

(1999) 08 DEL CK 0147
In the Delhi High Court
Case No : Civil Writ No. 4024 of 1997

Municipal Employees Union	Vs	APPELLANT
The Secretary (Labour) and Another		RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

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

Citation : (1999) 2 LLJ 1136

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Rajiv Aggarwal, for the Appellant; Subhash C. Sharma, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—This writ petition is filed against the order dated 11.7.1995 passed by respondent No. 1 refusing to make reference Of the dispute to the Labour Court for adjudication.

2. The facts of the case are brief and undisputed. One Shri Sansar Pal was working with respondent No. 2 namely Municipal Corporation of Delhi and he died while in service on 15.2.1993. His family consists of his old parents and one younger brother Badley Ram. After the death of Shri Sansar Pal, Shri Badle Ram requested MCD to give him appointment on compassionate ground and when no reply was received, the petitioner raised an industrial dispute by filing a statement of claim before the Conciliation Officer. Conciliation proceedings ended in failure. Thereafter respondent No. 1 namely Secretary (labour) Government of National Capital Territory of Delhi passed impugned order dated 11.7.1995 declining to refer the dispute for adjudication by giving the following reasons in the impugned order dated 11.7.1995:

"No case of appointment of Shri Badley Ram brother or Late Shri Sansar Pal on compassionate ground has been made out as Late Sh. Sansar Pal who was

working in M.C.D. as daily rated/casual/muster roll worker, admittedly, was an unmarried person."

3. The petitioner filed review petition against the aforesaid order dated 11.7.1995. When this review petition was still pending present petition was filed in September, 1997 challenging the impugned order declining to make reference. It appears that thereafter the respondent No. 1, decided the review petition also and dismissed the same vide order dated 18th March, 1998. Copy of this order is filed by respondent No. 1 Along with its counter affidavit. The relevant portion of this order is reproduced below:

"Shri Badley Ram, at no stage was the employee of the Management. He has never approached the Management seeking appointment on compassionate ground. Prima facie Therefore, the case of Shri Badley Ram is not covered u/s 2(k) of the I.D. Act. There is thus no merit in the review petition filed by the union against the order of the predecessor Secretary (Labour). The petition is, hereby dismissed."

4. Perusal of the order dated 11.7.1995 declining to make reference would show that reference was declined on the ground that Badley Ram could not make out a case of appointment on compassionate ground as his brother was working in MCD as daily casual/muster roll worker and was unmarried person. However perusal of the order dated 18th March, 1998 dismissing the review petition would show that the reason for rejection is that prima facie the case of Shri Badley Ram is not covered u/s 2(k) of the Industrial Disputes Act and is, Therefore, not an "industrial dispute."

5. In view of the aforesaid two reasons given by the respondent in rejecting the reference Mr. Rajiv Aggarwal Counsel for the petitioner has assailed the impugned order on both the grounds.

6. In so far as the ground for rejection given in order dated 11.7.1995 is concerned, it need not detain us for long as the appropriate Government could not decline to make reference on the ground mentioned in the impugned order dated 11.7.1995. My conclusion is based on the following reasons :

(a) The scheme of compassionate appointment which is circulated by the Government of India, Ministry of Personnel and Training circulated vide office memorandum dated 30th June, 1987 is admittedly applicable to MCD also. As per this scheme near relative of the deceased should also be considered for compassionate appointment. Shri Badley Ram is admittedly real brother of the deceased Sansar Pal and, Therefore, would be treated as near relative. The petitioner has also produced copy of the communication dated 3rd August, 1988 as Annexure-D to the writ petition as per which various facilities are extended to daily wages/muster roll employees and one of the facility extended to these categories of employees is "appointment of dependent of worker died in harness". Therefore, even if Shri Sansar Pal was daily wagger worker under the scheme of compassionate appointment, his dependent and near relative Sh.

Badley Ram could be considered for appointment.

7. The ground of rejection mentioned in the impugned order dated 11.7.1995 is, Therefore, untenable.

(b) Order dated 11.7.1995

warrants to be set aside also on the ground that by declining to make reference on the aforesaid ground the "appropriate Government" has really taken upon itself adjudicatory function which is not within the jurisdiction of respondent No. 1. Whether Shri Badley Ram is entitled to the appointment on compassionate ground or not is a matter to be examined by the labor/Industrial Tribunal which is the Adjudicatory Authority. There is no doubt that making or not making reference is administrative function and the Government may refuse to make reference on valid and relevant consideration but when reasons for refusing reference tantamount to adjudication the appropriate Government has no jurisdiction to refuse to make reference on such grounds as function of the appropriate Government is an administrative function and not judicial or quasi judicial function. Whether Sh. Badley Ram is covered by the scheme of appointment on compassionate ground and entitled for appointment on the basis of the said scheme or not is for the Labour Court to decide. Therefore on this ground also the impugned order dated 11.7.1995 warrants to be quashed.

8. Now I would deal with the reasons given by respondent No. 1 in its order dated 18th March, 1998. The relevant portion of this order, which is already reproduced above, again communicates two grounds.

(i) Shri Badley Ram at no stage was the employee of the management and, Therefore, there cannot be "industrial dispute" in respect of such person.

(ii) He did not approach the management for seeking appointment on compassionate ground before raising dispute.

