

(2003) 01 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ No. 5347 of 2001 and CM No. 9157 of 2001

Hindustan Zinc Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Citation : (2003) 4 AD 93 : (2004) 109 DLT 582 : (2003) 70 DRJ 604 : (2004) 101 FLR 655 : (2003) 3 LLJ 689 : (2004) 2 SLJ 504

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Aruneshwar Gupta and A.S. Bedi, for the Appellant; Manender Singh, Nishakant Pandey and D.C Vohra, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—RULE.

2. With the consent of the parties, the matter has been heard and disposed of by this order.

3. Respondent no.4 vide the letter dated 28.1.1995, was appointed on casual basis on a lump sum emoluments of Rs2570/- w.e.f. 1.2.1995. In terms of the letter of appointment, the appointment was initially for a period of one year subject to review of his performance periodically and consideration for appointment on regular scale subject to his performance. By a letter dated 12.4.1999, the petitioner informed respondent no.4 that his services were no more required with immediate effect. Along with the letter a pay order of Rs.11,273/- was enclosed allegedly in settlement of all the dues of respondent no.4 which included one month's notice pay, retrenchment compensation and salary up to the last working day. Respondent no.4 filed a petition in this Court challenging his termination and praying for quashing of the order and for regularisation of his services. By order dated 19.1.2000, the writ petition was dismissed as withdrawn with liberty to raise industrial dispute. Subsequent to the

dismissal of the writ petition, respondent no.4 made a representation to the Conciliation Officer and on receipt of the failure report, the dispute was referred by the Central Govt. for adjudication to the Central Government Industrial Tribunal cum Labour Court with the following terms of reference :-

Whether the action of the management of Addl. Executive Director (Mktg.) Hindustan Zinc Ltd., flat no.205-206, Dohil Chambers, 46, Nehru Place, New Delhi in stopping from services all of a sudden w.e.f 12.4.1999, Sh.Budhi Singh Bisht, daily wages worker working continuously w.e.f 10.2.1994 instead of making him regular in service, is justified, legal, valid and reasonable? If not, what benefits and relief he is entitled?

4. The reference is challenged by the petitioner on the ground that the termination of service was contra-distinguishable from 'stoppage of work'. It is submitted that the 'stoppage of work' sub silentio accepts continuity of service, the termination means 'no service' at all. The submission of learned counsel for the petitioner, Therefore, is that by making the reference as to whether the action of the management in stopping of respondent no.4 from service w.e.f 12.4.1999, instead of making him regular in service implies that respondent no.4 was continuing in service and he had been stopped from performing his duties whereas it was a case of 'termination of services' of respondent no.4 and not 'stoppage of work' to the said respondent.

5. Though, in my opinion, there is hardly any difference between stoppage of work" and 'termination of service' as both imply discontinuation of the services of employee by the management, however, with a view to avoid any technical objection at a later stage, I feel ends of justice will be met by directing that the Central Government Industrial Tribunal cum Labour Court while deciding the reference will keep in mind the fact that 'stopping the workman from service w.e.f. 12.4.1999' will also include 'termination of the services of the workman w.e.f. 12.4.1999' and deal with the issue as to whether the 'stopping the workman from service' and/or termination of the services of the workman" was justified, legal, valid and reasonable appropriately on merits.

6. Ordered accordingly.

7. Another argument not taken in the writ petition but now taken for the first time by learned counsel for the petitioner during arguments is that the Central Government has disinvested a large part of its shares in the petitioner company and thus the appropriate Government for making reference was the State Government and not the Central Government. In my view, this argument has only been noted to be rejected inasmuch as at the relevant time the appropriate Government was admittedly the Central Government and the reference having been made by the Central Government, there is no infirmity therein. Disinvestment of shares by the Central Government after the making of reference will have no bearing on the reference already made by it.

8. The petition, accordingly, stands disposed of. The Central Government

Industrial Tribunal-cum-Labour Court will proceed with the reference expeditiously and decide the same on merits keeping in view the observations made by this Court in this order.