

MHIC120006362018



IN THE COURT OF MEMBER, INDUSTRIAL COURT, PUNE.

Presided Over by Shri. S. M. Bukke

Application IT/376/2018

M/s ZF Steering Gear (India) Ltd.
1242/1244, Vadu Budruk, Tal. Shirur,
Dist. Pune 412 216

... Applicant

VERSUS

Kiran Shivaji Daphal
At post Bori, Tal. Indapur, Dist. Pune

... Opponent

Appearances :-

Advocate for the applicant	:	Shri. A. K. Gupte
Advocate for the opponent	:	Shri. S. A. More

ORDER BELOW EXH. U-9
(Delivered on - 03/01/2025)

1. This is an application on behalf of respondent to frame additional issue regarding the maintainability of application.
2. The respondent was employed with applicant company as Junior Engineer. He is workman within the definition under Section

2(s) of Industrial Disputes Act, 1947. The applicant company has terminated the services of respondent without following due process of law and without conducting fair and proper enquiry. Therefore, the termination of respondent is illegal. The applicant company in its pleading in para 2 of the application pleaded that the opponent does not fall within the definition of workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. The present application being submitted by way of abandoned caution and without prejudice to this contention. The applicant has made contrary pleadings in its application. The application is not maintainable. Therefore, the additional issue of maintainability needs to be framed.

3. The application is strongly objected by applicant company on the ground that the issue “whether the opponent is workman or not?” is agitated before the appropriate forum in Reference (IT) No. 35/2019. Therefore, this application is not maintainable. Considering the provisions of 33(2)(b) of the I.D. Act, 1947 and the judgment of the Hon’ble Supreme Court in case of John D’souza Vs. K.S.R.T.C., the present application may be rejected.

4. Heard Ld. Advocate Shri. Vaidya appearing on behalf of applicant as well as Ld. Advocate Shri. More appearing on behalf of opponent. Perused record.

5. The Hon’ble Supreme Court in case of John D’souza Vs. Karnataka State Road Transport Corporation (cited supra) emphasized that Section 33(2)(b) should not overlap with the

adjudication mechanism under Section 10(1)(c) and (d) nor should it be infringed upon the procedural safeguards intended to maintain industrial harmony. This case prevents the dilution of procedural safeguards and upholds the integrity of domestic enquiry process.

6. The ratio laid down in aforesaid cited case law is squarely applicable to case in hand, this Court cannot overstep the prescribed mandates and have to adhere to the material placed on record about the domestic enquiry conducted by the applicant. So far as the fairness of the domestic enquiry and existence of prima facie case this Court will deal with these issues on merit. To make out maintainability of the application is concerned, burden lies upon the applicant to prove same and that issue includes in issue No.1 – Whether the applicant proves the enquiry conducted against the opponent is legal? Therefore, in this complaint the additional issue of maintainability is not necessary. Moreover, the applicant pleaded in his application that the opponent is not workman as abandon precaution. The adjudication u/S. 10(1)(c) and (d) regarding maintainability as well as status of respondents will be decided in Reference (IT) No. 35/2019. This application devoid of merit deserves to be rejected. Hence, I pass following order :-

ORDER

- 1) Application Exh. U-9 is rejected.
- 2) No order as to costs.

Place :- Pune.

Date :- 03/01/2025.

(S.M. Bukke)
Member,
Industrial Court, Pune.