

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 3387-88/2006**
% **Date of Decision: 27th August, 2009**
SHRI RAM KISHAN & ANOTHER PETITIONERS
! Through: Mr. H.K. Chaturvedi, Advocate.

VERSUS

\$ THE MANAGEMENT OF M/S AMERICAN EXPRESS BANKING CORPORATION AND ANOTHER RESPONDENTS
^ Through: Mr. Raj Birbal, Sr. Advocate with
Ms. Raavi Birbal , 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 workmen in this writ petition filed under Article 226 of the Constitution are aggrieved by two separate orders both dated 21.11.2003 passed by the Central Government declining to refer the dispute raised by them with regard to their alleged termination for adjudication to the Central Government Industrial Tribunal.

2. Briefly stated the facts of the case relevant for the decision of the present writ petition are that the petitioner No. 1 was employed with respondent No. 1 on 15.10.1999 and petitioner No. 2 was appointed on 25.01.2000. The appointment of both the petitioners with respondent No. 1 was stated to be for a fixed period of three years. The appointment of petitioner No. 1 was for three years from 15.10.1999 to 14.10.2002 and of petitioner No. 2 was from 25.01.2000 to 24.01.2003. The contract

of employment of the petitioners with the respondent No. 1 was not renewed by respondent No. 1 after the expiry of the fixed period for which they were appointed. The petitioners were aggrieved by non-extension of the period of their employment and, therefore, they raised an industrial dispute before the Central Government and alleged unfair labour practice against the management of respondent No. 1. The dispute raised by them was declined to be referred by the Central Government for adjudication to the Central Government Industrial Tribunal vide impugned order (Annexure P-I collectively at pages 17-18 of the Paper Book) for the following reasons:

“since the applicant was appointed for a fixed period of three years from 15.10.1999 to 14.10.2002 and these terms/conditions were accepted by the complainant, hence dispute has no merit to refer.”

3. Mr. H.K. Chaturvedi, learned counsel appearing on behalf of the petitioners, has argued that the Central Government could not have taken upon itself the task of adjudication and declined the reference under Section 10 of Industrial Disputes Act, 1947 for adjudication to the Central Government Industrial Tribunal for the reason that the petitioners had been appointed for a fixed period of three years and that they had accepted the term of their appointment.

4. On the other hand, Ms. Raavi Birbal, learned counsel appearing on behalf of the respondent No. 1, has relied upon a three-Judge Bench judgment of the Hon'ble Supreme Court in ***Bombay Union of Journalists and Others Vs. State of Bombay and Another reported as 1964 1 LLJ page 351*** and on the strength of this judgment, she has contended that since the petitioners had admitted that they had been appointed by respondent No. 1 for a fixed term of three years, the Central Government was justified and acted legally in declining to refer

the dispute raised by the petitioners for adjudication by the Central Government Industrial Tribunal as no industrial dispute exists for such adjudication in view of the provisions contained in Section 2(o)(b) of the Industrial Disputes Act, 1947 which exclude from its ambit of the expression 'retrenchment' as defined in the main part of Section 2(o) "terminations of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein"

5. I have given my anxious consideration to the above rival arguments advanced by the counsel for the parties but I could not persuade myself to agree with the submission made by the counsel appearing on behalf of the petitioners. It is an admitted case of the petitioners that they were appointed with respondent No. 1 for a fixed term of three years. However, their case is that their appointment for a fixed term of three years was a camouflage and amounts to unfair labour practice. As to what amounts to an unfair labour practice is provided in Fifth Schedule annexed with the Industrial Disputes Act, 1947 and Clause 10 of the said Schedule relied upon by learned counsel appearing on behalf of the petitioners, provides that to employ a workmen as Badli or casuals or temporary and continue them for years with an object to deprive them the benefit of permanent post amounts to an unfair labour practice. It may be noted that the petitioners were neither appointed as Badli nor in their capacity as casuals or temporary. Their appointment was for a fixed term of three years. The petitioners had accepted the terms and conditions of their appointment which clearly stipulates that their appointment was for a fixed term of three years. Their grievance in the dispute raised by them before the Central Government was for non-

extension of the period of their employment. This does not fall within the scope of unfair labour practice as provided in the Fifth Schedule to the Industrial Disputes Act, 1947 particularly Clause 10 relied upon by the counsel appearing on behalf of the petitioners.

6. In ***Bombay Union of Journalists and Others Vs. State of Bombay and Another*** (supra), it was held by the Hon'ble Supreme Court that when the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not under Section 10 of the Industrial Disputes Act, 1947, it may consider, prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making of reference would be expedient or not.

7. In the considered opinion of this Court, the Central Government was fully justified in declining to refer the dispute for adjudication to the Central Government Industrial Tribunal because the appointment of the petitioners was for a fixed term of three years which was accepted and acted upon by them and therefore, they do not fall within the ambit of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act, 1947 and for that reason, no industrial dispute exists which require an adjudication by the Central Government Industrial Tribunal.

8. For the foregoing reasons, I do not find any illegality or perversity in the impugned order that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed.

AUGUST 27, 2009
'bsr'

S.N.AGGARWAL, J