
(2015) 04 DEL CK 0039
In the Delhi High Court
Case No : Writ Petition (C) 2960 of 2005

Brij Mohan

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(a)(i)

Citation : (2015) 146 FLR 644 : (2015) 2 LLJ 753 : (2015) LLR 575

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : Rajender Pathak, for the Appellant; Raavi Birbal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepa Sharma, J.

1. Vide the present writ petition, the petitioner has challenged the Award dated 22nd August, 2003 whereby the Labour Court has held that petitioner was not an employee of the management and that there existed no relationship of employer and employee between them and that the Delhi Government had no jurisdiction to send the reference because the appropriate Government, in relation to the respondent, was the Central Government. Thus, the reference had been answered against the petitioner. The brief facts of the case are as under:

2. The case of the workman was that he joined the management in 1981 as a casual labour to clean the gas cylinders and worked with the company upto the year 1985. He was retained in 1986 only for 50 days. From the period 1st July, 1986 to 10th January, 1987, he was shown as an employee of Daulat Ram Contractor. He had performed his duties for 50 days. He was again engaged w.e.f. 3rd August, 1989 and was shown as an employee of contractor Imran Khan. He had moved an application for regularisation on 23rd March, 1990 but instead of regularising him, his services were terminated w.e.f. 7th April, 1990.

3. The claim of the management, in their written statement, before the Labour Court was that the reference by the Delhi Government was bad because the management was dealing with the manufacture/production and distribution of Petroleum product and was wholly owned by Central Government. The Ministry of Labour and Rehabilitation (Deptt. of Labour) issued notification dated 21st May, 1984 declaring the Oil Industry as a controlled Industry under section 2(a)(i) of Industrial Dispute Act and in view of the said notification, the Central Government was the appropriate Government. The respondent had also denied the relationship of an employer and an employee between the parties.

4. After recording the evidences of both parties and on the basis of the arguments, the Labour Court had given its findings.

5. The workman has challenged those findings of the Labour Court on the ground that after the respondent had raised the objection in the written statement that the Central Government and not the Delhi Administration was the appropriate Government, the petitioner had approached the Central Government for reference of this matter to Central Government Industrial Tribunal but the same was rejected by the Central Government.

6. It is further contended that no evidence was brought on record before the Labour Court to prove that any notification No. S.O. 457E dated 21st June, 1984 was in operation on the date of termination of services of workman. It is further submitted that the respondent had violated the natural justice while terminating his services and had failed to produce original documents despite his request. On these contentions, it is prayed that the award be set aside.

7. It is submitted on behalf of the respondent that findings of the Labour Court are based on the evidences on record and does not suffer with any illegality.

8. Heard. Perused the relevant record.

9. In the present case, the preliminary issue raised by the respondent was whether the reference made by Delhi Administration in the present matter was maintainable or not in view of the fact that the appropriate Government in respect of the respondent is the Central Government. The petitioner, in his claim, has stressed the argument that he was the employee of the respondent. The Labour Court has clearly dealt with the issue. It has referred to the notification dated 21st June, 1984 which is reproduced as under:--

"S.O. 457(E) In pursuance of sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby specified for the purposes of that sub-clause, the Controlled Industry engaged in the Manufacture of production of mineral oil (Grade six) matter and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuel, lubricating oils and the like which has been declared as a controlled Industry under Section 2 of the Industries (Development and Regulation) Act 1951 (65 of 1951). This notification shall be in force for a period

of two years from the date of publication in the official Gazette."

and also Gazette notification dated 16th January, 2001 which is reproduced as under:-

"S.O. In pursuance of sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, 1947 (Act 14 of 1947), the Central Government hereby specifies for the purpose of that sub clause, the controlled Industry engaged in the Manufacturing production of Mineral oil (crude oil) matter and aviation spirit, diesel and kerosene oil and their blends including sympathetic fuel lubricating oil and like which in controlled by the Central Government under Section 2 of the Industries (Development of Regulation) Act, 1951 (Act 65 of 1951)."

and also relied on the judgment of this court dated 17th July, 1992 in the case titled Bharat Petroleum Corporation Ltd. v. Lt. Governor of Delhi and Ors.

10. In case CW 1343/87, Bharat Petroleum Corporation Ltd. v. Lt. Governor and Anr., the court has held as under:--

"Counsel for the parties are agreed that in view of the notification issued by the Central Government, the petroleum industries relating to liquid petroleum come under the Central Government and the Central Government would be the appropriate government for issuing orders to the Contract-Labour (Regulation and Abolition Act). In this case, the order has been passed by the Delhi Administration and, therefore, the same is without jurisdiction.

Accordingly, we quash the impugned notification dated 20th April, 1987 and the writ stands disposed of, with no order as to costs."

11. Bombay High Court also has taken the similar view in the case titled Bharat Petroleum Corporation v. Harun Jafer Sheikh and Sh. D.M. 2004 (6) Bom. CR 629 dated 25th August, 2004.

12. In view of these judgments, it is apparent that in the case of the respondent i.e. Bharat Petroleum Corporation Ltd., the appropriate Government is the Central Government. In the present case, the reference has been made by the Delhi Administration, the reference was therefore bad. Since the Central Government was the appropriate Government in this case, the Labour Court had no subject-matter jurisdiction. The Award therefore suffers with no illegality.

13. Learned counsel for the petitioner has also contended that pursuant to the objection of the respondent in their written statement they had raised dispute before the Central Government but vide its order dated 12th June, 1995, the Central Government had refused to refer the dispute on the following grounds:--

"It is reported that the matter is subjudice as a reference is pending as I.D. No. 5/92 before the Labour Court IV of Delhi Administration. Further, it is reported that workman was engaged through contractor M/s. Imran Khan, therefore no I.D. exists against the Management of M/s. B.P.C. Ltd."

14. The request has been made during the course of the arguments that the directions be issued to the Central Government for reviving the matter and to refer the dispute for adjudication to the CGIT. It is apparent that the reference was not refused merely on the ground that the matter was sub-judiced. The order clearly shows that the reference was refused because the workman was engaged through contractor M/s. Imran Khan, therefore no I.D. exists against the Management of M/s. B.P.C. Ltd. It is apparent that petitioner has not challenged the said order dated 12th June, 1995.

15. Since the Labour Court had no subject-matter jurisdiction to deal with the matter, its finding on the merit of the case which relates to the existence of the relationship of an employer and an employee between the petitioner and the respondent, is without jurisdiction. In view of the above, no ground to interfere with the award is made out. The petition has no merit and therefore the same is hereby dismissed with no order as to costs.