

(2016) 06 JH CK 0101
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5925 of 2014

Sri K.N. Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JLJR 258

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. Rajiv Sinha, ASGI, for the Respondent/Union of India; M/s M.K. Laik, Senior Advocate and Mahua Palit, Advocate, for the Petitioner; M/s V.K. Dubey and Indrajit Sinha, Advocates, for the Respondent-BCCL

Final Decision : Allowed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and learned counsels for the respondents.

2. The petitioner is the Vice-President of the registered Trade Union and had taken up the issue of a workman, viz, Uttam Kumar Saha, who is said to be working under the management of Bhowra Colliery of M/s. Bharat Coking Coal Limited. An industrial dispute was raised for alleged denial to regularise the service of said Uttam Kumar Saha and after conciliation, the matter was referred to the appropriate Government by letter dated 14.8.2014 by the Assistant Labour Commissioner (Central) Dhanbad-III, which is contained as Annexure-2 to the writ application. By letter dated 25.9.2014, as contained in Annexure-3, appropriate Government has refused to make the reference before the Industrial Tribunal/Labour Court, stating that the petitioner was never authorised by the management, to work as Attendance Clerk (R.C.) and the service of the workman was not entitled to be regularised, as the union had failed to produce any documentary evidence to support the claim.

3. Learned counsel for the petitioner has placed reliance upon a decision of the Supreme Court of India in *Telco Convoy Drivers Mazdoor Sangh and another v. State of Bihar & Ors.*, reported in AIR 1989 SC 1565, wherein, in similar circumstance, the order of appropriate Government refusing to refer the dispute on the ground that the person raising the dispute was not the workman, was set aside and the appropriate Government was directed to make reference. Learned counsel has submitted that in similar circumstance, several orders have been passed by this Court relying upon the decision of the Apex Court, as mentioned above.

4. Learned counsel for the Union of India, as also learned counsel for the BCCL have pointed out from Annexure-2, which is the letter dated 14.8.2014 that the matter was taken up by the Assistant Labour Commissioner (Central), Dhanbad-III on several dates, but on the last date, the Union did not represent the case of the workman and the matter was seized in conciliation. Learned counsels accordingly, submitted that there is no illegality in the order dated 15.9.2014 refusing the reference of the Industrial Tribunal.

5. The letter issued by the Assistant Labour Commissioner (Central) Dhanbad-III, as relied upon by the learned counsel for the respondents, contained in Annexure-2 to the writ petition, clearly shows that the industrial dispute was seized in conciliation and the matter was referred to the appropriate Government, i.e., Government of India, Ministry of Labour & Employment, New Delhi, stating inter alia that the conciliation proceeding has ended in failure. The appropriate Government took the decision that the service of the concerned workman was not entitled to be regularized, as the Union had failed to produce any documentary evidence to substantiate the claim. The letter clearly shows that the appropriate Government had practically adjudicated the industrial dispute itself on merits, holding in effect that the concerned workman was never engaged by the management. In my considered view, this is the issue involved in the case, which can be decided only on the basis of evidence, by the Industrial Tribunal/Labour Court. The case of the petitioner is fully covered by the decision of the Apex Court in *Telco Convoy Drivers Mazdoor Sangh's* case (supra).

6. Accordingly, the impugned order dated 25.9.2014 passed by the appropriate Government as contained in Annexure-3 is hereby quashed and the respondents are directed to make the reference of the industrial dispute in accordance with law.

7. This writ application is accordingly, allowed with the directions as above.