
(2017) 01 JH CK 0107
In the Jharkhand High Court
Case No : W.P. (L) No. 969 of 2015

Their Workmen Union

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

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

Citation : (2017) 2 AIRJharR 813 : (2017) 2 CLR 190 : (2017) 152 FLR 863 :
(2017) 152 FLR 1075 : (2017) 2 JCR 286 : (2017) LabLR 557 : (2017) 1 LLJ 673

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Sarvendra Kumar, Advocate, for the Petitioner; Mrs. Bibha Bakshi, Sr. P.C, for the Respondent - UOI; Mr. Indrajit Sinha, Advocate, for the Respondent - BCCL

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.— Heard counsel for the petitioner, Union of India and BCCL.

2. The Ministry of Labour, Government of India by the impugned communication at Annexure-6 dated 16.07.2014, has rejected the application for reference of a dispute raised by the petitioner Union for adjudication on account of the following reasons.

"The demand of Rashtriya Colliery Mazdoor Congress, Dhanbad for regularization of Services to S/Sh. Dhirendra Kumar Yadav & 47 others in the Gopalichak Colliery of BCCL cannot be acceded as they never worked under the direct control of the Management of BCCL from 1988-1990. Moreover, the Union failed to produce any documentary evidence like appointment letter, pay Slip, I. D. Card and FORM-B register etc. in support of their claim that they had worked under the direct control of the Management."

3. Petitioner Union by representation dated 31.10.2012 to the Assistant Labour Commissioner (Central), Dhanbad sought reference of the dispute relating to illegal and arbitrary denial of regularization of Dhirendra Kumar Yadav and others alleging that they have been working as Shramik Sahyog Samity Cooperative Workers in Gopalichak Colliery of M/s BCCL between the period 1988 to 1991. Their names and designation with their attendance were said to be enclosed with the representation raising their claim of regularization in service on the plea that they were performing permanent nature of job under the direct control and supervision of the Management of Dugdha Colliery under BCCL.

4. The Management objected to the plea before the Conciliation Officer, Dhanbad vide Annexure-4 dated 03.04.2013. On failure of conciliation thereafter, a report was submitted to the Ministry of Labour. The request for reference of an industrial dispute has been declined by the impugned order on account of the reasons quoted herein-above.

5. The Respondent BCCL has through its counter affidavit, also categorically denied any relationship of employer and employee with the Member of the petitioner Union for the period 1988-90. It has also taken the plea that Union has failed to produce any document before the Conciliator or before this Court. The dispute, if any, is more than 25 years old which has rightly been refused by the Appropriate Government.

6. Respondent Union of India has also defended its decision through counter affidavit filed on 16.02.2016 and thereafter by way of supplementary counter affidavit filed today with copy to the other side served yesterday. It has supported its stand on the grounds that the petitioner Union failed to produce any documentary evidence like appointment letter, pay slip, I.D. Card, form-B register, etc in support of its claim that they had worked under the direct control of the Management. No prima facie case was made out for making reference of the dispute raised by the petitioner for adjudication. In the supplementary counter affidavit again, the Respondent Union of India has stated that the document enclosed as Annexure-A was not even a document of the Management of Gopalichak Colliery of M/s BCCL, but it was the document purportedly signed by the Agent of Gopalichak Colliery, which appears to be a fabricated one.

7. No other documents have been furnished by the petitioner in the present writ application as well to substantiate its contention. Counsel for the petitioner has however relied upon the judgment rendered by the Apex Court in the case of *Sarva Shramik Sangh v. Indian Oil Corporation Ltd. & Ors.* [AIR 2009 Supreme Court 2355] and in the case of *Telco Convoy Drivers Sangh and another v. State of Bihar and others* [AIR 1989 Supreme Court 1565] in support of its contention that Union of India would not have acted in the manner of an adjudicatory forum to refuse reference of the dispute. If prima facie the petitioner Union had been able to make out a case for reference of industrial dispute, the Respondent Union of India should not have gone into the merits of the dispute and rejected the application on the grounds taken in the impugned order.

8. Counsel for the Respondent BCCL has also referred to the Judgment rendered by the Apex Court in the case of Secretary, Indian Tea Association v. Ajit Kumar Barat and others [(2000) 3 SCC 93] to support the contention that formation of prima facie opinion about the existence of a dispute on the basis of materials adduced before the referring authority is sine qua non. The plea of the petitioner for seeking reference has also been opposed on the ground of being stale having been raised after 22 years from the date the alleged cause of action had arisen.

9. I have considered the submissions of the parties and gone through the relevant materials on record including the impugned order as also the judgment cited by the parties. The principle of law on the subject relating to the power of Appropriate Government to make a reference of industrial dispute for adjudication before the Labour Court, is well settled by catena of judgments also referred to in the judgment rendered by the Apex Court in the case of Sarva Shramik Sangh (Supra) relied upon by the petitioner themselves. It is true that Government exercising administrative functioning while making reference, cannot go into the merits of the dispute. The provisions of Section 10 of Industrial Disputes Act which confers discretionary power on the Appropriate Government to make a reference entails a prima facie satisfaction of the Government of the existence of an industrial dispute or that it is apprehended. Formation of such an opinion as to the factual existence of industrial dispute is a preliminary subject for discharge of such function.

10. In the present case, neither before the Conciliatory Authority / Referring Authority, nor before this Court, petitioner has been able to produce any material whatsoever even in the namesake to substantiate its plea of existence of a relationship with the Management of BCCL for the period 1988 to 1991 when its Members claimed to have worked in the Gopalichak Colliery. The subjective satisfaction of the Referring Authority could not have been derived in absence of any such foundational material at all to make such a reference. The reasons reflected in the impugned order are also substantiated by their stand in the counter affidavit. Petitioner has not been able to make a dent in the aforesaid stand of the Respondents. Therefore, on scrutiny of the order impugned under powers of judicial review, the decision cannot be said to suffer from any illegality, irrationality or perversity or that they are based on any irrelevant consideration. Judgments relied upon by the petitioner in such circumstances, do not support their case. Accordingly, the writ petition is dismissed as being devoid of any merit.