

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

+ **W.P.(C.) No. 12233/2009 and C.M. No. 12517/2009 (for stay)**

% **Date of Decision: 09th October, 2009**

OFFICE OF DIRECTOR GENERAL OF AUDIT, POST &
TELECOMMUNICATIONS

! Through: Ms. Nandita Rao, Advocate. PETITIONER

VERSUS

\$ PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT & ANOTHER

^ Through: NEMO. RESPONDENTS

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

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

S.N.AGGARWAL, J (ORAL)

The management in this writ petition seeks to challenge an interim order dated 25.08.2009 passed by the Industrial Adjudicator rejecting its application under order 14 rules 1 & 2, CPC for treating the issue of jurisdiction of the Tribunal to hear the reference as a preliminary issue. The petitioner in this petition is the office of Director General of Audit, Post & Telecommunications.

2 Ms. Nandita Rao, learned counsel appearing on behalf of the petitioner, contends that the Hon'ble Supreme Court has held in two of its judgments, i.e. in **Himanshu Kumar Vidyarti Vs. State of Bihar, JT (1997) (4) SC 560** and **State of Gujarat Vs. Pratam Singh Narsingh Parmar, JT**

2001 (3) SC 326, that the appointments made in the office of Comptroller and Auditor General of India are appointments to a central civil post under the Union of India as per the statutory rules, i.e. Indian Audit & Accounts Department (Record Keeper) Recruitment Rules, 1985 framed by the President of India under Article 148 of the Constitution of India in consultation with the Comptroller and Auditor General of India and, for that reason, the appointments in the said Department are regulated by the statutory rules and the concept of 'industry' as defined in the Industrial Disputes Act, 1947, to that extent stands excluded.

3. The learned counsel appearing on behalf of the petitioner further submits that the petitioner has taken an objection of jurisdiction of the Tribunal to hear the reference and, according to her, the Tribunal below has wrongly declined to hear the objection of jurisdiction as a preliminary issue.

4. It may be noted that the reference of dispute raised by the respondent No. 2 for his compassionate appointment was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication pursuant to an order of this Court dated 24.04.2007 in the writ petition being W.P.(C.) No. 13467/2005. Since the petitioner had taken an objection to the jurisdiction of the Tribunal to hear the reference, the Tribunal has to decide the said objection in accordance with law. However, the objection of jurisdiction raised on behalf of the petitioner will be decided by the Tribunal along with other issues on merit. I am supported in my view from a judgment of the Hon'ble Supreme Court in **D.P. Maheshwari Vs. Delhi Administration, (1983) 4 SCC 293**, wherein it was observed as under:

“It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they

would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.”

5. In view of the above judgment of the Hon'ble Supreme Court, I do not consider it appropriate to interfere in the interlocutory order of the Industrial Adjudicator at this stage. This writ petition against an interlocutory order, in my view, is not maintainable and, therefore, dismissed in limine. Stay application is also dismissed.

OCTOBER 09, 2009
'BSR'

S.N.AGGARWAL, J