

Circular No – 007/2025

Date: 07.01.2025

To
All Members of The Association

**THE LABOUR COURT SHOULD FIRST DECIDE
THE MAINTAINABILITY OF THE REFERENCE ITSELF**

1. The Government of Himachal Pradesh had referred the charter of demands raised by the Wipro Karmachari Sangh Baddi during the tenure of the settlement dated 25.01.2018, for adjudication before the Labour Court at Shimla. The terms of references were as under:

“Whether the demands raised by the Wipro Karmachari Sangh, Plot No.87/A, EPIP, Phase-I, Village Jharmajri, Tehsil Baddi, Distt. Solan, H.P. vide demands charter dated 06.08.2021 (copy enclosed) before the Occupier/Factory Manager, M/s. Wipro Enterprises Private Ltd, Plot No. 87/A, EPIP, Phase-I, Village Jharmajri, Tehsil Baddi, Distt Solan, H.P. in breach of settlement dated 25.01.2018 by the above Karmachari Sangh, which is binding and agreed upon by the parties and is in force for a period of 01.01.2018 to 31.12.2021(as alleged by the employer) without adhering the procedure laid down under section 19(2) of the Industrial Dispute Act, 1947, are maintainable, legal and justified? If yes, to what relief of past service benefits and other consequential service benefits the workers working with the employer are entitled to from the above employer? If not, what are its legal effects?.”

2. The management in its counter statement besides the submission that the demands are totally unjustified and untenable, raised the preliminary objection that the reference itself is not maintainable. The Labour Court may

first hear and decide the preliminary objection as to the maintainability of the reference.

3. After completion of the pleadings, the union submitted application for grant of interim relief. The management filed objection to the said application and filed a separate application for first deciding the maintainability of the reference itself. The Labour Court by its order dated 07.08.2024 rejected the application of the management.
4. Aggrieved by the said order, the management filed writ petition in CWP No. 11156/2024 before the Hon'ble High Court of Himachal Pradesh at Shimla. Hon'ble High Court after hearing both the parties disposed of the writ petition on 27.12.2024 with a clarification that the Labour Court would permit parties to lead evidence pertaining to the point /issue under reference i.e. maintainability of the reference itself.
5. The operative portion of the judgment reads as under:

"6 By way of filing application under Rule 14 Rule 2 Sub-Clause-2 CPC, an attempt came to be made at the behest of the petitioner to make a prayer before the court below to decide the issue of maintainability at the first instance, however, having perused terms of reference, this court is of the view that there is no requirement of deciding the issue of maintainability at the first instance, because otherwise also, Tribunal below in terms of reference is only required to see whether demand raised by the respondent to the petitioner is in breach of settlement dated 25.01.2018. It is only after adjudication of the aforesaid question, issue with regard to grant of ancillary relief, if any, can be considered /granted.

7 Consequently, in view of the above, present petition is disposed of with the clarification that Tribunal below would permit parties to lead evidence pertaining to point /issue under reference i.e.



maintainability of demand, which is alleged to be in violation of settlement dated 25.01.2018 and section 19(2) of the Industrial Disputes Act, 1947. All pending applications stand disposed of accordingly.”

6. The clarification issued by the Hon'ble High Court in fact upholds the contention of the management with a rider that evidence should be led by both the parties for deciding whether the reference is maintainable or not.
7. Copy of the judgment is enclosed.

For KARNATAKA EMPLOYERS' ASSOCIATION

**Sd/
[B C Prabhakar]
President**

2024:HHC:16374

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 11156 of 2024
Date of Decision: 27.12.2024

M/s Wipro Enterprises Private Ltd.

.....Petitioner

Versus

Wipro Karamchari Sangh Union/Group of Workers.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. K.D. Shreedhar, Senior Advocate with
Ms. Sneh Bhimta, Advocate.

For the respondent: Mr. V.D. Khidtta, Advocate.

Sandeep Sharma, J. *(Oral)*

Being aggrieved and dissatisfied with order dated 7.8.2024 (Annexure P-1), whereby an application under Order 14 Rule 2 Sub-Rule 2 of the CPC, thereby requesting the learned Labour Court to decide the question of maintainability at the first instance, came to be dismissed, petitioner has approached this Court in the instant proceedings filed Article 226 of the Constitution of India, praying therein to set aside aforesaid order.

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. K.D. Shreedhar, learned Senior counsel, duly assisted by Ms. Sneh Bhimta, Advocate, appearing for the petitioner is that Tribunal below while

passing impugned order did not appreciate the fact that even in terms of reference, question of maintainability was required to be adjudicated at the first instance.

3. Pursuant to notice issued in the instant proceedings, respondent has filed reply, wherein it is stated that reference made by the appropriate government under Section 10 (2) of the Industrial Disputes Act, is required to be decided in whole and not in part.

4. Mr. V.D. Khidta, learned counsel for the respondent while making this Court peruse reference made to the Labour Court, attempted to argue that otherwise only question framed by the appropriate government is with regard to maintainability of dispute inter-se petitioner and respondent and subsequent relief, if any, can only be granted once claim of the respondent is found to be maintainable.

5. Having heard learned counsel for the parties and perused the material available on record vis-à-vis reasoning assigned in the order impugned in the instant proceedings, this Court sees no reason to interfere with the same. Bare perusal of reference made by the appropriate government to the Tribunal below itself suggests that Tribunal below is required to adjudicate “*whether demands raised by respondent before petitioner in breach of the settlement dated 25.1.2018, are justifiable or not?*”

6. By way of filing application under Rule 14 Rule 2 Sub-Clause-2 CPC, an attempt came to be made at the behest of the petitioner to make a prayer before the court below to decide the issue of maintainability at the first instance, however, having perused terms of reference, this Court is of the view that there is no requirement of deciding the issue of maintainability at the first instance, because otherwise also, Tribunal below in terms of reference is only required to see whether demand raised by the respondent to the petitioner is in breach of settlement dated 25.1.2018. It is only after adjudication of the aforesaid question, issue with regard to grant of ancillary relief, if any, can be considered/granted.

7. Consequently, in view of the above, present petition is disposed of with the clarification that Tribunal below would permit parties to lead evidence pertaining to point/issue under reference i.e. maintainability of demand, which is alleged to be in violation of settlement dated 25.1.2018 and Section 19 (2) of the Industrial Disputes Act, 1947. All pending applications stand disposed of accordingly.

December 27, 2024

Manjit

**(Sandeep Sharma),
Judge**