
(2005) 02 DEL CK 0162
In the Delhi High Court
Case No : Writ Petition (C) 1809 of 2004

Prem Kumar

APPELLANT

Vs

Secy. (Labour), GOI, M/O Labour and Another

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Citation : (2005) 117 DLT 712 : (2005) 105 FLR 816 : (2005) 2 LLJ 443 :
(2006) 1 SLJ 199

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : M.N. Singh, for the Appellant; Manoj Chatterjee, for respondent No. 2/CSIR, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—As per the Registrar's Order dated 12th April, 2004, respondent No.1/UOI has been duly served and no one appears for it. There is no representation on behalf of the respondent No.1/UOI in Court today.

2. Rule. With the consent of the counsel for the parties, the writ petition is taken up today for final hearing.

3. This writ petition challenges the Order dated 16th July, 2002(Annexure-A at Page 15 of the writ petition), declining to refer the industrial dispute raised in respect of the petitioner for adjudication. The petitioner claims that he had worked for about three years from 1st July, 1997 as a Helper on daily wages basis against the permanent perennial nature of work with the respondent No.2. The respondent No.1 is the Union of India through the Secretary, Ministry of Labour, Government of India, Shram Shakti Bhawan, New Delhi(in short the 'UOI'), who has the authority to make the reference of the industrial dispute raised by the aggrieved workman u/s 10 of the Industrial Disputes Act, 1947 (in short the 'Act') and whose Desk Officer has passed the Order dated 16th July, 2002 impugned in this writ petition. The respondent No.2 is the Council for

Scientific & Industrial Research, through its Joint Secretary (Admn.), Anusandhan Bhawan, New Delhi(hereinafter referred to as the `CSIR"), the employer of the petitioner though no relief is claimed against it.

4. The facts of the case in brief are:-

That on 1st July, 1997, the petitioner had been employed as a Helper on daily wages basis with CSIR in its Human Resource Development Group at New Delhi. The petitioner thereafter continued to work with CSIR without any break to the satisfaction of his employer till the date of his termination of services, i.e., on 29th September, 2000. It is the petitioner's case that his services were terminated on 29th September, 2000 by the CSIR without assigning any reason thereof and without following the procedure prescribed by the provisions of Section 25F, 25G, 25H of the ID Act. It has also been averred that thereafter the CSIR made fresh appointments to the post of Helper. Thereafter on 3rd November, 2000 the petitioner filed a statement of claim(Annexure-B at Pages 16-19 of the petition) along with documents before the Conciliation Officer. On 24th January, 2001, the CSIR filed a reply before the Conciliation Officer stating that the petitioner was not its employee as there was no relationship of employer-employee as he was employed by the CSIR through a contractor. On 16th March, 2001, the petitioner filed a rejoinder, reiterating his claim. On 12th October, 2001, the Conciliation Officer filed a failure of the conciliation report as no settlement could be arrived at between the parties. It is the petitioner's contention that despite of elapse of more than a year the dispute raised by him was not referred to adjudication by the UOI and accordingly he moved an application dated 11th June, 2002(Annexure-E at Pages 29-30 of the petition) to the UOI, requesting them to refer his case for adjudication to a competent Labour Court/Tribunal. Pursuant to the petitioner's said application, on 16th July, 2002, the UOI through its Desk Officer passed the impugned order declining to refer the dispute for adjudication which reads:-

"No.1-42012/214/2001-IR(CM-II)

Government of India/Bharat Sarkar

Ministry of Labour/Shram Mantralaya

New Delhi, Dated : 16/07/2002

To,

1 The Head (H.R.D.),

Council for Scientific Research

& Ind. Research

2 Shri Prem Kumar,

S/o Sh. Dilbagh Singh, C/o Sh. M.N. Singh,

X/1837, Park Marg, Rajgarh Colony,

Delhi-110031

Sub : I.D. between the management of CSIR and their workman, Sh. Prem Kumar over the matter of termination of his services.

Sir,

I am directed to refer to the Failure of Conciliation Report No.ALC-1/8(41)/2000 dated 12/10/2001 from the ALC(Delhi) received in this Ministry on 16/10/2001 on the above mentioned subject and to say that, prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons:

"It is reported that the workman was appointed by the contractor who was awarded with some work."

Yours faithfully

Sd/-

(N.P. KESAVAN)

DESK OFFICER"

5. According to the petitioner the aforesaid impugned order is untenable in law and accordingly deserves to be quashed by this Court in view of the well settled position of law laid down in Ram Avtar Sharma and Others Vs. State of Haryana and Another, & Telco Convoy Drivers Mazdoor Sangh Vs State of Bihar reported as 1989 SCC 465. The petitioner/workman again made the representations dated 12th September, 2002 and 12th May, 2003(Annexure-F & H at Pages 31-35 and Pages 37-38 of the petition respectively) to the respondent No.1 to reconsider the impugned order and cited all the aforesaid judgments of the Hon"ble Supreme Court as well as this Court. Accordingly the UOI through issued another Order dated 16th January, 2004 informing him that the authority has decided not to vary its earlier decision. The said order reads:

"No.1-42012/214/2001-IR(C-II)

Government of India

New Delhi, Dated : 16/1/2004

To,

Shri Prem Kumar,

C/o Shri Manvendra Nath Singh, Advocate

X/1837, Park Marg, Rajgarh Colony,

Delhi-110031

Sub : I.D. between the management of CSIR and their workman, Sh. Prem

Kumar over termination of his services.

