

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.1117/2008**

% **Date of decision : 12.02.2008**

AIIMS Petitioner

Through: Mr.Mukul Gupta, Advocate.

Versus

Sh.Satpal Singh & Ors Respondents

Through: Mr.Vikas Chopra, Advocate for
the respondent/UOI.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may | YES |
| be allowed to see the judgment? | |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported | NO |
| in the Digest? | |

ANIL KUMAR, J. (Oral)

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1. The petitioner has impugned the order dated 10th May, 2006 of the Labor Court declining to treat the issue whether the management is an industry or not as a preliminary issue after the workman had already filed his evidence on affidavit.

2. The petitioner contended before the Labor Court that a writ petition CW(Civil) No.896/1999 is pending before the High Court where the point involved is also whether the All India Institute of Medical Sciences is an industry or not.

3. The Labor Court has noted that there is no order of the High Court staying the proceedings in the case and since the case is still at the stage of workman's evidence there was no reason not to proceed with the matter at that stage. Since the workman had already filed his evidence by way of affidavit on all the issues, therefore, whether AIIMS is an industry or not has not been treated as a preliminary issue as whether AIIMS is an industry or not is not solely a question of law but also a question of fact.

4. The learned counsel for the petitioner has contended that in the claim petition nothing has been stated by the workman whether AIIMS is an industry or not. This cannot be disputed that a reference has been made by the concerned Government and pursuant to which claim has been filed by the respondent. If the claim has already been filed by the respondent pursuant to a reference, it is for the respondent to allege and prove that All India Institute of Medical Sciences is not an industry which cannot be decided merely on the basis of averments made by the petitioner.

5. The learned counsel for the petitioner has relied on AIR 1984 SC 516, Workmen of M/s.Hindustan Lever Ltd Vs. Management of M/s.Hindustan Lever Ltd and (2001) 9 SCC 713, State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar to contend that the issue of jurisdiction ought to have been treated as a preliminary issue and the

burden lies on the person claiming the establishment to be an industry.

6. In Workmen of M/s.Hindustan Lever Ltd (Supra) relied on by the petitioner, the Apex Court had held that adjudication of issues are of two types. One which are referred by the Government for adjudication and set out in the order of reference and the other issues which are incidental issues which are sometimes the issues of law or issues of mixed law and fact. The Apex Court has not laid down that the question whether the management is an industry or not has to be treated as a preliminary issue. It has been held that it is the discretion of the Tribunal to treat a particular issue as preliminary issue and generally the question of laws which do not require any evidence are taken as preliminary issues.

7. In the present case the evidence of the workman on affidavit has already been filed and whether All India Institute of Medical Sciences is an industry is not a pure question of law and will depend on various facts pertaining to All India Institute of Medical Sciences also. If an issue is based on mixed question of law and facts, it is not necessary to first decide the question of jurisdiction which is a mixed question of fact and law as a preliminary issue and thereafter decide other issues. In the circumstances, the order of the Labor Court not treating the issue pertaining to All India Institute of Medical

Sciences/management being an industry or not, does not suffer from any such manifest error which requires correction in exercise of jurisdiction under Article 226 of the Constitution of India. In totality of facts and circumstances there are no grounds to exercise jurisdiction under Article 226 of Constitution of India against the order dated 26th July, 2006 declining to treat the issue whether All India Institute of Medical Sciences is an industry or not as a preliminary issue.

8. The writ petition is also filed by the petitioner almost after one and a half year after the order declining to treat the issue whether the AIIMS is an industry was passed. The learned counsel for the petitioner is unable to give any cogent reason or sufficient cause for filing the writ petition almost after one and a half year after the order impugned by the respondent was passed.

9. The writ petition is, therefore, without any merit and it is, therefore, dismissed.

February 12th, 2008
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ANIL KUMAR, J.