

(2009) 08 DEL CK 0057

In the Delhi High Court

Case No : Writ Petition (C.) No. 717 of 2007

Shri Sureshanand

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2009) 08 DEL CK 0057

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Deepali Gupta, for the Appellant; None for Respondent No. 1 and R.S. Mathur, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The petitioner had made a claim before the Conciliation Officer alleging that he was illegally terminated by respondent No. 2 bank after he had worked with the bank for 15-16 years. The notice of the petitioner's claim was sent by the Conciliation Officer to respondent No. 2 bank and since no conciliation could take place between the parties, the Conciliation Officer submitted failure report dated 24.06.2005 to the appropriate Government. On receipt of the failure report from the Conciliation Officer, the Government vide impugned order dated 31.10.2005 (at page 16 of the paper book) declined to refer the dispute raised by the petitioner for his reinstatement for adjudication of the Labour Court for the following reasons:

The disputant failed to establish a valid claim against the bank management to the effect that he was engaged for a period of not less than 240 days in any 12 calendar months preceding his alleged termination from service. In the circumstances, the dispute does not exist under the Industrial Disputes Act, 1947.

2. Ms. Deepali Gupta learned Counsel appearing on behalf of the petitioner has argued that the impugned order passed by the Government declining to refer the

dispute for adjudication to the Labour Court is adjudicatory in nature. Her contention is that the Government could not have taken upon itself the task of deciding whether the petitioner had worked for 240 days in the year preceding the date of his alleged termination or not. Ms. Gupta learned Counsel appearing on behalf of the petitioner submits that in view of stand taken by respondent No. 2 bank before the Conciliation Officer denying the relationship of employer and employee between the parties, it was incumbent upon the Government to have referred the dispute for decision to the Central Government Industrial Tribunal-cum-Labour Court so that both the parties could be heard on the stand taken by respondent No. 2 in opposition to the claim of the petitioner regarding relationship of employer and employee between them. Learned Counsel appearing on behalf of the petitioner therefore submits that the impugned order declining to refer the dispute passed by the Government should be set aside by this Court and the Government may be asked to consider to refer the dispute for adjudication to the CGIT.

3. On the other hand, Mr. R.S. Mathur learned Counsel appearing on behalf of respondent No. 2 has relied upon a recent judgment of this Court dated 06.07.2009 in W.P.(C) No. 9526/2009 titled Vritra Kumar v. Central Bank of India and Ors. Mr. Mathur contends that under identical circumstances, this Court has already upheld the order of the Government declining to refer the dispute for adjudication to the Labour Court. Mr. Mathur has further contended that there is no infirmity in the impugned order of the Government declining to refer the dispute for adjudication to the Labour Court because the petitioner was never employed by respondent No. 2 bank and for that reason, the conciliation before the Conciliation Officer had failed. The submission of Mr. Mathur is that it was within the realm of the appropriate Government to examine the relationship of employer and employee between the parties in order to satisfy itself whether there exist dispute between them or not which require adjudication by the Labour Court.

4. I have given my thoughtful consideration to the rival arguments advanced by learned Counsel for the parties. I have also gone through my own judgment in Vritra Kumar's case (Supra) on which reliance has been placed by Mr. Mathur appearing on behalf of respondent No. 2 bank. In my opinion, reliance on Vritra Kumar's case placed by Mr. Mathur is wholly misconceived. This judgment has no application to the facts of the present case. In Vritra Kumar's case the reference was declined by the Government because it had become stale dispute as the workman had approached the Conciliation Officer after more than 13 years of his alleged termination whereas in the present case, the petitioner being the workman had approached the Conciliation Officer aggrieved by his alleged termination promptly. I also do not find any merit in the argument of learned Counsel appearing on behalf of respondent No. 2 that it was within the realm of the appropriate Government to go into the question of relationship of employer and employee between the parties because decision on such a question is certainly adjudicatory in nature. As and when a dispute regarding termination is

raised by the workman before the Government, what the Government has to see u/s 10(1) of the Industrial Disputes Act, 1947 is whether there exists a dispute between the parties which require adjudication by the Labour Court or industrial tribunal. A perusal of the impugned order would show that the Government had declined to refer the dispute raised by the petitioner for adjudication to the Labour Court on the ground that he had not completed 240 days in the year preceding to the year of his termination. This reason given by the Government declining the reference, in my opinion, is adjudicatory in nature and is beyond the competence of the appropriate Government. I am of the considered opinion that the appropriate Government in this case has exceeded its jurisdiction in expressing an opinion on a question of fact whether the petitioner had completed 240 days of service or not. This could not have been a ground for declining the reference of dispute for adjudication to the Labour Court. I have no hesitation in holding that the impugned order of reference suffers from perversity and therefore cannot be sustained in law.

5. For the foregoing reasons, the impugned order dated 31.10.2005 passed by the Central Government declining to refer the dispute for adjudication to the Labour Court is hereby set aside. This writ petition is allowed. The appropriate authority in the Central Government is hereby directed to reconsider referring of dispute raised by the petitioner for adjudication to the concerned Labour Court as per law.