

**BEFORE THE JUDGE, LABOUR COURT-II, AT AURANGBAD**

( Presided over by Shri. S. S. Sahasrabudhe )

**Complaint (IT) No.04/2022**

**Order below Exh.C-9**

1. The respondent no.1 has filed this application for dismissal of complaint and interim application. It is submitted by the respondent no.1 that, during pendency of this complaint and application for interim relief a new Reference bearing no.89/2022 referred by Central Government for adjudication. The subject matter of instant complaint and the application for interim relief filed in Reference IDA No.89/2022 are having same subject matter i.e. change in service condition and whether there exists employer-employee relationship. The parties in present complaint as well as in Reference IDA No.89/2022 are same. Therefore, the present complaint and the application for interim relief is hit by the principles of resjudicata. Hence, the present complaint and the application for interim relief deserves to be dismissed.
2. Complainant has filed reply at Exh.U-8. It is submitted by the complainant that, he has not filed any litigation on instant cause before Competent Court. The allegation in respect of challenging termination order in Reference No.89/2022 has no substance. The respondent trying to prolong this proceeding by showing baseless and frivolous reasons. Therefore, the application is liable to be rejected.
3. Heard both sides.
4. Ld.Counsel for respondent submitted that, a Reference bearing no.113/2017 is pending before the Court. In the said case the issue regarding employer-employee relationship is already framed. Therefore, present complaint is not tenable. In support of his submission Ld.Counsel

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for respondent has relied on IDBI Bank Ltd. Vs. Bhartiya Kamgar Sena, reported in 2019 (160) FLR 519, wherein it was held that, “Unless there is adjudication in the question of employer-employee relationship no relief can be granted.”

5. On the other hand Ld.Counsel for complainant submitted that, by filing this application respondent no.1 has challenged the tenability of the complaint as well as interim relief application. However, respondent no.1 has failed to show as to how the proceeding and interim application hit by provisions of resjudicata. Hence, the application is liable to be rejected.
6. Following points are arises for my determination. Same are reproduced below along with my findings thereon :-

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Whether the complaint and application for interim relief is hit by the provisions of resjudicata?	In the negative
2	What order?	As per final order

### **REASONS**

#### **As to Points no.1 and 2 :-**

7. Respondent no.1 has contended that, appropriate Government i.e. Central Govt. has forwarded Reference bearing no.89/2022. The fact in issue of said reference as well as present complaint and interim relief application is same i.e. change in service conditions. So also whether there exists employer-employee relationship, therefore the present complaint as well as interim application is hit by the provisions of resjudicata. The respondent has filed copy of Referral order in Ref IDA No.89/2022. On perusal of said order it appears that, the said reference was referred for adjudication of dispute as follows :-

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*Whether employer-employee relationship exists between the Management of M/s.Indus Tower Ltd., and the worker namely Shri.Pandharinath Babarao Sarkate and 7 others? If yes, whether claim of Indus Mobile Tower Technical Karmachari Sanghatana vide letter dated 12.01.2022 that transfer of Shri.Pandharinath Babarao Sarkate and 7 others at Bhopal tantamounts to change in service condition by the management of M/s.Indus Tower Ltd., is proper, legal and justified? If yes, to what relief the disputant entitled and what directions, if any, are necessary in the matter?*

8. On perusal of present complaint and the interim application it appears that the complainant has pleaded that, the respondent no.1 was not entitled to change the service conditions of complainant. In spite of that he has made that attempt, therefore criminal prosecution is liable to be launched against the respondent. It is also alleged that the respondents have violated mandatory provisions of Section 33 and they have tried to change the service conditions of complainant without taking prior permission of this Court. Therefore, the respondents are liable to be prosecuted u/s.31, 32 of Industrial Disputes Act, 1947.
9. Admittedly, the appropriate Government while forwarding the reference bearing no.89/2022 has formulated the issue in respect of change in service condition of the complainant. Same is fact in issue in the present complaint. However, merely by that fact it cannot be said that the present complaint is barred by the provisions of resjudicata because if the said provision is taken into consideration, when it can be gathered that the resjudicata is defined in Section 11 as follows :-

*“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in former suit between the same parties or between parties under whom they are any of them claim, litigating under the same title, any Court*

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*competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”*

10. Admittedly, though fact in issue in both proceedings i.e. the issue in respect of change in service conditions as well as the issue of employer-employee relationship is raised, however same is not decided in previous proceeding as well as in the present complaint. Therefore, considering this fact the present complaint as well as the interim application is not hit by the provisions of resjudicata as defined in Section 11 of Civil Procedure Code. Therefore, I answer point no.1 in the negative and held that the complaint and interim application is not hit by the provisions of resjudicata and in answer to point no.2 I pass following order :-

**ORDER**

1. Application is rejected.

Aurangabad

( S. S. Sahasrabudhe)

Date :- 06/06/2023.

Presiding Officer, Labour Court-II, A'bad

**CERTIFICATE**

I affirm that the contents of this PDF file judgment/order are same, word to word, as per the original judgment/order.

Order dictated on : 06/06/2023

Order transcribed on : 06/06/2023

Order checked & signed on : 06/06/2023