

(2003) 04 DEL CK 0064
In the Delhi High Court
Case No : C.W.P. No. 2197 of 1999

Municipal Employee's Union	Vs	APPELLANT
The Secretary (Labour), GNCTD and Another		RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Citation : (2003) 5 AD 460 : (2003) 106 DLT 47 : (2003) 71 DRJ 737 : (2004) 1 SLJ 192

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Sanjoy Ghosh, for the Appellant; V.K. Diwan, Vandana Miglani for Respondent No. 1 and Subhash C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule.

2. With the consent of the parties the matter is taken up for hearing.

3. The issue involved in the present writ petition relates to interpretation of Section 2(k) of the Industrial Disputes Act, which reads as under:-

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context, --

.....

(k) "industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, 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 persons;

4. In the present case, the petitioner union is espousing the cause of Raju son of the deceased workman Karan Singh who was employed with respondent No. 2, who had sought and been denied such compassionate appointment and the writ

petition arises from the order dated 7th July, 1997 passed by the Secretary (Labour), which reads as under:-

"ORDER

In the matter of dispute between the management of M/s. Municipal Corporation of Delhi through its Commissioner, Town Hall, Chandni Chowk, Delhi-6 and Shri Raju S/o deceased workman Shri Karan Singh as represented by Municipal Employee's Union, Aggarwal Bhawan, G.T. Road, Tis Hazari, Delhi - 110 054.

All the documents filed and submissions of the parties and the report of the conciliation officer have been perused and it is found that this is not a fit case for reference to the Industrial Tribunal or Labour Court, Delhi for adjudication for the reasons given below:-

"Admittedly Shri Raju S/o Late Shri Karan Singh has never been in the employment of M.C.D. and is Therefore, not a workman u/s 2(s) of the I.D. Act, 1947."

As required under the provisions of sub-section (5) of section 12 of the Industrial Disputes Act, 1947 a copy of this order be sent to the parties concerned.

-sd-

(A. S. AWASTHI)

SECRETARY (LABOUR)

GOVT. OF THE NATIONAL

CAPITAL TERRITORY OF DELHI

No. F.24(2661)/97 - Lab./20106 -10 Dated: 7/7/97"

5. Learned counsel for the petitioner submits that the above order proceeds contrary to law laid down by the learned Single Judge of this Court in Municipal Employee's Union vs. The Secretary (Labour), Govt. of N.C.T. Of Delhi & Anr." reported as 1999 LLR 1020 Delhi High Court, and in particular paragraph 9 thereof. The said paragraph 9 reads as under:-

"(9) 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 & Others 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 workmen, 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 persons.

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 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."

6. Relying upon the above judgment, the learned counsel has contended that the order of Secretary (Labour), declining the reference is unsustainable. Counsel for respondent No. 1 Shri V.K. Diwan and Mr. Sharma appearing on behalf of MCD have contended that the position of law in respect of issue arising in the said petition is covered by the judgment of Hon'ble Supreme Court as 2001 7 AD (S.C.)365 in *Bongaigaon Refinery & Petro Chemicals Ltd. vs. Samijuddin Ahmed*. The relevant portion of the law relied upon by the respondent is in paragraph 7 which reads as under:-

"7. The learned counsel for the respondent relied on *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, to submit that in view of Section 2(k) of I.D. Act a dispute raised by "any person" even if not a "workman" *stricto sensu* is competent. But we are not impressed. In the abovenoted case `any appointed on probation and it was doubtful whether he was a workman or not. The case did not relate to a person never employed and yet claiming to be workman. It was held that "any person" cannot be read without limitation and a person in respect of which the employer-employee relationship never existed and can never possibly exist cannot be the subject matter of dispute between employers and workmen. The present case does not satisfy the tests laid down vide para 21 of the decision cited so as to warrant the validity of reference being upheld."

7. Learned counsel for the petitioner in seeking to distinguish the reliance of Dimakuchi's judgment (*supra*) by the counsel for the respondents 1 & 2 has

contended that the phrase in paragraph 9 relied upon by the learned counsel for respondent No. 1 Mr. V.K. Diwan to the effect that the employer-employee relationship can never possibly exist cannot be lost sight of. He has submitted that according to him, the position of law is settled in paragraphs (9 & 21 of the Dimakuchi's Judgment (supra) which are reproduced as follows:

"(9) A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject matter of dispute must relate to (i) employment or non-employment or (ii) terms of employment or conditions of labour of any persons; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation never existed or can never possibly exist cannot be the subject matter of a dispute between employers and workmen. Secondly, the definition clause must be read in the context of the subject matter and scheme of the Act, and

x x x x x

x x x x x x

21) the expression "any person" in S. 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour" (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest."

8. He has stated that point (2) above in paragraph 21 above, it is clearly stated that the person regarding whom the dispute is raised must be one in whose employment, non-employment or conditions of labour, the parties to the dispute have a direct or substantial interest. He has submitted that the use of the phrase "non-employment" mentioned in the said sub-para 2 concludes the issue in favor of the petitioner. He has further submitted that the petitioner's case cannot fall within the scope of the phrase "can never possibly be said to exist". He states that the Dimakuchi's decision (supra) is by 3 Hon'ble Judges and consequently the position of law laid down by 3 Hon'ble Judges applies to the facts of the present case rather than the position of law laid down by 2 Hon'ble

Judges in Bongaigaon's case (supra). He has also relied upon the observation that strictly speaking a person raising the dispute need not be a workman within the meaning of the Act.

9. The learned counsel for the petitioner further states that the judgment of Dimakuchi was passed by three Hon''ble Judges and it appears that the impact of relevant paragraphs of the earlier judgment was not brought to the notice of the 2 Hon''ble Judges delivering the later judgment in Bongaigaon Refinery & PetroChemical Ltd. (supra).

10. In my view it is not for this Court to consider whether the interpretation put on an earlier judgment of the Hon''ble Supreme Court by a latter judgment is correct or not. This Court is fully bound by the interpretation given by the Hon''ble Supreme court in Bongaigaon Refinery's case (supra) of the position of law laid down in Dimkuchi's case (supra) and it is not open for this Court to consider whether the position of paragraph 21 of Dimakuchi's case (supra) and the phrase `non-employment' in Section 2(k) was not noticed by the latter judgment of the Supreme Court in Bongaigaon Refinery's case (supra). I am fully bound by the interpretation given by the Bongaigaon's judgment (supra) to the effect of Dimakuchi's judgment (supra). Accordingly the writ petition fails and is dismissed. In the circumstances of the case, there will be no order as to costs.