

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

+ **WP(C)No.12829/2005**

% 6th January, 2011

M/S GREAVES COTTON LTD.

..... Petitioner
Through: Mr.D.R.Thandani,
Advocate
VERSUS

GOVT. OF N.C.T. OF DELHI & ORS.

..... Respondent
Through: Mr.H.K.Chaturvedi, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

VALMIKI J. MEHTA, J (ORAL)

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges the impugned order dated 27.5.2005 of the Secretary (Labour) of the Government of NCT, Delhi referring disputes between the petitioner and the respondents no. 3 to 14/workmen for adjudication by the Industrial Tribunal.

2. Before this Court, learned counsel for the petitioner canvassed three main propositions:-

- i) There was no power in the authority to review the order which was earlier made declining the reference.

- ii) In the present case no dispute exists because the workmen had received the amount under the Voluntary Retirement Scheme and thus the reference is illegal.
- iii) It was finally argued that in case the workmen seek to raise an industrial dispute, they must return the benefits taken under the VRS.

3. So far as the first point is concerned, the issue is no longer res integra and it has been decided by the Supreme Court in the case of ***M/s. Avon Services Production Agencies Pvt. Ltd. vs. Industrial Tribunal, Haryana & Ors. AIR 1979 SC 170*** that the government has power to make reference although earlier it had refused to make the reference. Para 8 of this judgment is relevant and the same is read as under:-

“8.It follows that the Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. But it was urged that the ratio of the decision would show that the Government must have some fresh material made available to it subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference. It is not absolutely necessary that there ought to be some fresh material before the Government for reconsideration of its earlier decision. The Government may reconsider its decision on account of some new facts brought to its notice or for any other relevant consideration and such other relevant consideration may include the threat to industrial peace by the continued existence of the industrial dispute without any attempt at resolving it and that a reference would at least bring the parties to the talking table. A refusal of the appropriate Government to make a reference is not indicative of an exercise of power under

S.10 (1), the exercise of the power would be a positive act of making a reference. Therefore, when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that does not denude the power. The power to make the reference remains intact and can be exercised if the material and relevant considerations for exercise of power are available; they being the continued existence of the dispute and the wisdom of referring it, in the larger interest of industrial peace and harmony. Refusal to make the reference does not tantamount to saying that the dispute, if it at all existed, stands resolved. On the contrary the refusal to make a reference not compelling the parties to come to a talking table or before a quasi-judicial Tribunal would further accentuate the feelings and a threat to direct action may become imminent and the Government may as well reconsider the decision and make the reference. It is, therefore, not possible to accept the submission that if the Government had on an earlier occasion declined to make a reference unless it be shown that there was some fresh or additional material before the Government the second reference would be incompetent. It has not been shown that the dispute had ceased to exist and the very existence of the dispute enables the Government to exercise the power under S.10(1) and it has been rightly exercised. The view which we are taking is in accord with the decision of this Court in *Binny Ltd. v. Their Workmen* (19720 3 SCR 518 : (AIR 1972 SC 1975) wherein it was found that the Government had declined to make a reference of the dispute on two previous occasions on the basis of which it was contended that the reference was invalid. The contention was negative observing that the mere fact that on two previous occasions the government had taken the view that no reference was called for does not entitle the Court to conclude that there could be no cause for a reference at a later date.”

In view of the above it is incorrect to plead that the appropriate authority has no power to review and it cannot make a reference merely because earlier reference has been declined

4. So far as the second argument that there is no dispute because the workmen had received the payment under the VRS, I am of the opinion that firstly, this would in fact be a dispute which requires adjudication by the Industrial Tribunal as to whether or not there is any industrial dispute which requires adjudication and the reference cannot be pre-empted on this basis. When an averment is made by one party and is denied by the other, the dispute surely arises, though however, existence of such dispute is denied. Disputed facts which require trial are to be decided by the Industrial Tribunal. If however there is urged that there is no dispute this issue can be treated as a preliminary issue as per the admitted facts which emerges on record. In my opinion, this argument can be disposed of with a direction that the Industrial Tribunal will deal with this issue first whether at all there is a dispute between the workmen and the management and that whether or not there is accord with satisfaction between the manager and the workmen with regard to the subject dispute.

Counsel for the respondents no. 3 to 14/workmen have no objection if this issue is treated as a preliminary issue by the Industrial Tribunal.

5. So far as the third argument that the workmen must refund the VRS payment before claiming reference of the dispute, I am of the opinion that the same does not have substance because the decision relied upon by the learned counsel for the petitioner in the case of ***Punjab National Bank vs. Virender Kumar Goel 2004 Vol. 2 SCC 193*** applies only if the workman would be immediately reinstated and thereafter immediately would start getting their pay. Counsel for the respondent however says that he is not asking for any immediate pay or immediate reinstatement which is to be in fact an issue which is to be decided by the Industrial Tribunal at the stage of final adjudication of the matter after final arguments in the case are concluded.

6. In view of the above Writ Petition is therefore dismissed, giving the petitioner liberty to raise a preliminary issue before the Industrial Tribunal as to whether or not there exists a dispute or whether or not there is an accord and satisfaction so there is no industrial dispute which requires adjudication. The petition is therefore dismissed subject to aforesaid liberty.

Parties to appear before the concerned Industrial Tribunal on 01.2.2011.

CM Nos.9628/2005 & 14822/2010

No orders are required to be passed. CMs are dismissed.

JANUARY 06, 2011

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VALMIKI J. MEHTA,J