
(2016) 08 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8793 of 2014

Ram Swaroop Bhati

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2017) 152 FLR 914 : (2017) LIC 2009 : (2016) 2 WLCRajUC 478

Hon'ble Judges : Mr. Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. N.S. Rajpurohit, Advocate, for the Petitioner; Mr. D.P. Dhaka, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Sandeep Mehta, J.— Heard learned counsel for the parties. Perused the material available on record.

2. By way of the instant writ petition, the petitioner has approached this Court being aggrieved of the order dated 20.4.2011 (Annex.4) whereby, the Central Government rejected the application submitted by the petitioner for referring his labour dispute to the competent Labour Court for adjudication under the provisions of Industrial Disputes Act, 1947 (for short, "the Act of 1947").

3. The petitioner claims to be a workman engaged in the respondent Akashwani. His services were allegedly terminated by the employer without following the procedure prescribed under the Act of 1947. He raised a dispute before the Labour Officer. However, the conciliation proceedings failed upon which, the petitioner submitted an application to the Central Government for referring his dispute to the concerned Labour Court. The application so submitted was rejected by the competent officer of the Central Government by order Annex.4 dated 20.4.2011 assigning the following reason :-

"The applicant was selected in the panel of the Programme Comparer on payment basis and was not employed on regular basis. Further he also failed to prove that he was on the role of the management. Hence, the question of termination of service does not arise."

4. Being aggrieved by the above action, the petitioner has approached this Court by way of the instant writ petition.

5. Mr. Rajpurohit, learned counsel for the petitioner, while relying upon the judgment of the Bombay High Court in the case of Satish v. Union of India & Ors. reported in 2010 LLR 474, urges that the Central Government does not have any adjudicatory power when considering the matter for reference of the dispute to the Industrial Tribunal upon an application filed by workman under the Industrial Disputes Act. He contends that while passing the impugned order, the competent authority has virtually decided the fate of the petitioner's claim on merits. He urges that the impugned order is grossly illegal as being contrary to the letter and spirit of Section 10 of the Act of 1947 and thus, deserves to be quashed and set aside.

6. Per contra, Mr. Dhaka, learned counsel appearing for the respondents, vehemently opposes the submissions raised by the petitioner's counsel. He urges that the status of the petitioner with All India Radio was not as an employee on regular basis. He was not on the roll of the management and, therefore, there was no question of termination of his services by the A.I.R. and consequently, there was no reason to refer the dispute raised by the petitioner to the Industrial Tribunal.

7. I have considered the arguments advanced at the Bar and perused the material available on record.

8. Sub-Section (1) of Section 10 of the Act of 1947, in context where to, the reference was sought, is quoted here under for the sake of ready reference:-

"10. Reference of disputes to Boards, Courts or Tribunals.-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,--

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

9. Thus, it is evident that the only consideration which is required at the end of the Central Government while deciding the application for reference to the Tribunal is to find out whether any industrial dispute exists or is apprehended. Exceptions are provided in the subsequent clauses of the Section. However, nowhere in the entire set up in the provision, discretion is given to the Government to decide the merits of the workman's claim. Examining the merits of the claim is entirely the domain of the Tribunal concerned. The issue was considered in extenso by the Hon'ble Bombay High Court in the above referred judgment. The Court examined the validity of an order similar in nature to the one assailed in the instant writ petition and quashed the same. The order refusing to make the reference Annex.4 is on its face, of such a nature that it tantamounts to usurping the powers of the Tribunal to decide upon reference being made. Consequently, the same being totally contrary to law cannot be sustained.

10. As an upshot of the above discussion, the writ petition deserves to be and is hereby allowed. The impugned order Annex.4 dated 20.4.2011 is quashed and set aside. The competent authority of the Central Government is directed to refer the petitioner's industrial dispute to the competent Labour Court for adjudication under the provisions of the Act of 1947. The consequential action in terms of the above direction shall be taken within a period of three months from today.

11. No order as to costs.