in such establishments does or does not exceed a thousand.

Rule 51 Wages to be paid without deduction

Wages shall be paid without any deduction of any kind except those permissible under the Payment of Wages Act, 1936 (4 of 1936).

Rule 52 Provisions of rules 45 to 51 not to apply where other Acts apply

Nothing contained in rules 45 to 51 shall apply to wages of contract labour in any employment to which the Payment of Wages Act or the Minimum Wages Act, as the case may be, apply and the time and conditions of payment of wages and deductions permissible from wages in respect of workmen employed by the contractor in such employment shall be governed by the provisions of the Payment of Wages Act of the Minimum

Wages Act, as the case may be and Rules made thereunder.

Rule 54 Entries regarding payment of wages, etc. to be made in Register

(1) Entries denoting the time and place of payment of wages and the payments actually made shall be made in the register of wages simultaneously as the payments are made.

(2) The authorised representative of the principal employer shall affix his initials against each entry and further record a certificate at the end of the entries in the following form :-

“Certified that the amount shown in column No..... has been paid to the workman concerned in my presence.”

Rule 59 Muster Roll, Wages Registers, Deduction Register and Overtime Register :-

(1) In respect of establishments which are governed by the Payment of Wages Act and the rules made thereunder, or the Minimum Wages Act and the rules made thereunder, the following registers and records required to be maintained by the contractor as employer under those Acts and the rules made thereunder shall be

deemed to be registers and records to be maintained by the contractor under these rules :-

- (a) Muster Roll;
- (b) Register of Wages;
- (d) Register of Overtime;
- (e) Register of Fines;
- (f) Register of Advances.

(2) In respect of establishments not covered under Sub-rule(1) the following provisions shall apply, namely :-

(a) Every contractor shall maintain a muster-roll-cum-wages register as prescribed by sub-rule (i) of rule 27 of the Maharashtra Minimum Wages Rules, 1963.

(b) Every contractor shall issue attendance card-cum-wage slip as prescribed by sub-rule (2) of rule 27 of Maharashtra Minimum Wages Rules, 1963 to the workers.

(c) Signature or thumb-impression of every worker on the register of wages or wages-cum-muster roll as the case may be, shall be obtained and entries therein, shall be authenticated by the initials of the contractor or his representative, and duly certified by

the authorized representative of the principal employer as required by rule 54;

(18) AS TO PRELIMINARY ISSUES NO.1 & 2:

The First Party has produced on record various documents along with list Exh.U-7,U-11, U-16, U-22 to support its claim and the stand that, it is a recognized Labour Union representing the contractual labour employed with the Second Party. The Inspector deputed by the Assistant Commissioner Labour, Jalgaon did also inspect the record of the First Party labour union and submitted the same along with his report.

(19) According to the Inspector for Labour during the period from July-2016 till December-2016, it was found that, the First Party had 350 members out of the 500 employees working with the second party. The certificate of registration issued by the Deputy Registrar under Trade Unions Act, 1926 Nashik in form "C" of the said Act shows that the First Party has been registered at the Registration number NSK/J-951 and has been certified to be affiliated with Jalgaon Zilla Majdoor Congress (INTUC) Sanghtana. The first party had been registered

on 1/08/2001. The List of members during the period from July-2016 till December-2016, verified in inspection and found according to the subscription of membership fees and according to the membership register, shows that there were 350 members who have paid the monthly membership subscription of Rs.15/- and admission or entry of Rs.10/- each and the same has been deposited in the bank account of the first party with J.D.C.C. Bank, branch Dudh Vikas Parisar, Jalgaon.

(20) The copies of the proceeding book show the Minutes of the meeting held on 01/01/2017 which was attended by about 352 members on the occasion of Annual General Meeting of the First Party. Resolution No.5 for subject no.5 has been passed unanimously, thereby authorizing the President of the First Party Labour Union, to take all the necessary steps in regard with the implementation of the decision and observations of the Hon'ble Supreme Court in the case of Civil Appeal No. 213 of 2013 [**State of Punjab and Ors. Vs. Jagjit Singh and Ors.**] and in regard with the unfair labour practices engaged by the Second Party by causing their financial exploitation by not paying equal wages for equal work.

(21) A letter dated 24/10/2017 sent by the President of the First Party to the Managing Director of the Second Party in pursuance of the representation/application made by the First Party to the Second Party on 10/11/2016 regarding equal pay for equal work to the contractual workmen, has been placed along with the reference. It reveals as well as written submission/reply dated 3/10/2017 filed by the Second Party before the Assistant Commissioner Labour, Jalgaon that, the First Party did make a claim on behalf of its members for being paid equal wages as like the regular and permanent workmen employed with the second party. So also, it was pointed out that, there were directions of the Hon'ble High Court of Bombay in Writ Petition No.5428/2006, writ petition No.11138/2010 and in Writ Petition No.10181/2013 and that an undertaking was submitted by the Second party before the Hon'ble High Court for conducting the recruitment of the employees for removing the backlog of the reservation for the backward classes in accordance with Maharashtra Reservation Act, 2001. It is in this context, alleged by the First party that, the Second Party has not been regularizing the contractual workmen as permanent and regular workmen on

its establishment, so as to avoid the compliance of the undertaking submitted before the Hon'ble High Court of Bombay.

(22) The First Party has produced along with List Exh. U-11 the list of the employees on the roll of M/s Modern Facilities Management Pune, Deepjyoti Labour Contractors, whereby the names of the contractual employees for whom subscription for E.P.F. has been deducted from the wages and the contribution paid by the contractors with the Employees Provident Fund Organization. The names of the employees shown in the said list appear in the list of members maintained by the First Party.

