

(2019) 02 DEL CK 0392

In the Delhi High Court

Case No : Civil Writ Petition No. 9691, 11227 Of 2016, 69, 1786, 4481, 4530, 4580, 4582, 4650, 5058, 5468 Of 2017, Civil Miscellaneous No. 38748, 43949 Of 2016, 431, 7903, 19574, 19787, 19980, 20011, 20222, 21722, 22982 Of 2017

IRCON International Ltd

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1)(d), 10(2A)(d)

Citation : (2019) 02 DEL CK 0392

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : A.P.Nagrath, Anish Kumar, Vikram Jetly, Mrinacini Sen, Ajay Digpaul, Ruchir Mishra, Bharathi Raju, Dev.P.Bhardwaj, Rajesh Kumar, Braham Singh, Rohit Vidhud

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The present batch of eleven writ petitions raise common issues with similar prayers and are, therefore, being decided by this common judgment.
2. For the sake of convenience, only the facts of W.P.(C)No. 9691/2016 are being referred to. Vide the present petition under Article 226/227 of the Constitution of India, the petitioner/Management impugns the reference order dated 20.07.2015 made by the respondent no.1/Union of India and the consequential order dated 27.07.2016 passed by the learned Labour Court in I.D.No.108/2015, whereby the petitioner's application seeking rejection of the aforesaid reference order was dismissed.
3. At the outset, the undisputed facts as emerge from the record may be noted. The petitioner, having been awarded an NTPC contract for railway siding

construction work at Dadri (U.P), appointed the respondent no.2/workman on 02.01.1989 as messenger on casual/ad-hoc basis. A notice dated 04.02.1998 was published by the petitioner for closure of the NTPC Dadri project w.e.f. 05.02.1998 on account of its completion, whereby the services of all the workmen employed in the said project were terminated. At the same time, the petitioner had also issued individual termination letters to the workmen.

4. Aggrieved by the notice dated 04.02.1998 terminating its service, the respondent no.2, alongwith 13 other similarly situated workmen approached the High Court of Judicature at Allahabad by way of W.P.(C)No.5448/1998. Although the Allahabad High Court, vide its order dated 13.02.1998 initially restrained the petitioner from terminating the workmen's services, this order was subsequently vacated on 14.09.1998, in view of the petitioner's stand that the workmen's termination was on account of the fact that the project for which they had been engaged, stood completed. Thereafter, the services of all the workmen, including that of the workman's/respondent no.2, were terminated.

5. The aforesaid writ petition remained pending before the Allahabad High Court for almost 15 years before it was dismissed vide order dated 26.04.2013 on the ground that alternate statutory remedy was available to the workmen under the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act). The workmen were accordingly granted liberty to approach the appropriate forum for their grievance.

6. Surprisingly, it is not the workmen who were aggrieved by this order of the Allahabad High Court, but the petitioner/Management which challenged the same by way of Special Appeal No. 633/2013 before the Division Bench. While this appeal of the petitioner was pending before the Division Bench, the respondent no.2 duly raised an industrial dispute before the Conciliation Officer.

7. Pursuantly, the petitioner's aforesaid appeal was taken up for consideration by the Division Bench on 17.04.2014 when the learned counsel for the respondent no.2 suggested that instead of directing the workman to approach the labour Court, the appeal may be disposed of in terms of the order passed by the High Court in Lal Mohammad & Ors.[W.P(C)No.32651/1993]. It is pertinent to note that Lal Mohammad was a similarly placed workman employed in a different project whose termination had been upheld by a Full Bench of the Allahabad High Court with a direction to the petitioner/Management to compensate Lal Mohammad/the workman in accordance with the ID Act with a further direction that, in case of a vacancy in the future, preference for appointment to the same be given to him. Therefore, the Division Bench of the Allahabad High Court, on the suggestion made by the learned counsel for the respondent no.2, disposed of the petitioner's appeal vide its order dated 17.04.2014 passed in terms of the final order in the case of Lal Mohammad (supra).

8. At this stage, it may also be appropriate to note that Lal Mohammad, being aggrieved by the order passed by the Full Bench of the Allahabad High Court in

W.P(C)No.32651/1993 had also approached the Supreme Court by way of a Special Leave Petition being Civil Appeal No.6195-6198/2004, which stood dismissed vide a detailed decision of the Supreme Court reported as 2007 (2) SCC 513.

9. After the disposal of the petitioner's aforesaid appeal by the Division Bench of the Allahabad High Court, the respondent no.2/workman had initiated contempt proceedings against the petitioner/Management by way of Civil Miscellaneous Contempt Petition No.866/2015 before the High Court on the ground that the Management had not implemented the order dated 17.04.2014 in its letter and spirit.

10. After the respondent no.2 had initiated contempt proceedings against the petitioner, the respondent no.1, before whom the industrial dispute involved was pending, made the impugned reference in the following terms:-

"NO - L-41012/17/2015 - IR(B-I)

Government of India/Bharat Sarkar

Ministry of Labour/Shram Mantralaya

New Delhi, Dated: 20/07/2015

ORDER

NO.L-41012/17/2015 (IR(B-I)): WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of IRCON International Ltd. and their workmen in respect of the matters specified in the Schedule hereto annexed;

AND WHEREAS the Central Government considers it desirable to refer the said dispute for adjudication;

NOW THEREFORE , in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Cent. Govt. Indus.Tribunal-cum-Labour Court No.2, New Delhi . The said Tribunal shall give its award within a period of three months.

