

IN THE HIGH COURT OF DELHI AT NEW DELHI

L.P.A. No.171 of 2007 & CM.No.3279/2007

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L.P.A. No.172 of 2007 & CM.No.3283/2007

DATE OF HEARING: 28.04.2008

DATE OF DECISION : .05.2008

IN THE MATTER OF :

Hira Singh

.....

Appellant.

Thru. Mr.Ashok Gurnani with Mr.Rajan Roy
and Mr.Rahul Pandey,Advocates.

- Versus -

Management M/s.Hotel Samrat & Ors.

.....

Respondents.

Thru. Mr.Amit Seth,Advocate.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR.JUSTICE J.R.MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Both these Letters Patent Appeals are filed by same person, namely, Hira Singh who was a workman employed with Hotel Samrat (hereinafter referred to as the 'Management'). Since he was employed as Cook on daily wage basis, dispute

regarding his regularization was raised which was referred to the Labour Court for adjudication. The Labour Court, as would be noted, gave partial relief to the appellant (hereinafter referred to as the 'workman'). The Management filed writ petition challenging that Award. The workman was also not satisfied with the partial relief and, therefore, he also filed a writ petition challenging the same Award. Both these writ petitions arising out of the same Award have been decided by a common judgment dated January 4, 2007 rendered by a learned Single Judge of this Court holding the Award of the Tribunal as perverse. The same is set-aside by the impugned judgment thereby allowing the writ petition of the Management and dismissing that of the workman. It is the reason that two Letters Patent Appeals are filed against the said common judgment by the workman which were taken up and heard together by us. It is but natural to deal with both these appeals in this judgment.

2. With the aforesaid background, we now proceed to narrate the essential facts which led to the raising of industrial dispute and the issues that arose for consideration.
3. As per the version of the workman, he along with one other person Sapan Vishwas was engaged as Cook by the Management on daily wage basis w.e.f. 25.9.1985. They were performing the same duties as other regular cooks but were not being paid equal wages and other benefits which were payable to

regular employees. Both Sapan Vishwas and workman made representations to the management for their regularization and payment of salary as payable to the regular employees. When their demand was not conceded by the Management, they raised industrial dispute. Conciliation proceedings failed and appropriate Government referred the matter for adjudication to the Labour Court with the following terms of reference:

“Whether the workmen Hira Singh and Sapan Vishwas are entitled for regularization and if so, what directions are necessary in this regard?”

4. The Management contested the claim on various pleas. In respect of Sapan Vishwas it was stated that he was not reporting for duty since 24.12.1989 without any intimation and that he had abandoned the job and thus the terms of reference in his respect were not proper. We may note at this stage itself that his claim was rejected by the Labour Court on the ground that he neither signed the claim nor he was joining the duties with the Management. Therefore, insofar as Sapan Vishwas is concerned, nothing further is required to be stated, more so when we are not concerned with his dispute.
5. Insofar as the workman herein is concerned, the Management had also taken the plea that dispute as raised by the workman was not proper for want of valid espousal. Right to seek regularization by the workman was also

challenged on the plea that he was appointed temporarily on the management getting a contract of catering from Indian Airlines. It was stated that as and when the contract comes to an end the services of workman and other similarly placed persons would not be required and, therefore, there is no question of regularization. Following issues were framed by the Labour Court on the basis of pleadings:

1. Whether the cause of the workmen has been properly espoused?
2. Whether Sh.Swapan Vishwas, workman is absent from duty from 19.12.1989, as alleged in WS?
3. As per the terms of reference.

6. Issue No.1 was decided in favour of the Management holding that there was no proper espousal. Notwithstanding this finding the Labour Court proceeded with the issue of regularization of the workman and held that since he was working continuously in the bakery section of the management and not in the catering section and since it was a job of permanent nature he was entitled to equal pay as payable to other regular employees. Thus, in the impugned Award dated 17.7.2001, direction was given to treat the workman as regular employee w.e.f. 25.9.1986 and to pay him wages as payable to regular employees. The penultimate para of the Award containing these directions read as under:

“In view of my above findings, though technically, proper espousal of the cause of workman is not established, yet even otherwise the workman Sh. Hira Singh is found entitled for the relief claimed. This workman cannot be caused incalculable and irreparable injury for a technical reason when otherwise he has a good case and his claim is established. Therefore, in order to answer the query in reference, the workman Sh. Hira Singh is only entitled to be regularized and Sh. Swapan Vishwas is not entitled for regularization. The Management is directed to treat the workman Hira Singh a regular employee w.e.f. 25.9.86 and pay him difference of the arrears of wages to the extent of the amount in excess paid to the regular employees of his grade every month. This award is accordingly passed. Appropriate government be informed. File be consigned to record room.”

