

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

+ **W.P.(C.) No. 14163/2006**

% **Date of Decision: 07th DECEMBER,2009**

THE MANAGEMENT OF SHRIRAM INSTITUTE FOR INDUSTRIAL
RESEARCH

.....PETITIONER

! Through: Mr. B.K. Mishra, Advocate.

VERSUS

\$ SECRETARY (LABOUR), GOVERNMENT OF NCT OF DELHI &
ANOTHER

.....RESPONDENTS

^ Through: Ms. Usha Saxena, Advocate.

CORAM:

Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The management of Shriram Institute for Industrial Research, in this writ petition, seeks to assail an order dated 10.07.2006 passed by the Secretary (Labour) in the Government of NCT of Delhi referring the dispute raised by the respondent with regard to his termination from the service of the petitioner for adjudication to the Labour Court.

2. Briefly stated the facts of the case relevant for the disposal of this writ petition are that the respondent has joined as Assistant Trainee-Technical Grade 'A' with the petitioner management on 22.08.1988. He got several promotions from time to time and was working on the post of Scientist (Research Project) on the date his services were terminated by the management of the petitioner w.e.f. 04.03.2002. He was aggrieved

by his termination and had filed a Civil Suit being Civil Suit No. 873/2002, which was dismissed as not maintainable vide judgment and decree dated 25.01.2005 passed by the Court of Ms. Smita Garg, then Civil Judge, Delhi. The suit filed by the respondent to get his termination declared illegal was dismissed by the Civil Judge mainly on the ground that contract of personnel service is not enforceable in Civil Court in view of provisions contained in Section 14 (1)(a) read with Section 41(e) of the Specific Relief Act, 1963.

3. The respondent aggrieved by the order of dismissal of his suit had filed an appeal being R.C.A. No. 25/2005 which was partly allowed vide judgment dated 06.07.2005 passed by the Court of Ms. Shail Jain, ADJ, Delhi. In the appeal order, it was observed that the question whether appellant is a 'workman' or not, is a point to be decided by the Labour Court. The respondent thereafter raised an industrial dispute with regard to his termination which was referred by the Government to the Labour Court for adjudication vide impugned order of reference dated 10.07.2006. The terms of reference are as under:

“Whether Dr. Anil Kumar Jain S/o Sh. Ajit Parshad Jain holding post of Scientist (SARC) fall under definition of workman as defined in the Section 2(s) of the Industrial Disputes Act, 1947 and if so, whether his services have been terminated by the management illegally and/or unjustifiably and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Law/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

4. Aggrieved by the order passed by the Government for referring the dispute to the Labour Court for adjudication, the management has filed the present writ petition seeking to assail the said order on the following two grounds:

(i) That respondent is not a 'workman' within the meaning of Section

2(s) of Industrial Disputes Act, 1947.

(ii) That respondent has indulged in forum hunting without any case on merit in his favour.

5. Mr. B.K. Mishra, learned counsel appearing on behalf of the petitioner management, has relied upon a Division Bench judgment of this Court in **Jamia Hamdard Vs. Delhi Administration & Others, 1992 (2) Delhi Lawyer 111**, in support of his contention that a person holding the post of Scientist cannot be treated as 'workman' within the meaning of Section 2(s) of Industrial Disputes Act, 1947. His contention is that it was the duty of the Government to have formed an opinion before referring the dispute for adjudication to the Labour Court whether respondent was a 'workman' or not within the meaning of Section 2(s) of Industrial Disputes Act, 1947. It is submitted by Mr. Mishra that the Government has not considered the plea of the management raised before it that respondent was not a 'workman' as he was holding the post of Scientist and was drawing salary of more than Rs.3,500/- per month and was writing ACR also of persons working under him.

6. On giving my anxious consideration to the above arguments advanced on behalf of the petitioner, I have not been able to persuade myself to agree with him. The question that needs consideration in the present writ petition is not whether the respondent is a 'workman' or not but the question is whether the Government had exercised its discretion vested in it under Section 10 of the Industrial Disputes Act, 1947 before referring the dispute to the Labour Court for adjudication. In the present case, on going through the record, I find that this aspect of the matter has been duly considered by the Government before the dispute was referred to the Labour Court for adjudication. No fault can be found with the impugned order of reference. The order of the appropriate

Government making a reference under Section 10 of the Industrial Disputes Act, 1947, is an administrative order and not a judicial or quasi judicial one and the Court, therefore, cannot canvass the reference closely to see if there was any evidence to support its contention that it was a judicial or quasi judicial order. Furthermore, an order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved as such an order is made on the subjective satisfaction of the Government. Since the reference has already been made to the Labour Court for adjudication, it will be open to the petitioner to prove before the Labour Court/Tribunal that respondent is not a 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. The question whether respondent is a 'workman' or not is a mixed question of fact and law and requires evidence in the matter. If upon evidence, findings on this point are returned in favour or against any of the parties before the Labour Court/Tribunal, then such a party will be entitled to challenge such findings in appropriate proceedings before the competent Court. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India can interfere with the order of reference passed by the appropriate Government only in case it is found that the Government has taken into account any consideration irrelevant or foreign material in referring the dispute under Section 10 to the Labour Court for adjudication. It may be noted that in the present case the Appellate Court then presided by Ms. Shail Jain in its judgment dated 06.07.2005 has made an observation that the question whether the respondent is a 'workman' or not, shall be decided by the Labour Court. In view of this observation of the competent Court, it cannot be said that by any stretch of imagination that the impugned order of reference passed by the Government suffers from perversity.

For the same reason, I do not find any merit in the argument of the learned counsel for the petitioner that the respondent has indulged in forum hunting. This argument has been noted only to be rejected. The judgment of the Division Bench of this Court in Jamia Hamdard's case (supra), on which reliance is placed by the petitioner's learned counsel, is not applicable to the facts of the present case. The decision in that case was based on the merits of that case. The Division Bench on the basis of evidence available on record in that case, has held that a highly qualified research scholar assigned duties similar to that of a teacher cannot be called a 'workman' within the meaning of Section 2(s) of Industrial Disputes Act, 1947. In the present case, the evidence is yet to come about the nature of duties being performed by the respondent from time to time.

7. For the foregoing reasons, I absolutely do not find any merit in this writ petition which fails and is hereby dismissed. Needless to say that the stay granted by this Court vide order dated 08.09.2006 stands vacated.

DECEMBER 07, 2009
'BSR '

S.N.AGGARWAL, J