The Schedule

" Whether the action of the management of Indian Railway Consturction Co.Ltd. District Centre, Saket in terminating the services of Sh. Sanjai S/o Sh. Kanhaiya Lai w.e.f 30.05.1998 is legal and justified? If not, what relief the workman is entitled to?"

signed

(Sumati Saklani)

Section Officer"

11. Upon receiving notice of the said reference, the petitioner appeared before the learned Labour Court and filed an application seeking rejection of the reference on the ground that the matter regarding termination of the respondent no.2/workman had already been adjudicated upon by a detailed order passed by the Division Bench of the Allahabad High Court and that too on terms suggested by the workman itself. However, the learned Labour Court vide its impugned order dated 27.07.2016, rejected the petitioner's application leading to the filing of the present petition by the management.

12. Impugning the reference order dated 20.07.2015 and the order dated 27.07.2016 passed by the learned Labour Court, Mr. A.P.Nagrath, learned counsel for the petitioner states that not only the respondent no.1, but the learned Labour Court has also failed to appreciate its stand that once the challenge to the respondent no.2's termination had attained finality by way of a judicial order and that too in the manner suggested by the workman himself, neither the Central Government nor the learned Labour Court had any jurisdiction to make a reference in that regard or to reconsider the said aspect of termination. He, therefore, prays that the impugned reference order as also the order dated 27.07.2016 be set aside.

13. On the other hand, Mr.Vikram Jetly, learned counsel for the respondent no.1/ Union of India supports the impugned orders by stating that the reference made by the respondent no.1 was on an aspect other than the termination of respondent no.2. He draws my attention to the counter affidavit filed by the respondent no.1 and states that the impugned reference relates to a dispute regarding compensation only and not to the termination, reinstatement or employment of the respondent no.2. He, therefore, states that the Central Government was fully justified in making the impugned reference.

14. Mr. Braham Singh, learned counsel for the respondent no.2, also supports the impugned reference on the ground that merely because the respondent no.2's counsel had made a wrong statement before the Allahabad High Court, the workman cannot be penalised for the same. He was, therefore, fully justified in raising the industrial dispute qua his termination, which according to him was wholly unsustainable in law. He further contends that the Central Government was fully justified in making a reference regarding the workman's termination. He, therefore, prays that the present writ petition be dismissed.

15. I have carefully considered the rival contentions of the learned counsel for the parties and with their assistance perused the record. In view of the undisputed facts noted hereinabove, it becomes evident that the workman had indeed challenged his termination before the Allahabad High Court but had, instead, been directed by the learned Single Judge to avail the alternate statutory remedy available to him under the ID Act. Subsequently in his appeal before the Division Bench, the workman suggested that his case be disposed of on the same terms as Lal Mohammad (supra), which suggestion was accepted by the Division Bench and the workman's Appeal was disposed of vide order dated

17.04.2014 in the aforesaid terms. What is interesting to note is that the workman had, thereafter, also preferred a contempt petition seeking implementation of the directions passed by the Division Bench. In these circumstances, the plea of the learned counsel for the respondent no.2 that a wrong statement had been made by the previous counsel of the petitioner before the Allahabad High Court seeking disposal in terms of the directions passed in Lal Mohammad (supra) ought to be outrightly rejected. It is difficult to fathom as to why the respondent no.2 preferred a contempt petition if he felt that the appeal had been wrongly disposed of on the basis of an erroneous statement made by his counsel. Evidently the respondent no.2's plea, that the disposal of the appeal in terms of the decision in the case of Lal Mohammad (supra) resulted from a wrong statement made by his counsel, is merely an afterthought and needs to be deprecated. The respondent no.2 having agreed, before the High Court, to adjudication of his grievance qua his termination as per the decision in Lal Mohammad (supra) cannot be permitted to turn around and claim a fresh adjudication upon the same, before the Labour Court.

16. Though Mr. Jetly, learned counsel for the respondent no.1/Union of India has tried to contend that the impugned reference relates only to grant of compensation, a bare perusal of the reference order dated 20.07.2015 in itself, shows that the same specifically relates only to the termination of respondent no.2 and does not even refer to any claim for compensation. The reference, as is evident, was only in respect of the respondent no.2's termination, challenge whereof already stood finally adjudicated by the Allahabad High Court. In my opinion, the Union of India could not have subsequently made any reference qua the respondent no.2's termination. Such a course of action is wholly impermissible and is hit by the doctrine of res-judicata.

17. For the aforesaid reasons, I have no hesitation in holding that the reference suffers from complete non-application of mind and is wholly unsustainable. Consequently the impugned order passed by the learned Labour Court, which is based on the very same reference order, is also unsustainable. The impugned reference order dated 20.07.2015 as also the order dated 27.07.2016 passed by the learned Labour Court are hereby quashed.

18. Since the learned counsel for the respondent no.2 has raised a grievance that the respondent no.2 has not even received the compensation payable to him, it is directed that the petitioner will be liable to pay balance compensation, if any, remaining payable to the respondent no.2 in terms of the aforesaid decision in Lal Mohammad (supra), alongwith with interest @ 10 % per annum within four weeks.

19. The writ petitions are allowed in the aforesaid terms, with no order as to costs.

C.M.No.38748/2016 in W.P.(C) 9691/2016 C.M.No.43949/2016 in W.P.(C) 11227/2016 C.M.No.431/2017 in W.P.(C) 69/2017 C.M.No.7903/2017 in W.P.

(C)1786/2017 C.M.No.19574/2017 in W.P.(C) 4481/2017 C.M.No.19787/2017 in W.P.(C) 4530/2017 C.M.No.19980/2017 in W.P.(C) 4580/2017 C.M.No.20011/2017 in W.P.(C) 4582/2017 C.M.No.20222/2017 in W.P.(C) 4650/2017 C.M.No.21722/2017 in W.P.(C) 5058/2017 C.M.No.22982/2017 in W.P.(C) 5468/2017

In view of the orders passed in the writ petitions, these applications are rendered infructuous and are dismissed.