(23) The documents produced with the List Exh.U-7 by the First party show that, there have been several rounds of litigations between the First and Second parties before the Hon'ble High Court of Bombay and before this Court in regard with the contentions of unfair labour practices allegedly engaged in by the Second Party. For instance, it can be seen from the copies of the writ in LPA No. 86 of 2004 in Writ petition 2586 of 2004 that, by orders dated 7/6/2004, the Division Bench of the Hon'ble High Court of Bombay confirmed the decision of the

Hon'ble Single Judge of the Hon'ble High Court of Bombay in Writ petition No.2586 of 2004, wherein the Judgment and order of this Court in Complaint (ULP) No. 126 of 2003 passed on 23/2/2004 had been challenged. The subject matter in issue was regarding the payment of dearness allowance to the contractual employees – members of the First Party employed with the Second Party.

(24) A copy of undertaking filed by the Managing Director of the Second Party before the Hon'ble High Court of Bombay in Writ petition 11138 of 2008, produced along with List Exh. U-7, reveals that, it was undertaken by the Second Party to fill up the vacant posts on its establishment, out of which some were for the candidates from reserved categories. Further in regard with the said issue, the Second party had called the President of the First party, time and again, for discussions and meetings. However, it was informed by the Second Party by letter dated 10/05/2018 bearing outward No.

दुउस/प्रशासन/२०१८-१९/९४२ that, the Government has not invested in any share capital for the second party, therefore the information asked for by the first party regarding the sanctioned staffing pattern, the information regarding the regular and

permanent employees along with their pay-scales cadre-wise and monthly wages paid to them, the names of the contractual labour cadre-wise or class-wise along with the wages paid to them, list of the labour contractors, etc. could not be furnished to the First Party, even under the Right to Information Act, 2005.

(25) In the context of the applicability of the Right to Information Act, 2005 to the establishment of the Second party, the Additional Registrar (General) Co-operative Societies Maharashtra State, Pune, has by letter bearing No. सर्वसाधारण / १५ सआ/ माआधीकायदा / सहसंस्था / २०१८ /३०८ dated 25/05/2018, informed the Divisional Joint Registrar, Co-operative Societies (Administration/Audit) that, according to the decision of the Hon'ble High Court and according to the provisions of Section 2- h of the Right to Information Act, 2005, the Second Party being a Co-operative Society, it was not bound to furnish the information asked for.

(26) There appear several instances wherein the disputes have arisen between the First Party and the Second Party regarding the regularization of the contractual labour and payment of wages and allowances at par with the

regular and permanent employees and the matters have been carried upto the Hon'ble High Court of Bombay. Time and again, the First Party has been demanding the implementation of the principle of equal pay for equal work for its members employed on contractual basis with the First Party.

(27) According to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the Second Party is the Principal Employer, M/s Modern Facilities Management Services Pvt. Limited, Aundh, Pune, and Sai Jeet Associates, Jalgaon, are the contractors (Labour Contractors), whereas the Members of the First party are the workmen employed on contractual basis.

(28) According to the provisions of **Section 2 of the Payment of Wages Act, 1936**, wages are -

Section -2.(vi) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money of capable of being so expressed which would, if the terms of employment express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(29) These wages are required to be paid to the workmen engaged for discharging the same work or duties as like the regular or permanent workmen. According to the provisions of Section 21 of the Contract Labour Regulation and Abolition Act, 1970, a contractor has been held responsible for payment of wages to each worker employed by him as a

contract labour. Every Principal Employer has to nominate a representative duly authorized by him at the time of disbursement of the wages by the contractor. In case the contractor fails to make payment of wages within time or makes short payment, then Principal Employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labourers employed by the contractor and recover the amounts so paid, from the contractor.

(30) In view of the said provision, the responsibility of the Principal Employer i.e. the Second Party herein, is to ensure that the contract labour employed with it through the labour contractors should receive their wages in full. It is not disputed by the Second Party that, the wages paid to the contractual labour are not at par with the wages paid to the permanent or regular employees on its establishment. It was the bounden duty of the said party to ensure whether the labour contractors are paying equal wages for the work discharged by the contractual labour similarly to that of the regular employees.

(31) It has been held by the Hon'ble Supreme Court in the case of **Food Corporation of India**

[represented by Regional Manager] Calcutta Vs. Tulsi Das Bauri (1997 II LLJ 747 (SC) = 1997 (76) FLR 493) that, the principal employer is statutorily responsible for payment of wages to the contractual labour if the contractor fails and recover the same from the contractor as the debt payable by him.

(32) It has also been held by the Hon'ble Supreme Court in the case of **Hindustan Steel Works Constructions Vs. Commissioner of Labour**, 1997 I LLJ 656 (Supreme Court) = 1996 (74) FLR 2151, that, contractor to pay equal wages as paid by principal employer to his worker doing similar works.

(33) The First Party did bring it to the notice of the Second Party that, its members employed with the second party through the labour contractors, are not being paid equal pay for equal work, as like the regular or permanent employees and sought the implementation of the observations and the law declared by the Hon'ble Supreme Court in the case of **State of Punjab and Others vs. Jagjit sing and Ors.**(Civil Appeal 213 of 2013 decided on 26/10/2016) wherein it has been reiterated in paragraph (56) of the Judgment that,

“ there is no escape from the above obligation, in view of different provisions of the constitution referred to above, and in view of the law declared by this Court under Art. 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.”