Sir,

I am directed to refer to your letter dated 12.5.2003 for reviewing the decision taken by this Ministry on the above subject and to say that the matter has been examined and there is no change in the decision taken by the Ministry vide letter dated 16.7.2002.

Yours faithfully

Sd/-

(N.P. KESAVAN)

DESK OFFICER"

6. It is regrettable that in spite of several judgments of the Hon'ble Supreme Court in Sharad Kumar Vs. Govt. of NCT of Delhi and Others, ; Telco Convoy Drivers Mazdoor Sangh's case (supra); Rav Avtar Sharma's case (supra); M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, : Shambu Nath Goyal Vs. Bank of Baroda, & Bombay Union of Journalists and Others Vs. The State of Bombay and Another, as well as the judgments rendered by this Court in General Secretary, Delhi Mazdoor Sangh & Another Vs Management of M/s. Indian Airlines & Anr., reported as 1999 LLR 406; Civil Writ Petition No.5326/2001 entitled Hotel Workers Union & Another Vs Govt. of NCT of Delhi & Others, delivered on 24th July, 2003 and Civil Writ Petition No.2795/2002 entitled Shri Khushi Ram Vs Union of India & Another, delivered on 27th January, 2005 u/s 10(1) of the Act the Ministry of Labour continues to labour under misapprehension that it is a judicial tribunal and keeps on recording findings on merits while rejecting the orders of reference.

6(a). In para 31 of the Sharad Kumar's case (supra) the Hon'ble Supreme Court has held as under:-

"31. Testing the case in hand on the touchstone of the principles laid down in the decided cases, we have no hesitation to hold that the High Court was clearly in error in confirming the order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the respondent i.e. Area Sales Executive. As noted earlier determination of this question depends on the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him. We do not find that the State Government or even the High Court has made any attempt to go into the different types of duties discharged by the appellant with a view to ascertain whether he came within the meaning of Section 2(s) of the Act. The State Government, as noted earlier, merely considered the designation of the post held by him, which is extraneous to the matters relevant for the purpose. From the appointment order dated 21-4-1983/22-4-1983 in which are enumerated certain duties which the appellant may be required to discharge it

cannot be held there from that he did not come within the first portion of Section 2(s) of the Act. We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."

6(b) In *Telco Convoy Drivers Mazdoor Sangh's* case (supra), the Hon'ble Supreme Court has held as follows:-

"Though in considering the question of making a reference u/s 10(1), the government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", but it is not entitled to adjudicate the dispute itself on merits. While exercising power u/s 10(1) of the Act the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function. In performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act."

6(c) In the aforesaid judgment in *Telco Convoy Drivers Mazdoor Sangh* and another Vs. *State of Bihar and others* (supra), the Hon'ble Supreme Court also held as follows:-

"In several instances this Court had to direct the government to make a reference u/s 10(1) when the government had declined to make such a reference and this Court was of the view that such a reference should have been made. See *Sankari Cement Alai Thozhilalar Munnetra Sangam V. Government of Tamil Nadu* ; *Ram Avtar Sharma V. State of Haryana*; *MP. Irrigation Karamchari Sangh V. State of M.P.*; *Nirmal Singh V. State of Punjab*."

7. Mr. Chatterjee, the learned counsel, appearing for the CSIR without disputing the aforesaid position of law, submits that the Order dated 16th July, 2002 has been passed on the basis that in the April, 1997, the CSIR has entered into an agreement with a contractor, namely, M/s National Placement Services, New Delhi for supply of manpower to the CSIR for undertaking certain jobs. However, no relief is claimed by the petitioner against the respondent No.2 and the main party is respondent No.1 who is not appearing in spite of the service. However, these pleas relate to the merits of the matter and cannot have any bearing on the question of making of a reference.

8. Whatever be the strength of the respondent No.2's pleas, it was not for the respondent No.1/UOI through Under Secretary to usurp the function conferred

on Industrial Tribunal. In the aforesaid cited decisions, the Hon''ble Supreme Court clearly discussed the position of law and it is well settled that it is not for a referral authority to delve into the merits of the matter which function is exclusively within the domain of the Industrial Tribunal.

9. In this view of the matter, the impugned Order dated 16th July, 2002 cannot be sustained and is accordingly set aside, directing the respondent No.1/Union of India, Ministry of Labour, through its Under Secretary, Shram Shakti Bhawan, New Delhi to make a reference of the dispute as sought by the petitioner preferably on or before 31st March, 2005 as per the decision in Telco Convoy's case(supra) since the reference was sought in 2000 and almost a period of 5 years has since elapsed. Since the respondent No.1 has acted directly in contravention of several binding judgments and has chosen not even to appear in Court in spite of service, costs of Rs.10,000/- are payable to the petitioner, through counsel on or before 31st March, 2005 by respondent No.1.

10. The writ petition stands allowed and disposed of accordingly.