
(2016) 02 CAL CK 0092
In the Calcutta High Court
Case No : W.P. No. 2108 of 2005

Shivnanda Singh

APPELLANT

Vs

Standard Chartered Bank and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, Section 10(1), Section 12(4), Section 12(5)

Citation : (2016) 1 CLR 1023 : (2016) 149 FLR 663 : (2016) LabLR 1097 : (2016) LabLR 643 : (2016) LIC 4216 : (2016) 3 LLN 80

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Soumya Majumder, Advocate, for the Appellant; P.S. Sengupta, Asit Kr. De and Atish D. Roy, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Debangsu Basak, J.—1. The petitioner claiming himself to be a driver employed by the first respondent had made a request for a reference to the Tribunal on his retrenchment contending the same to have given rise to an industrial dispute. This request has been turned down by the impugned order.

2. According to the petitioner, he was appointed by the first respondent as a driver with effect from 1998 at a monthly salary of Rs. 3,500/-. He was drawing salary from the first respondent. He was not issued any formal appointment letter by the first respondent. His services was terminated on October 19, 2002 illegally. In support of the contention that he was employed by the first respondent and was its employee, the petitioner relies upon various vouchers of the first respondent approving payment to him and the fact that the first respondent is the owner of the vehicle which he drove.

3. It is contended on behalf of the petitioner that, by the impugned writing dated September 12, 2003 the Government has decided the issue as to the existence of worker-employer relationship between the petitioner and the first respondent.

The Government has no jurisdiction to do so. Reliance is placed on , All India Reporter 1989 Supreme Court page 1565 (Telco Convoy Drivers Mazdoor Sangh & Anr. v. State of Bihar & Ors.) and , All India Reporter 1978 Supreme Court page 481 (The Employers in relation to Punjab National Bank v. Ghulam Dastagir) in this regard.

4. On behalf of the first respondent, it is contended that, the authorities have rightly rejected the request for reference as a worker-employer relationship did not exist between the parties. Relying on , 1964 Volume 1 Labour Law Journal page 351 : All India Reporter 1964 Supreme Court page 1617 (Bombay Union of Journalists & Ors. v. State of Bombay & Anr.), , All India Reporter 1976 Supreme Court page 1474 (Prem Kakar v. State of Haryana & Anr.), , 1996 Volume 2 Supreme Court Cases page 66 (Sultan Singh v. State of Haryana & Anr.) and , 2000 Volume 3 Supreme Court Cases page 93 (Secretary, Indian Tea Association v. Ajit Kumar Barat & Ors.) it is submitted that, the authorities will have to determine, at the prima facie level that there existed a workman-employer relationship between the contesting parties and that it was necessary for industrial peace and harmony to refer such disputes. In the present case, the materials produced before the authorities did not establish an employer-employee relationship. The authorities have, therefore, rightly rejected the request.

5. The issue falling for consideration is whether the refusal of the authorities impugned here is bad in law or not.

6. The petitioner had worked as a driver from 1998 till October 19, 2002 in respect of a vehicle bearing No. WB-02J-5366. The vehicle was owned by the first respondent during this relevant period of time. His services was terminated with effect from October 19, 2002 without any retrenchment compensation and reason. According to the petitioner, these facts coupled with the claim that he had received his salary from the first respondent were sufficient for the authorities to make a reference. The authorities in refusing to refer on the ground that, the disputes have no merit as he was the personal driver with no direct relationship is in fact tantamount to deciding the issue and is without jurisdiction.

7. In Ghulam Dastagir (supra) the Court on consideration of the facts before it has set aside the conclusion of the Central Government Industrial Tribunal that the workman was a driver employed by the bank. A personal driver of an Area Manager of a nationalized bank was held not to be a person employed by the bank.

8. In Telco Convoy Drivers Mazdoor Sangh & Anr. (supra) it has been held that, the Government while considering whether a reference should be made or not, cannot delve into the merits of the dispute and determine the lis itself. It has noted that, there can be cases in which the State Government, on a proper examination of the demand, come to a conclusion that the demands are either

perverse or frivolous to make a reference. In the facts of such case, the Deputy Labour Commissioner had rejected the request for a reference in view of the opinion of the law department to the effect that, there was no relationship of master and servant between TELCO and the convoy drivers and, therefore, the demands of the convoy drivers did not come within the purview of the Act. This decision of the Government had been considered to be a decision on the lis itself.

9. In *Bombay Union of Journalists & Ors.* (supra) the Supreme Court has held that, the appropriate Government could go into the merits of the dispute in order to see whether a prima facie case has been made out for reference or not. If the claim made is patently frivolous or is clearly belated, the appropriate Government may refuse to make a reference. A prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under Section 10(1) of the Industrial Disputes Act, 1947. Moreover, in deciding a writ directed against an order made by the appropriate Government under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the appropriate Government.

10. In *Prem Kakar* (supra) it has been held that, where the State Government on receipt of the report of the Conciliation Officer referred to in Section 12(4) of the Industrial Disputes Act, 1947 has found that, the petitioner is not a workman within the meaning of the Act of 1947 and, therefore, is not a fit case for reference of the adjudication, the State should not be asked by a writ of mandamus to make a reference under Section 10(1) of the Act of 1947.

11. In *Sultan Singh* (supra) it has been held that, the appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of a material on record.

12. In *Ajit Kumar Barat & Ors.* (supra) the Court has held that, before making a reference under Section 10 of the Act of 1947, the appropriate Government has to form an opinion whether the employee concerned was a workman and consider as to whether an industrial dispute existed or was apprehended. In that case, the request for making a reference was initially refused by the appropriate Government. The Writ Court had allowed the reference to be made. The order was upheld by the Division Bench. The Supreme Court, however, rejected the request for reference.

13. The appropriate Government while considering an application under Section 10 of the Act of 1947 is required to examine the request to find out whether the same is perverse or frivolous. It has to evaluate the request to find out whether a prima facie case for reference has been made out or not. While evaluating the request, the appropriate Government has to consider the materials made available to it to find out whether an employer-worker relationship had existed

prior to the act complained of and whether act complained of would jeopardize the industrial peace and harmony unless redressed. Consequently, it has to make a prima facie examination of the merits of the claim. It cannot, however, make a final finding or determine the lis between the parties. It has no jurisdiction to do so.

14. An order under Section 10 of the Act of 1947 is justiciable before a Writ Court. A Writ Court, however, is not called upon to look into the impugned order as an Appeal Court. It need not reappraise the evidence before the appropriate Government to evaluate the sufficiency of the reasons given. However, if the reasons are perverse or no reasons are given, the Writ Court may interfere.

15. In the present case, the request for reference has been rejected. The reason given by the appropriate Government for rejection is that the applicant was the personal driver of the head of the corporate banking of the bank and hence the petitioner did not have a direct relationship with the bank. The reasons attributed are plausible on the basis of the materials produced before the appropriate Government. The reasons have not been demonstrated to be perverse.

16. I do not find any merit in the writ petition. W.P. No. 2108 of 2005 is dismissed, however, without any order as to costs.