(34) It was necessary for the Second Party to consider and implement the law declared by the Hon'ble Supreme court and to ensure its compliance by the Labour Contractors also in regard with the contractual labourers. However, it seems from the record of the previous litigations between the First and Second Parties that, despite of the directions and even after submission of the undertaking, the Second Party has not filled in the backlog of the reserved posts and the nature of work, though appears to be perennially available with it and the contract labour being used continuously for doing the similar work as like the regular employee / workman, no efforts and steps have been taken to recruit regular or permanent employees.

(35) According to the provisions of Items 9 and 10 of Schedule V of the Industrial Disputes Act, 1947, the Acts of showing favouritism to one set of workers regardless of merits and employment of workmen as Badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, are amounting to unfair labour practices.

(36) The Industrial Tribunals, Labour Courts or National Tribunals have been entrusted with the duty of adjudicating the Industrial Disputes and to submit an award to the appropriate Government. Any dispute or difference between employers and employers or employers and workmen which is connected with the employment or non-employment or terms of employment or with conditions of labour, of any person, is an 'industrial dispute' according to Section 2(k) of the I.D.Act, 1947.

(37) According to the provisions of Section 10 sub-section(1) and Section 12 subsection (5) of the I.D.Act, where the appropriate Government and Conciliation Officer are of the opinion that, any industrial dispute exists or is apprehended, and after the attempts for settlement or conciliation

fail, it or he may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in Second Schedule or the Third Schedule to a Tribunal for adjudication. In these circumstances, the Deputy Commissioner of Labour, Nashik Division, Nashik having been conferred with the powers of the State Government of Maharashtra, has exercised powers under Section 12(5) of the I.D.Act, to make a reference to this Industrial Tribunal. According to the provisions of Section 15, it is the duty of this Tribunal to adjudicate the reference and to submit an award to the appropriate Government i.e. the State Government herein.

(38) During the pendency of this reference, the First Party has produced on record the documents with List Exh.U-20 which show that, the Board of Directors of the Second Party convened its meeting on 28/07/2018 wherein the subjects at Sr.No.8, 11 and 12 were regarding the contractual labour, the reference made to this Tribunal for equal pay for equal work and the undertaking for filling the backlog submitted to the Hon'ble High Court, were under consideration. However, a stand

has been taken by the Board of Directors that, since the members of the First party are not directly appointed by the Second Party, they are not falling within the purview of the definition of workmen and since they are contractual labourers, reference has been decided to be opposed.

(39) The Ld.Advocate Shri.V.A. Pawar for the Second Party has argued that, the issues regarding jurisdiction raised by preliminary objection in a reference of industrial dispute under Section 10(1)(d) of the I.D.Act, need to be decided as Preliminary Issues. He has placed reliance on the observations of the Hon'ble High Court of Madhya Pradesh in the case of **Birla Corporation Ltd. Vs. Deputy Labour Commissioner and Anr.**[2016(151) FLR 353] wherein it has been held that, the objection regarding jurisdiction can be raised before the Labour Court and after framing a preliminary issue, the Court can decide the question of jurisdiction. It has also been held that, incidental issues which are either issues of law or fact or both, are required to be determined by the Tribunal as they pertain to the jurisdictional questions and are required to be decided as preliminary issues.

(40) Further reliance has been placed by the Ld. Advocate for the Second Party on the observations of the Hon'ble High Court of Bombay in the case of **Ashok Jadhav and Ors. Vs The Bombay Dock Labour Board and Ors. [1997 I C.L.R. 919]**, it has been held by their Hon'ble Lordships while considering the facts and provisions of Section 10(4) of the I.D.Act that, whether the petitioners are employees of the Respondent Board is the issue clearly incidental to the reference, namely, whether the termination of the services of the petitioners by the Bombay Dock Labour Board since 31st August, 1983, is legal and if not so, to what reliefs are the workmen entitled to and hence directions to the Tribunal to adjudicate on to whether petitioners are employees of Respondent no. 1 and to dispose of the reference in accordance of law, were issued.

(41) In the reference in hand, there is no relief sought regarding the permanency or regularization in the services of the contractual labour / workmen on the establishment of the second party, neither is there any issue regarding their termination, discharge or retrenchment, but the issue is regarding the implementation of the principle of equal pay for equal work,

which relates to the service conditions and the statutory duties of the Second Party. Even then, this Tribunal has taken up the issues regarding jurisdiction and tenability of the reference for hearing and decision in view of the observations in the reported cases referred above.

(42) The Ld. Advocate for the Second Party has further relied on the observations of the Hon'ble High Court of Rajasthan in the case of **Delhi Cloth and General Mills Company Vs. State of Rajasthan and Ors. [1992 (65) F.L.R. 847]**. While deciding Whether the Government of Rajasthan has any jurisdiction to make any reference under Section 10 of the I.D.Act, 1947 in respect of Contract Labour, after passing of Contract Labour (Regulation and Abolition) Act, 1970, it has been held that, the disputes which have been referred to the Industrial Tribunal by the State Government, are such disputes, which are covered under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and can be dealt with only under the provisions of the said Act, which is a special Act and reference under the I.D.ACT, is not maintainable and is without jurisdiction.

(43) It must be noted that, the reference made by the State Government of Rajasthan in the case of Delhi Cloth and General Mills Company Vs. State of Rajasthan and Ors. was regarding the issue whether the discharged ten employees were employees of the Principal Employer or not and if yes, their discharge was whether valid and legal. In this context, it has been held that, the dispute in regard with the said issue was not maintainable by reference before Industrial Tribunal and that the Tribunal was without jurisdiction. In the reference in hand, the issue is only about the implementation of the principle of equal pay for equal work, which is a statutory responsibility of the Principal Employer under Section 21 of the Contract Labour Act, 1970. Therefore, the reference would be maintainable and this Tribunal having been constituted for dealing with the industrial disputes in regard with unfair labour practices under the I.D. Act, as well as, under the MRTU & PULP Act, 1971, is duty bound to adjudicate the same and submit an award to the appropriate Government.