9. So far as second ground mentioned above is concerned it is factually incorrect. The petitioner has clearly mentioned in the writ petition that demand notice dated 3.3.1993 was served demanding appointment of Shri Badley Ram on compassionate ground. This is specifically admitted by respondent No. 2 in its counter affidavit. Therefore, this reason given in the impugned order is incorrect.

10. The question to be determined is whether a dispute raised for seeking appointment of a person who is not employee would amount to "industrial dispute" within the meaning of Section 2(k) of the Industrial Disputes Act. This question came up for determination in this Court in Civil Writ No. 2840/97 in the case of Delhi Municipal Workers Union (Regd) v. Management of MCD and Ors. and it was held in the Judgment dated 26th November, 1998 that the definition of "industrial dispute" is wide enough to cover a dispute raised by the employer workmen in regard to non-employment of others who may not be his workmen at the material time. In fact it was also a case relating to appointment on compassionate basis of the person whose relative had died in harness while in

the employment of the MCD. The relevant portion of the said Judgment is quoted below:

"6. The expression "Industrial dispute" is defined in Section 2(k) of the Industrial Disputes Act which is extracted below:

(k) "Industrial dispute" means any dispute or difference between employers and employees or between employers and workman or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person:

From the above definition of "industrial dispute," it is clear that even a dispute between an employer and his workmen which is connected with the non-employment of any person can be an industrial dispute. The beneficiary of the claim need not be a workman of the employer at the time of raising the dispute. A dispute can be raised by the workmen of the employer even in respect of the non-employment of any person who is not his workman at the material time. In the judgment in *Kaya Construction Company (Pvt.) Ltd. v. Its Workman* reported in AIR 1959 SC 208, the Hon"ble Supreme Court has pointed out that it is well settled that a dispute which validly gives rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly between an employer and his workmen and that the definition of the expression " industrial dispute" is wide enough to cover a dispute raised by the employer's workmen in regard to the non-employment of others who may not be his workmen at the material time.

7. In this case the dispute referred for adjudication was between the management of the Municipal Corporation of Delhi and its workmen represented by the Delhi Municipal Workers Union. In paragraph 16 of the writ petition, it is specifically stated that industrial dispute was raised by petitioner No. 1, Delhi Municipal Workers Union. In paragraph 18 of the writ petition it is stated that the statement of claim was filed before the Industrial Tribunal by petitioner No. 1. Those statements have not been disputed in the counter affidavit filed on behalf of the first respondent in this case. In Annexure G. order issued by the Government of NCT of Delhi u/s 10(1)(d) and 12(5) of the Industrial Disputes Act. It is stated that the Secretary (Labour) Government of NCT of Delhi is satisfied that an Industrial dispute in respect of the matters specified in the schedule exists between the management of M/s Municipal Corporation of Delhi through its Commissioner and its workmen as represented by Delhi Municipal Workers Union. Hence it is clear that the dispute was raised by the Delhi Municipal Workers Union which represents the workmen of the Municipal Corporation of Delhi. However, it would appear that the learned Industrial Tribunal lost sight of the fact that the dispute was raised by the Delhi Municipal Workers Union representing the Workmen of the Municipal Corporation of Delhi and that the dispute was connected with the non employment of Shri Jai Singh. The learned Tribunal proceeded on the wrong assumption that the dispute was between the MCD and Shri Jai Singh. Possibly the learned Tribunal was misled by the words "Shri Jai Singh son of Shri Bali, deceased workman," shown within

brackets after the word "workmen", in Annexure G order. The learned Tribunal might have also been misled by Annexure I statement of claim filed by the General Secretary of petitioner No. 1 trade union before the Industrial Tribunal in which the dispute was described as a dispute between the management of MCD through its Commissioner and its claimant Shri Jai Singh S/o late Shri Bali. Baldur through Delhi Municipal Workers Union. The learned Industrial Tribunal failed to note that the dispute referred for adjudication was raised by the Workmen of MCD represented by Delhi Municipal Workers Union and not by Shri Jai Singh, of course the dispute was connected with the non-employment of Shri Jai Singh son of deceased Bali and the Union was competent to raise such an Industrial dispute. It may also be observed that according to the petitioner the right of dependants of workman for appointment on compassionate grounds in cases where workman die in harness is part of the terms of employment or conditions of labour. Hence the dispute in this case may be stated to be connected with the terms of employment or with the conditions of labour of late Bali who was a Baldar in the. MCD."

11. In view of this position in law even the reasons given in the impugned order dated 18th March, 1998 appears to be perverse.

12. For the aforesaid reasons, the decision of respondent No. 1 in declining to make reference warrants to be set aside. This writ petition is accordingly allowed and the impugned order dated 11.7.1995 declining to make reference as well as order dated 18th March, 1998 rejecting the review petition of the petitioner against the dated 11.7.1995 are hereby set aside. After setting aside the aforesaid orders the normal course would be to send the case back to respondent No. 1 and consider the matter afresh in making the reference. However as much time has elapsed it would be more appropriate to direct respondent No. 1 to refer the dispute itself for adjudication. Such course is adopted by Hon'ble the Supreme Court in various recent decisions by issuing mandamus and directing the Government to make reference of dispute within a stipulated period. It would be suffice to make reference to the case of Tilak Chand Magatram Obhan Vs. Kamala Prasad Shukla and Others, .

Accordingly direction is issued to respondent No. 1 to make reference of the dispute for adjudication within a period of 8 weeks from the date of receipt of copy of this Judgment. Writ petition stands allowed with no order as to costs.