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HIGH COURT ON EXISTENCE OF INDUSTRIAL DISPUTE

The Calcutta High Court (HC), in the *Indian Institute of Management, Calcutta* case,¹ held that an Industrial Tribunal (Tribunal) is the right forum to determine if Indian Institute of Management-Calcutta (IIM-C) was the principal employer. It further held that mere denial by IIM-C was not sufficient to preclude a reference under the Industrial Disputes Act, 1947 (ID Act). It ruled that an employer-employee relationship is a mixed question of law and fact, and must be adjudicated by the Tribunal.

A. Brief facts:

In September 2022, the student council of IIM-C had engaged mess contractors for food services in its campus. In October 2022, protests were held by various students that the mess contractor as serving stale and contaminated food due to which many had taken ill. In December 2022, the student council had entered into contracts with new mess contractors. The previous mess workers raised a dispute that they were not retrenched in accordance with the ID Act by IIM-C, whom the workers claimed was the principal employer.

The main issue was whether IIM-C, a statutory body, had an employer-employee relationship with the former mess workers, and what relief, if any, they were entitled to for their alleged retrenchment.

The Labour Commissioner, through order dated October, 18, 2023, made a reference that “*Whether the stand of the management of the Indian Institute of Management Calcutta (IIMC) that they do not have any employer-employee relationship with the contractual workers working for the contractor M/s Sanchari Caterers, Kolkata in the premises of IIMC, is legal and justified in the eye of law or not? If not, what relief the workers are entitled to for their retrenchment?*” and observed that there was no employer-employee relationship, hence, there was no industrial dispute.

Aggrieved, the present writ petition was filed in the HC.

B. HC’s Judgement & Analysis:

The HC observed:

- Relying on the *Cipla* case² (where the Supreme Court observed that “...in a case of the present nature where it is clear that the workmen are working under a contract. But it is only a veil and that will have to be lifted to establish the relationship between the parties. That exercise, we are afraid, can also be done by the industrial tribunal under the Bombay Industrial Relations Act, 1946 or under the Industrial Disputes Act”) held that the Industrial Tribunal would be

¹ *Indian Institute of Management, Calcutta vs Union of India and Ors*, WPA 28424 of 2024.

² *Cipla Ltd. vs Maharashtra General Kamgar Union & Ors.*, AIR 2001 SC 1165.

the appropriate forum to decide if there existed an employer and employee relationship between the employees.³

- Relying on the *Balwant Rai Saluja* case⁴ and observed that “an industrial dispute which arose between the Appellants-workmen herein of the statutory canteen and Respondent No. 1- herein. The said industrial dispute was referred by the Central Government, by its order dated 23.10.1996 to the Central Government Industrial Tribunal cum Labour Court (for short “the CGIT”). The question referred was whether the workmen as employed by Respondent No. 3-herein, to provide canteen services at the establishment of Respondent No. 1- herein, could be treated as deemed employees of the said Respondent No. 1.....”
- Relying on the cases including *Balwant Rai Saluja*⁵ and *Vividh Kamgar Sabha*⁶ observed that “this is clearly an industrial dispute and has to be decided by the appropriate forum under the [ID Act].”⁷

Accordingly, the HC dismissed the petition.

C. Comment.

The key takeaway from this judgment is whether or not an ‘industrial dispute’ exists between workmen including contract resources and the principal employer is mixed question of law and facts. As such, it is a matter to be decided only by the Industrial Tribunal and not by the High Court.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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³ Paragraph 20 of the Judgement.

⁴ *Balwant Rai Saluja & Anr. Etc. Etc vs Air India Ltd. & Ors.*, 2014 (9) SCC 407.

⁵ Ibid.

⁶ *Vividh Kamgar Sabha vs Kalyani Steels Ltd. & Anr.*, AIR 2001 SC 1534.

⁷ Paragraph 24 of the Judgement