(44) The Ld. Advocate Shri.V.A. Pawar for the Second Party has further placed reliance on the

observations of the Hon'ble Supreme Court in the case of **India General Navigation and Railway Co.Ltd. & Arn. Vs. Workmen [Civil Appeal No.514 of 1964 decided on 28/10/1965]**. In the said case, the subject matter in issue was the reference made under Section 10(1) of the I.D.Act to the Industrial Tribunal Assam, wherein the termination of 56 workers and their reinstatement with full back wages etc. were under consideration. In this context, their Hon'ble Lordship held that, it is clear that, if the relationship of master and servant is not established between appellant and the workmen in question, the Tribunal can give no relief to them. It is necessary to mention here that, no issue as like the above are referred by the appropriate / State Government to this Tribunal touching to the relationship of employer-employee between the parties to the reference, but the issue of the statutory duty of the Principal Employer under the Contract Labour (Regulation and Abolition)Act, 1970, has been referred and is under consideration.

(45) In view of the observations of the Hon'ble High Court Rajasthan in the case of Delhi Cloth and General Mills Company Vs State of Rajasthan and Ors (referred

above) in paragraph 7, 8 and 11 as under, the disputes which have been referred to the Industrial Tribunal by the State Government are such disputes, which are covered under the provisions of the Act, 1970 and can be dealt with only under the provisions of the Act, 1970, which is a special Act and reference under the I.D.Act is not maintainable and is without jurisdiction. :

“7. It will be appropriate to extract the definition of “Workmen” as amended in Section 2(s) by the Rajasthan Amendment Act which reads as under and the words added have been underlined:-

“Workman” means any person (including an apprentice) employed in any industry (by an employer or by a Contractor in relation to the execution of his contract with such employer) to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that rule, or whose dismissal,

discharge or retrenchment has led to that dis rule, but does not include any such person.....”

By this amendment, the definition of 'workman' has been extended to such workmen who are employed by Contractor in relation to the execution of contractual work of such employer. This amendment was made in the year 1958. It is clear from the preamble to the Act, 1970 that it was enacted with the purpose to regulate the employment of contract labour in certain establishments and to provide for the abolition in certain circumstances and for matters connected therewith.” Therefore, it can be said that the Act, 1970 was enacted with the special object of regulating the employment of contract labour in various establishments and it also provides for the abolition of the same in certain circumstances. Thus, this Act makes provision for protecting the rights of workmen employed by the contractor in relation to the execution by one's contract with an employer and casts duties on the Principal employer in several ways. Under the Rajasthan Contract Labour (Regulation and Abolition) Rules, 1971 (for brevity 'the Rules, 1971') a Board has been constituted for implementation of the provisions of the Act, 1970 and the Rules framed thereunder. Chapter in deals with registration of

the establishments, as provided in Rules 17 & 18 of the Rules, 1971. Rule 21 deals with the application, which may be filed by a Contractor for grant of a licence for employing labour on contract. Rule 24 provides for taking security from such licensee for each workman to be employed as contract labour. Rule 25 provides the conditions of the licence regarding the kind and hours of the work. Under Rule 23 the Licensing Officer is authorized to reject the application for grant of licence if in his opinion the licence should not be granted. Therefore, the provisions of the Act, 1970 and Rule, 1971 deal with all aspects of the matter and it can be said that the Act, 1970 is a comprehensive Act on the subject of employment of contract labour. It provides protection to the contract labour by providing suitable remedies.

8. The I.D.Act was enacted in the year 1947 and deals with all aspects of industrial disputes, applies to all industries and the workmen coming within its fold. Previously the dispute relating to contract labour could be referred for adjudication under the provisions of I.D.Act, as the Rajasthan Amendment Act included in the definition of 'workman' any person who is employed in any industry by an employer or by a contractor in relation to the execution of his contract with such

employer to do the various kinds of work mentioned in Section 2(s) of the I.D.Act. Therefore, the I.D.Act is admittedly a general enactment. Out of generality of the matters falling within the purview of I.D.Act, the Act 1970 takes out case of contract labour and legislates exclusively thereon. Evidently, therefore, the Act, 1970 is a special enactment which has been legislated to apply only to the subject of contract labour, whether they are employed by contractor or they work in an establishment. The Act is, therefore, a special Central Enactment and will prevail to the extent that it applies, over the provisions of I.D.Act, 1947 which is the earlier general law pertaining to the subject of Contract Labour and the power to refer a dispute to adjudication concerning the same, since the special Central Enactment prevail over the earlier general law as was provided under the I.D.Act, the Government, therefore, cannot make any reference of dispute on the subject of contract labour under the provisions of Section 10 of the I.D.ct. The Act 1970 covers the entire subject of contract labour and is a self-contained Act and a piece of exclusive jurisdiction. Under the general principle of law applicable to the validity, as well as under Article 254 of the Constitution, the Act, 1970 which is a

latter Act of Parliament, will, therefore, prevail over the previous I.D.Act, 1947 as amended by the Rajasthan Amendment Act, which becomes non-existent, ineffective and inoperative so far as the dispute on the subject of contract labour are concerned. As mentioned earlier the respondents have admitted so far as the factual position is concerned that the persons involved were employees of the Contractor Hardayal Singh. The petitioner-company employ about 1000 workmen, therefore, less the provisions of the Act, 1970 will apply automatically, without any necessity of special notification to that effect. The Act, 1970, therefore, takes away the power of Government which it enjoyed previously under Section 10 of the I.D. Act regarding making reference about disputes relating to contract labour to the Industrial Tribunal. However, nothing prohibits Government, if it so desires, to apply the provisions of the Act, 1970 to a particular establishment or prohibit the contract labour in any process of a particular establishment.

