

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 1447/2007

Date of decision : 8.3.2010

Union Bank of India

... Petitioner

Through :Mr. O.P. Gaggar, Adv.

versus

Jaiveer Singh Negi

..... Respondent

Through : Mr. K.S. Parihar, Adv.

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* **HON'BLE MR.JUSTICE KAILASH GAMBHIR**

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

Kailash Gambhir, J. (ORAL)

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1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks quashing of the impugned award dated 21.11.2006 passed by the Labour Court whereby the reference was answered against the

petitioner management and in favour of the respondent workman directing the petitioner to give compassionate appointment to the respondent within a period of two months.

2. Brief facts relevant for deciding the present petition are that the respondent is the son of late Hukam Singh Negi, who was employed as an armed guard in the petitioner bank and died on 1.9.2000 after falling from a roof. Thereafter, the respondent on 8.11.2000 applied for employment with the petitioner bank on the ground of compassionate employment which was disallowed. Feeling aggrieved by the same, one Bhartiya Mazdoor Sangh, a Trade Union, espoused the cause of the respondent and an industrial dispute was raised bearing ID No. 95/2003 where vide award dated 21.11.2006 , the petitioner bank was directed to grant compassionate appointment to the respondent within two months from the date of publication of the award. Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Without touching upon the merits of the claim of the respondent for his entitlement for compassionate appointment, counsel for the petitioner submits that the respondent who is seeking his employment on compassionate grounds on account of death of his father does not fall within the definition of 'workman' as envisaged under Section 2(s) of the I.D. Act, 1947. Counsel thus submits that the learned Tribunal has wrongly assumed the jurisdiction to decide the reference without appreciating the fact that the respondent being a dependent of the deceased employee was not a workman. Counsel further submits that the petitioner has taken an objection on the maintainability of the reference itself as once the respondent being not a workman, he has no right to raise any industrial dispute under the I.D. Act. Counsel thus submits that the order passed by the learned Labour Court is ex facie illegal and perverse.

4. On the other hand, counsel for the respondent submits that technicality should not come in the way of this court to dispense justice while exercising jurisdiction under Article 226 of the Constitution of India. Counsel thus submits that this court under Article 226 can always mould the relief to serve the ends of justice.

5. I have heard learned counsel for the parties and gone through the records.

6. The respondent is the son of Mr. Hukum Singh Negi who was engaged as an armed guard on permanent basis with the petitioner bank. The father of the respondent unfortunately died on 1.9.2000 while falling from roof. After his death the respondent along with his mother approached the petitioner bank to seek employment on compassionate grounds but no heed was paid to their request. Hence, left with no remedy, the respondent raised an industrial dispute and Ministry of Labour had referred the dispute for

adjudication to the Industrial Tribunal in terms of the following reference :

“Whether the action of the management of Union Bank of India, Meerut in not giving Compassionate Appointment to Shri Jaiveer Singh Negi vide Smt. Sushila Devi’s application dated 22.9.2000 is legal and justified? If not, what relief is the concerned workman entitled to?”

7. It is not in dispute that the respondent, Jaiveer Singh sought his employment with the petitioner bank on compassionate grounds due to the demise of his father during his service and therefore, he was yet to acquire the status of an employee with the petitioner bank. Admittedly, there was no relationship of employer and employee between the parties and therefore to extend the benefit of the provisions of I.D. Act to a person who has not acquired the status of an employee would be clearly far fetched. Section 2(s) of the I.D. Act defines a “workman” as under :-

“”Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the term of employment be expressed or implied and for the purpose of any proceeding under this Act in relation to an Industrial Dispute includes any such person, who has been dismissed, discharged or retrenched in connection with, or as a

consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.”

8. A bare perusal of above provision would amplify that the respondent by no stretch of imagination can be considered as a ‘workman’ entitled to raise reference under Section 10 of the I.D. Act. Here, it would be pertinent to refer to the judgment of the Apex Court in **Mukand Ltd. Vs. Mukand Staff & Officers’ Association 2004(10)SCC460** where it held that:

"The above submission of learned counsel for the appellant is well founded under the Act. Disputes can be raised only by the workmen with the employer.

If the non-workmen are given the status and protection available to the workmen, it would mean that the entire machinery and procedure of the Act would apply to the non-workmen with regard to their employment/non-employment, the terms of employment, the conditions of labour etc. This would cast on the appellant-Company the onerous burden of compliance with the provisions of the Act in respect of the non-workmen. In our view, the situation is not envisaged by the Act which is solely designed to protect the interests of the workmen as defined in Section [2\(s\)](#) of the Act.

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*In our view, the material that was placed before the Tribunal was not considered or discussed and that there was, as such, no adjudication by the Tribunal. The whole award of the Tribunal, in our view, is liable to be set aside on the ground of non-application of mind by the Tribunal to the material on record. In the first place, the Tribunal has no jurisdiction to entertain and decide a dispute which covered within its fold **"persons who are not workmen"**.*

The Tribunal, in this case, has exceeded its jurisdiction. It has embarked upon an enquiry against non-workmen and, therefore, the decision of the Tribunal is a non-compliance with the provisions of the Act. Therefore, the determination by a Tribunal on a question other than the one which Statute directs it to decide, would be a decision not under the provisions of the Act and, therefore, in exercise of its jurisdiction is liable to be set aside”.

Hence, applying the aforesaid observations to the case at hand where the petitioner had taken an objection before the learned Labour Court challenging the locus of the respondent to raise an industrial dispute but the learned tribunal failed to decide the said objection of the petitioner except stating that no espousal was required so far the nature of the dispute raised by the respondent was concerned. However, the learned Labour Court on merits found the respondent to be entitled for compassionate appointment. Since the impugned award is being set aside on the technical ground of the respondent being not a ‘workman’ falling within the definition of Section 2(s) of the I.D. Act, therefore, remedy of the respondent to seek compassionate appointment with the petitioner bank remains open. Similarly, the petitioner bank will have the right to take its decision as per the applicable

rules in case the respondent approaches the petitioner in this regard. The impugned award is accordingly set aside.

9 . The parties are directed to bear their own costs.

10. With above directions, the petition stands disposed of.

March 08, 2010
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KAILASH GAMBHIR,J