7. Obviously, the Management felt aggrieved by the said Award directing regularization and payment of salary of regular employee and challenging the Award, it filed Writ Petition No.6682/2002. On the other hand the grievance of the workman against this Award was limited to aspect of espousal decided by the Labour Court as his submission was that there was a proper espousal of the industrial dispute and, therefore, challenging that para of the Award filed Writ Petition No.6247/2004.
8. The learned Single Judge in its impugned judgment has confirmed the finding of the Labour Court that there was no espousal. On this premise, it is opined that the Tribunal could not have adjudicated upon the dispute on merits as the absence of proper espousal would mean want of jurisdiction to

adjudicate. However, the learned Single Judge has also gone ahead to consider the case of regularization of the workman and concluded that he was not entitled to regularization.

9. In these appeals, therefore, conclusion of learned Trial Court on both these issues are challenged and we proceed to discuss the same hereafter.
10. The learned Labour Court while holding that there was no proper espousal discussed the issue in the following manner:

“The burden of proof of this issue was on the workman. The workman examined Sh. Hukum Chand-WW2 who stated that he is working in Hotel Samrat as a Commi First (I). He is the General Secretary of All India I.T.D.C. Mazdoor Janta Union, unit Samrat Hotel. He knows Sh. Hira Singh, who is working with him in the bakery for the last 10 years continuously without any break. There is no evidence to the effect that workman approached him for espousal of their cause or that any resolution to that effect was passed. Therefore, in the absence of this evidence it cannot be said that the cause of the workman has been properly espoused. However, it is not disputed that the workman has been working with the management continuously since 1985. However, the statement of claim has been signed by workman Sh. Hira Singh, but not signed by Sh. Swapan Vishwas. Therefore, this issue is answered against the workmen and in favour of management.”

It is clear from the above that for want of resolution by the Union to take up the dispute of the workmen, the Labour Court concluded that there was no proper espousal.

11.The learned Single Judge accepted the aforesaid view of the Labour Court.

The contention of the workman before the writ court was that the All India TDC Mazdoor Janta Union had initiated the proceedings before the Conciliation Officer which would show that the cause of the workman was properly espoused by the Union. It was also argued that the General Secretary of the Union had deposed before the Labour Court that he had requested the Management number of times to pay the House Rent to the workman at par with other employees and to issue him an appointment letter but this aspect was not even considered by the Labour Court and, therefore, findings of the Labour Court for Issue No.1 were perverse. Same argument is advanced before us. Repelling of this argument of the workman, the learned Single Judge held as under:

“The dispute between an individual workman and the employer can be treated as an industrial dispute only where the workmen as a body or a considerable section of them, make common cause with the individual workman and espoused his demand. The question arises how the espousal can be inferred. Espousal means that the dispute of an individual workman is adapted by union as its own dispute or a large number of workmen give support to the cause of an individual workman. In the instant case, the only evidence available on record about espousal of the cause is the statement of the Secretary of the Union made before the Tribunal. In his statement, he stated that he requested the management to treat workman Hira Singh at par with other employees and grant him regular pay scale and he met the

management for this purpose and on his pursuance, the management started deducting provident fund from salary of the workman Hira Singh. There is no evidence apart from this evidence about the espousal of the cause. Does mere lending of name of the union by the union Secretary while raising the conciliation proceedings or for issuing notice amount to 'espousal' of cause? Union is a representative body of the workmen. The cause of any workman can be espoused collectively by the Executive Body of the union by taking a decision in this respect. This decision may not be taken in a formal manner but can be taken in an informal manner but it has to be a collective decision of the executive body of the union. An individual member of the Executive body cannot take the character of the entire union and cannot bind the union. Merely because the union secretary met the management and requested for giving a regular appointment letter to the workman, would not amount to espousal of the cause. In this case, this is the only evidence available on record in respect of espousal."

12. We are in agreement with the aforesaid view of the learned Single Judge.

We may note that in arriving at the aforesaid conclusion, reference is made to the judgment of the Supreme Court in the case of **J.H.Jadhav Vs. Forbes Gokak Ltd., AIR 2005 SC 998**, wherein the Supreme Court held as under:

"The definition of 'Industrial Dispute' in Section 2(k) of the Act shows that an Industrial Dispute means any dispute or difference between an employer and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the condition of labour, of any person. The definition has been the subject matter of several decisions of this Court and the law is well settled. The locus classicus is the decision in the Workman of M/s.Dharampal Premchand (Saughandhi) Vs.