11. In the result, these petitions are allowed. The disputes which have been referred to the Industrial Tribunal have been referred to the Industrial Tribunal by State Government are such disputes, which are covered under the provisions

of the Act, 1970 and can be dealt with only under the provisions of the Act, 1970, which is a special Act and reference under the I.D.Act is not maintainable and is without jurisdiction.....”

(46) The provisions of the Contract Labour (Regulation and Abolition) Act, 1970 do provide under Chapter V, by Section 21, the matters relating to the payment of wages. The questions thereunder are regarding the payment of wages whichever would have been agreed between the licensed labour contractors and contractual labour and responsibility of the Principal Employer for ensuring that, such wages are paid by the Labour contractor. However, the said provisions do not contemplate whether the principle of equal pay for equal work can be made applicable on the claim of the contractual labour and if such dispute arises, where would the contractual labour ventilate their grievances to seek redressal thereof.

(47) Though under Chapter VI penal provisions are made under Section 22 to 25, they are regarding the contravention of the provisions of the Act, 1970 and Rules made thereunder. Nowhere is the provision made whereby the

applicability of any other Act, Regulation, Rules, etc. has been made, except under Section 30 of the said Act. According to the provisions of Section 30, the agreements, contract of service or standing orders in respect of any matter which are more favourable to the contract labour, shall be continued to entitle them to the more favourable benefit in respect of that matter, notwithstanding that they receive the benefits in respect of other matters under the Act, 1970.

(48) It means that, the provisions under any other law applicable to the contract labour which would be more favourable to them, would be applicable and shall not preclude them from entering into any agreement with the Principal Employer or the Contractor for granting them right or privileges in respect of any matter which are more favourable than those to which they would be entitled under the Act, 1970. Since the applicability of the principle of equal pay for equal work is in question in this reference, in view of the decision of the Hon'ble Supreme Court in the case of State of Punjab and ors. Vs. Jagjit Singh and Ors. [referred above], it would not be covered under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 but it

would be a matter of conciliation or industrial adjudication. It would be a matter more favourable to the Contract Labour, hence the provisions of the Act, 1970 would not restrict them from seeking the settlement of such issue. Therefore they had approached to the State Government through the Assistant Commissioner for Labour, Jalgaon and Deputy Commissioner for Labour, Nashik Division, Nashik. After the attempts for settlement by conciliation failed, upon the report of the Conciliation Officer, the Deputy Commissioner for Labour, has referred the dispute to this Tribunal under the provisions of Section 12(5) of the I.D.Act, 1947.

(49) The observations of the Hon'ble High Court of Rajasthan in the case of Delhi Cloth and General Mills Company grant liberty to the workmen to raise the dispute before the proper forum, if so desired. The proper forum, if at all, it is, would be the State Advisory Board under Section 4 of the Act, 1970 whereby the State Advisory Contract Labour Board constituted by the State Government would advise it on such matters arising out of the administration of the said Act as may be referred to it and to carry out other functions assigned to it under

the said Act. No provision has been made specifically to make the principle of equal pay for equal work applicable or to consider its applicability by any forum, so as to be referred to such an Advisory Board. Therefore in view of the observations in the cases of Food Corporation of India, Calcutta Vs. Tulsi Das Bauri and Hindustan Steel Works Constructions Vs. Commissioner of Labour (referred above), it being the responsibility of the Principal Employer to ensure that equal wages are paid by the Contractor to his workers doing similar work. But yet it has not been made mandatory by the provisions upon the Principal Employer to ensure the payment of wages at par to the contractual labour with his regular or permanent workmen. The dispute being prejudicial to the industrial peace at the establishment of the Second Party, it has been referred under Section 12(5) of the I.D.Act, 1947 to this Tribunal which exercises the powers under Section 33 A of the I.D.Act, 1947.

(50) The Ld. Advocate for the Second Party has further relied on the observations of the Hon'ble Supreme Court in the case of **K.K.Suresh and Anr.etc. Vs. Food Corporation of India and Ors.etc.**[2018 A.I.R.(SCW) 3905 =

2018 DGLS (SC) 791], wherein the Hon'ble Lordships upheld the decision of the Hon'ble Single Bench and Division Bench of High Court of Kerala in the matter of the dispute wherein the workmen – clerical staff of Food Corporation of India sought their regularization in services, that in the absence of any relationship of employer-employee between the parties to the dispute, no question of entertaining such dispute did arise. Since the workmen therein were found to be appointed by one co-operative society, the Principal Employer was not held liable to regularize their services. However, it has been observed that, the cases arising out of industrial reference decided by Industrial Tribunal regarding the status of such persons could be considered.

(51) During the pendency of this reference and during the hearing of the application Exh.C-11, both the parties have produced on record various documents showing the registration licence of the contractors through whom the members of the First Party have been employed on contractual basis. The Second Party has placed on record a copy of registration certificate bearing No.0720800710011652 dated 27/01/2015 under Section 7 (2) of the C.L.R. A. Act, 1970. It

shows that, the establishment of the second party has been registered with the Registering Officer under the said Act, whereby the number of contract labour is shown as 412 and the number of contractors is shown as 5. The said certificate shows that, the certificate was valid upto 31/12/2016.

(52) The names of the contractors whichever have been given in a list appended to the certificate of registration, include the two names of the labour contractors which the second party has claimed through whom the members of the first party have been employed. The estimated or actual date of termination of employment of contract labour for all the said 5 contractors is mentioned as 31/12/2016.

(53) Further, an application for amendment to the registration of establishment employing contract labour under Rule 17(1) of Maharashtra Contract Labour Regulation and Abolition Rules, 1971 appears to have been made by the Second Party to the Registering Officer i.e. Assistant Commissioner of Labour, Jalgaon on 01/11/2018 i.e. during the pendency of the hearing of this reference for 5 labour contractors.

(54) The applications for licenses for the Contractor appear to have been made by Deep Jyoti labour Suppliers and Contractors on 23/10/2018, whereas the contract started from 01/01/2016 and ended on 31/12/2016. The application for licence made by Sai jeet Associates is on 02/10/2018 and the date of the contract started from 01/01/2018 and ended on 31/12/2018. The application for license made by Modern Facilities Management Pvt. Ltd. was on 23/10/2018. The duration of the contract started from 01/01/2016 and ended on 31/12/2018.

(55) The copies of the labour contracts between the Second Party and Saijeet Associates is placed on record with List Exh.C-15. It shows that, the non-judicial stamp paper required for the agreement was purchased on 07/03/2018 for the Saijeet Associates from the stamp vendor. However, the agreement is shown to have been executed on 03/03/2018, which is prior to even the purchase of the stamp paper. The copy of the agreement between the Second Party and Modern Facilities Management Pvt. Ltd. is shown to have been executed on 03/03/2018, which is the date on which the stamp vendor himself

did receive the stamp paper from Chief Stamp Clerk from District Treasury, Jalgaon.

(56) Though, according to the provisions of Section 9 of the C.L.R.A.Act, 1970, is permitted to employ contract labour in the establishment after the expiry of the period of registration under Section 7 and the registration of the Second Party was valid up to 31/12/2016 only and subsequently amended on 01/11/2018, the members of the First party have been continued to be employed with the Second Party continuously. Even though the licenses of some of the labour contractors had expired, the Second Party continued to employ the members of the First Party on its establishment.

(57) The afore stated facts regarding the registration of the establishment of the second party under the Contract Labour Act and the licenses of the labour contractors, appear to be suspicious about the approach and conduct of the Second Party. There is a room for doubt that the licensed labour contractors are merely acting as Agents for the employment of contract labour and to avoid the extension of benefits of regularization or permanency to the contractual labour. The

agreements between the Second Party and the licensed labour contractors are doubtful and there is a likelihood that they are sham, bogus and camouflage. Therefore the dispute which has been referred before this Court would have incidental matters regarding the status of the members of the First Party and the Second Party.

(58) The First Party has produced along with list Exh.U-22, the copies of certificates of registration of the Second Party under the C.L.R.A.Act, 1970. The certificate of registration issued on 31/10/1991 seems to have been renewed and extended till 31/12/2015. Thereafter a certificate of registration issued on 27/01/2015 shows the names of the different labour contractors than which are being claimed to be in agreement with the Second Party at present. The dates of the termination of the employment of contract labour mentioned therein are 31/12/2014 and 31/12/2015. The license of Om Sai Power Services Pvt. Ltd., a labour contractor has been permanently revoked and cancelled w.e.f. 28/03/2016.

(59) A copy of notice bearing No.ACL/Jalgaon/IR/SC/CLA/D-1/1417/2018 Dated 06/10/2018

issued by the Assistant Commissioner of Labour, Jalgaon to the Second Party and its Managing Director, with copies to the licensed labour contractors namely; M/s Modern Facilities Management Pvt. Ltd. And M/s Saijeet Associates Ltd., is placed with List Exh.U-22. It is a show cause notice issued in regard with the irregularities, mis-representation and suppression material facts found out during the visit and inspection made by the Assistant Commissioner of Labour on 18/9/2018. It has been mainly noted that, the certificate of registration and the licenses of the labour contractors had not been renewed and amended by the Second Party and the said contractors till that date. Therefore, they were called upon to show cause as to why legal action be not initiated against the establishment of the Second Party in view of the observations of the Hon'ble High Court of Bombay in the case of **General Labour Union (Red Flag) Bombay Vs. K.N. Desai and Ors.** [1990 I C.L.R.22] .

(60) It appears that, after the service of this notice, the Second Party and the so called labour contractors have rushed to renew and amend the certificates of registration and licenses of the labour contractors and the same have been placed before this

Court during the pendency of the hearing on application Exh.C-

11. All these circumstances lead to assume that, there is a substance in the contentions of the First Party that, the Second Party has been employing contract labour for avoiding the compliance of the undertaking submitted before the Hon'ble High Court of Bombay in Writ Petition No. 11138/2008.

(61) The Learned Advocate for the First Party pointed out from the documents produced with list Exh.U-16 that, the members of the First Party are actually treated as the employees of the Second Party and the arrangement of the labour contractors is a camouflage. He has pointed out that the E.P.F. subscription of the members of the First Party, employed with the Second Party through the contractors, is deducted through E.P.F. Code number Mh/16410 since past about 40 years. For instance, copies of the statements of the deductions from the year 2007-2008 and further are placed on record to show that the provident fund subscriptions are being deducted and transferred from the code number of the Second Party from all the employees including the regular and contractual basis. Further it is argued for the First Party on the basis of communication made to the Assistant

Commissioner, Regional Provident Fund Organization, Nashik Division, Nashik which was made by the President of the First Party to claim that, the members of the First Party are in regular employment of the Second Party but deliberately attempts have been made to change the EPF Code number for deduction of contribution from the wages of the contractual labour.