M/s.Dharampal Premchand (Saughandhi), 1965(3)SCR394 where it was held that for the purposes of Section 2(K)it must be shown that (1) the dispute is connected with employment or non employment of a workman. (2) the dispute between a single workman and his employer was sponsored or espoused by the Union of workmen or by a number of workmen. The phrase “the union” merely indicates the Union to which the employee belongs even though it may be Union of a minority of the workmen, (3) the establishment had no union on its own and some of the employees had joined the Union of another establishment belonging to the same industry. In such a case it would be open to that Union to take up the cause of the workmen if it is sufficiently representative of those workmen, dispute the fact that such Union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in Dharam Pal’s case is to be found in the Workmen of Indian Express Newspaper (Pvt.)Ltd. Vs. Management of Indian Express Newspaper Private Ltd. AIR 1970 SC 737 where an ‘outside’ union was held to be sufficiently representative to espouse the cause.”

- 13.It was thus observed that the Union must formally express itself in the form of a resolution which should be approved by its members though number of supporting members of the Union may be relevant depending upon facts of each case. Again in the case of **Bombay Union of Journalists Vs. Hindi Bombay, 1961 II LLJ 436**, the Supreme Court opined that the test is whether on the date of reference, the dispute was taken up and supported by the Union of the workman of the employer against whom the dispute is raised by the individual workman or by an appreciable number of employees. In that case notice of the meeting for the purpose of considering

request by members for tenable cause of concerned workmen was not given to the employees of the Hindu Board which were not the members of the Union at the relevant time. The Court opined that by mere passing of a resolution by other members of the Union, the case of the appellant that the cause of concerned workmen was supported by the other employees of Hindu Board, could not be supported. The Apex Court also held that unless individual dispute was taken up by Union of employees of the employer or by appreciable number of employees of the union, it remains as an individual dispute and does not become an industrial dispute.

14. The question is as to whether merely because the name of Union is lent and one of the office bearer who was a Secretary of the Union signs the statement of claim etc., would be treated as proper espousal by the said Union. Judgment of the Supreme Court in **J.H.Jadhav Vs. Forbes Gokak Ltd.(supra)** provides the guidance in this behalf, as is clear from para 7 thereof which reads as under:

“As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the Union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the Union may also be available aliunde. It would depend upon the facts of each case. The Tribunal had addressed its mind to the question, appreciated the

evidence both oral and documentary and found that the Union had espoused the appellant's cause."

15. There is, thus, normally a need to prove the espousal by way of resolution.

Reason is simple. Union/ Association is also a body of workmen which may be a registered body and is to act in accordance with its rules, regulations and byelaws. It thus follows that whenever it has to act for cause which is to be taken up, there has to be a resolution in the Executive Committee to this effect. Else it is to be shown by the Secretary or President who has given the demand notice or sign the claim etc. that there is a general authority given to him by the Executive Committee to take up such causes. Though proof of support can be given aliunde, but not such attempt is also made in this case. In the absence of any evidence to this effect it cannot be presumed that merely because the Secretary signed the demand notice etc., there was a mandate of the Union in his favour to take up the cause. When no evidence worth the name is produced it could not be presumed that there was a proper espousal. The Tribunal as well as learned Single Judge, therefore, rightly held that the appellant could not prove proper espousal by the Union.

16. Under Section 10 of the Industrial Dispute Act, an appropriate Government may refer the industrial dispute to a Labour Court or an Industrial Tribunal.

The necessary pre-requisite is that there has to be an industrial dispute before it is referred. Industrial dispute is defined in Section 2(k) of the Industrial Disputes Act. These disputes before the same could be referred, require espousal. Only exception is provided in respect of those industrial disputes which are governed by Section-2A of the Industrial Disputes Act. It was a common case of the parties that the issue of regularization is not covered by Section 2A of the Industrial Disputes Act and, therefore, it needed espousal of the Union. The moment we come to the conclusion that there was no proper espousal, the Tribunal will not have necessary jurisdiction to adjudicate such a dispute as in the eyes of law there would not be any industrial dispute and, therefore, reference itself was bad in law. It was, therefore, not even proper on the part of the Labour Court to proceed further and hold that the appellant was entitled to be regularized. That Award is clearly without jurisdiction.

17. We may note that the learned Single Judge has held that even regularization is not permissible in view of the judgment of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others, 2006 SCC (L&S) 753**. However, the learned Single Judge has lost sight of the fact that it is clarified in that judgment itself that the principle laid down therein will have no application to the industrial disputes raised before the

Labour Court. Therefore, to that extent observation of the learned Single Judge may not be correct. However, on the ground that reference before the Labour Court was incompetent and the Labour Court had no jurisdiction to deal with the issue, the Award to that effect has rightly been set-aside by the learned Single Judge as perverse. We, therefore, do not find any merit in these appeals, which are dismissed.

(A.K. SIKRI)
JUDGE

May
skk ,2008.

(J.R.MIDHA)
JUDGE