(62) The tenor of the letter is showing that, the grievance has been raised that, the Second Party has been malafide and in connivance with the labour contractors entering into an agreement for labour contract so as to deprive the members of the First Party from the benefits of the EPF and family pension.

(63) The said letter dated 2/4/2012 accompanies the correspondence made by the Assistant Commissioner (Compliance), Sub-Regional Office, Nashik to the First Party and the copies of the same having been sent to the Enforcement Officer, District Office, Jalgaon and the Second Party also. Inspection was directed to be conducted at the establishment of the Second Party to verify the correctness of the complaint dated 2/4/2012 made by the First Party.

(64) It is also pointed out by the Ld Advocate for the First Party that, the gradation list of the employees on the establishment of the second party has been published and the names of the regular and permanent employees have been shown therein, by excluding the contractual labour. It is also pointed out that the pay-scales of the regular employees have been revised from 01/04/2016 by the Second Party, however no such benefits appear to have been extended by revision of the wages paid to the contractual labour. Though merely deduction of the E.P.F. and ESI C subscription by the common code by the principal employer it would not accrue any rights to the contractual labour for regularization, the issue remains regarding the nature of the contract between the First Party and the labour contractors as to whether it is sham, bogus and camouflage. Therefore, the State Government is empowered to make a reference of the industrial dispute between the Principal Employer and the contractual labour to this Tribunal to ascertain the nature of their relationship.

(65) While considering the issue referred by the Reference to this Tribunal, the incidental issues regarding the nature of the relationship between the members of the First Party and the Second Party might be raised by the First Party. However, this Tribunal would consider first whether the State Government has the jurisdiction to make a reference and whether this Court has jurisdiction to entertain and try the same.

(66) In view of the observations in the case of **Bhartiya Kamgar Sena Vs. Udhe India Ltd. And Anr.** [2008 I LLJ 371 = 2008 (116) F.L.R. 457] even if the permanent or regular employees of the company have not espoused the question for abolition of contract labour, but the Union of contract labourer alone has espoused the dispute stating that the contract is sham, the Tribunal having found the contract genuine, cannot be said to have no jurisdiction to make a reference to the Government to seize the matter for abolition of Contract Labour under Section 10 of the Act.

(67) In view of the observations in the case of **Bharat Earth Movers Ltd. Mysore Vs. Gangaramaiah and ors.** [2007 III LLJ 112 = 2007 (114) F.L.R. 7000], the

contract labourers are workmen of Principal Employer for the purpose of recovery of legal dues such as difference between the minimum wages and the wages actually paid by the immediate employer, the contractor, for the purpose of Section 33 C(2) of the I.D.Act, 1947. Hence the High Court held that the application under Section 33 C (2) is maintainable for the recovery of the amount as agreed under the contract or for that of minimum wages.

(68) In the case in hand, the First Party has been claiming the arrears of difference in the pay of the contractual labour/employees/workmen and of those on regular basis, after implementation of the principle of equal pay for equal work. Therefore, the reference made by the Deputy Commissioner of Labour, Nashik Division to this Tribunal is not bad for want of jurisdiction to make reference as well as to entertain it.

(69) Since a reference was being entertained by the Industrial Tribunal and the findings regarding the existence of relationship of employer and employee between the principal employer and contractual labour in the case of **Mukund Ltd. vs. its workmen represented by Sarva Shramik**

Sangh, Thane and Ors. [2004 II C.L.R. 428 (Bombay High Court)], Such a reference made to this tribunal is proper and tenable.

(70) The Industrial Tribunal did entertain a reference in the matter of **M/s Bharat Coking Coal Lttd. Vs. workmen M/s Bharat Coking coal Ltd. And another** [2010 II LLJ 131 = 2009 (123) F.L.R.578], regarding the absorption of the contract labour by the Principal employer on completion of 240 days of service in a calendar year.

(71) The Industrial Tribunal did entertain reference regarding the dispute between the contract labour and principal employer, in the case of **General Manager, (P & A) Hindustan Petroleum Corporation Ltd. Vs. General Secretary, General Employees' Association and Ors.** [2010 II C.L.R 245 = 2010 (2) B.C.R.877(Bom.H.C.)]. The issue in dispute was regarding regularization of the services of contract labour. The Hon High Court of Bombay upheld the award of the Tribunal directing regularization of the services of such contract workmen.

(72) In this analogy, the present reference being only regarding the issue about the applicability of the principle of equal pay for equal work and the recovery of arrears of the difference in pay and the State Government being the appropriate Government in regard with the industry of the Second Party having made reference, through the Deputy Commissioner of Labour, Nashik Division, Nashik, it is tenable before this Tribunal and this Tribunal is vested with the powers to adjudicate upon the industrial disputes referred to it by the Appropriate Government.

(73) The Hon'ble Supreme Court has in the case of **State of Punjab and Ors. Vs. Jagjeet Singh and Ors.** (referred above) held that, there is no escape from the obligation arising under the International Covenant of Economic, Social and Cultural Rights 1966, in view of the different provisions of the Constitution and in view of the law declared by it under Article 141 of the Constitution, the principle of equal pay for equal work constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis. It

has also been observed in Para (42), (43),(44) and (55) as under:---

“42.Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of 'equal pay for equal work' was invoked and considered, it would be just and appropriate, to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of 'equal pay for equal work'. Our consideration, has led us to the following deductions :-

(i) The 'onus of proof', of party in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see – the Orissa University of Agriculture & Technology case, Union Territory Administration, Chandigarh V. Manju Mathur, the

Steel Authority of India Limited case, the National Aluminum Company Limited Case.

(ii) The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different department of Government (see—Randhir Singh case, and the D.S. Nakara case).

(iii) The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh Case). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case, the Mewa Ram Kanojia case, the Grih Kalyan Kendra Workers' Union case and the S. C. Chandra case).

(iv) Persons holding the same rank/designation (in difference departments) but having dissimilar powers, duties and responsibilities can be placed in difference scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work' (see the Randhir Singh Case, State of Haryana Vs Haryana Civil Secretariat Personal Staff Association, and the Hukum Chand Gupta case). Therefore, the principle would not be auto invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case and the State Bank of India case). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also,

the level of responsibility. If these parameters are not met, party cannot be claimed under the principle of 'equal pay for equal work' (see – State of U.P. V J.P. Chaurasia, and the Grh Kalyan Kendra Workers' Union case).

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – the Orissa University of Agriculture & Technology case).

(vi) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as – 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (see – State of U.P. V J.P. Chaurasia).

(viii) If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case, and Government of W.B.

v Tarun K. Roy). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be difference, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see – Union of India v. Pradip Kumar Dey, and the Hukum Chand Gupta Case)

(x) A comparison between the subject post and the reference post, under the principle of equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see – the Barbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see – Official Liquidator v. Dayanand).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see – the State Bank of India case).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see – State of Haryana v. Haryana Civil Secretariat Personal Staff Association).

(xiii) The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay-scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties

and responsibilities (see – State of West Bengal v. West Bengal Minimum Wages Inspectors Association).

(xiv) For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see – Union Territory Administration , Chandigarh Vs. Manju Mathur).

(xv) There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see – the Hukum Chand Gupta case), when the duties are qualitatively dissimilar.

(xvi) The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation or on account of lack of promotional avenues (see – the Hukum Chand Gupta case).

(xvii) Where there is no comparison between one set of employees of one organization and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply (see – the S.C.Chandra case, and the National Aluminum Company Limited case).

43. We shall now venture to summarize the conclusions recorded by this Court, with reference to a claim of pay parity, raised by temporary employees (differently designated as work-charge, daily-wage, casual, ad-hoc, contractual, and the like), in the following two paragraphs.

44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the concerned temporary employees, was accepted by this Court, by applying the principle of 'equal pay for equal work', with reference to regular employees :-

(i) In the Dhirendra Chamoli case this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of Article 14 of the Constitution. It was held, that the action amount to exploitation – in a welfare state committed to a socialist pattern of society.

(ii) In the Surinder Singh case this Court held, that the right of equal wages claimed by temporary employees emerged, inter alia, from Article 39 of the Constitution. The principle of 'equal pay for equal work' was again applied, where the subject employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this Judgment, this Court also took note of the fact, that the above

proposition was affirmed by a Constitution Bench of this Court, in the D. S. Nakara case.

(iii) In the Bhagwan Dass case this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (-or had remained) engaged, would not make any difference. And therefore, whether the selection and appointment would make no difference. And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential, insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of 'equal pay for equal work' is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in

a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch case this Court held, that under principle flowing from Article 38(2) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such as act of an employer, would amount to exploitation. And further that, the same wold be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In State of Punjab V. Devinder Singh this Court held, that daily-wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the

concerned employees, were doing the same work as regular incumbents holding the same post, by applying the principle of 'equal pay for equal work'.

(vi) In the Secretary, State of Karnataka case, a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity – if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In State of Haryana v. Charanjit Singh, a three-judge bench of this Court held, that the decisions rendered by this Court in State of Haryana v. Jasmer Singh, State of Haryana v. Tilak Raj, the Orissa University of Agriculture & Technology case, and Government of W.B. v.

Tarun K. Roy, laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified.

(viii) In State of U.P. v. Putti Lal, based on decisions in several cases (wherein the principle of 'equal pay for equal work' had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but would not be entitled to any other allowances or increments.

(ix) In the Uttar Pradesh Land Development Corporation case this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this court directed the employer to pay the respondents wages, in the minimum of the pay-scale ascribed for the post of Assistant Engineer.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows , that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

(74) In the reference in hand, though the First Party has come forward with a contention that its members are contractual labour employed with the Second Party,

they have been claiming to be regularized, alleging that, the labour contractors are merely the Agents of the Principal Employer and have claimed at present, the application of the principle of equal pay for equal work, upheld by the Hon'ble Supreme Court. Therefore, the reference made before this Tribunal by the appropriate Government is tenable and this Tribunal has jurisdiction to entertain and try the industrial dispute under reference.

(75) In view of the foregoing discussion and in view of the observations in the cases referred in this order, it has to be held that, the Preliminary Points No.1 and 2 are required to be answered in the affirmative and are thus so answered.

(76) The application Exh.C-11 is allowed to the extent of framing of Preliminary Issues. The Preliminary Issues are answered in the affirmative, holding that, the reference made to this Tribunal is maintainable and this Tribunal has the jurisdiction to entertain and try the same.

(77) The parties to the Reference are directed to submit the rest of the proposed issues for framing of the Issues for being adjudicated by this Tribunal.

Place-Dhule

sd/-xxxx

Date: 31/01/2019

(S. E. BANGAR)
I/c. Presiding Officer,
Industrial Tribunal, Jalgaon

kad/-