

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 897 OF 2015

Bhagwan Jagannath Nitnaware .. Petitioner

Versus

The Union of India & Ors. .. Respondents

Mr. S. G. Kudle with R. G. Panchal, Advocate for the petitioner
None for R. No. 1.

Mr. A. V. Bukhari, Sr. Advocate with A. M. Nathani, Ms. Pinaz
Contractor, Ms. Jyotsna Wahane and Ms. Burhan Bukhari, Advocate
for R. Nos. 2 and 3.

CORAM:-ANOOP V. MOHTA &
V. L. ACHLIYA, JJ.

DATED : -21/07/2015

ORDER:-(Per Anoop V. Mohta, J.)

The petitioner has filed this second petition and challenged the same impugned orders whereby after inquiry the petitioner was removed from the service. This Court on 22nd August, 2014 considering the rival submissions and the position of law as raised and offered by the parties has observed as under:

“3 The learned Counsel appearing for Respondent No.1 raised a preliminary objection about the

maintainability of the present writ petition in this Court, as there are various issues of facts are involved on every aspect. The alternate remedy as read and referred is provided under the Industrial Disputes Act, 1947 (The I.D. Act). Section 11 A of the I.D. Act is reproduced as under:

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and

shall not take any fresh evidence in relation to the matter.”

5 *The learned Counsel appearing for the Petitioner read Service Rules and pointed out apart from nature of duties, salary and scale being employee in Group-A, falls within a class of “academic category”. Therefore, the Petitioner cannot be treated as “workman”. The learned Counsel appearing for Respondent No.1, however, referring to the judgments of the Supreme Court and even otherwise pointed out that these issues can also be gone into by the concerned Tribunal under the I.D. Act, by giving an opportunity to all the parties.*

6 *It is settled that the term “workman” and “Industry” have various aspects which are required to be considered by the Court and/or by the Tribunal, specifically when there is a dispute in reference to it. Such dispute, in our view, also just cannot be gone into in a writ jurisdiction as it requires detail evidence on either side, therefore require opportunity to both the parties to deal with and to place on record the supporting material. Another aspect of such matter a restrictive scope in taking note of disputed facts, specifically when we are dealing in writ jurisdiction under Article 226 of Constitution of India.*

8 *The statement is also made that full opportunity was given to the Petitioner to appear and participate in the departmental proceeding, but for unknown reason and/or for the reason known to the Petitioner, he failed to take these opportunities. Even for that we are not concerned and/or passing any order against the Petitioner. On the contrary, we are inclined to dismiss this writ petition, mainly on the ground of invoking the appropriate remedy so that all these factual aspects can be gone into by the Court/Tribunal in accordance with law. Therefore, we are inclined to dismiss the present writ petition, with liberty to invoke alternate remedy in accordance with law. However, it is made clear that above observations made in no way should influence and/or affect the Tribunal and/or other authorities while dealing with the matter of Petitioner arising out of the impugned orders in question.*

9 *All points are kept open. Writ Petition is dismissed. Rule is discharged accordingly. No costs”.*

2 In view of the above finding, a statement is made that the above judgment was challenged by the petitioner in Supreme Court and by order dated 18/11/2014 the Special Leave Petition was

dismissed.

3 The petitioner's contentions and the reason for filing this writ petition, apart from an agitation of the same issues/grounds, on same grounds is also an order dated 13th May, 2015 passed by Conciliation Officer and communication dated 27/5/2015 by Govt. of India, declaring that the petitioner cannot be treated as 'workman' and as "NITIE" is also not an 'industry' within the meaning of Section 5 and Section 2(j) of the Industrial Disputes Act and, thereby, refused adjudication.

4 Strikingly the petitioner himself before issue could be examined on merits in conciliation proceeding, sought permission to approach before appropriate authority and accordingly it was recorded on 24/2/2015. Having once done so there was no question of deciding the issues by the authorities so recorded above, which requires detail inquiry and trial specifically whether petitioner is 'workman' and/or whether NITIE is 'industry' or not.

5 Apart from clear provisions so referred above and the Supreme Court judgments dealing with the aspects of these terms as cited by the learned Senior Counsel appearing for respondents No. 2

and 3, including **AIR 1978 Labour Industrial Court 467, Bangalore Water Supply & Sewerage Board vs. A Rajappa & Ors.**, specifically paragraphs 83, 112 and 161 read with **(2002) 4 SCC 490, Sharad Kumar v. Govt. of NCT of Delhi & Ors.** read with **(2004) III CLR 13, B. Venugopalan Nair v. Union of India & Ors.**, and even otherwise considering the provisions as we have recorded in the earlier order and judgment that detail inquiry and trial is necessary to deal with the subject, the Conciliation Officer,/Govt. Of India, therefore, ought not to have decided the issues in such fashion as done and as recorded in the order and so also ought not to have been confirmed by order dated 27/5/2015 by the Desk Officer to the Government of India, Ministry of Labour & Employment. These observations are arrived at by overlooking the earlier judgment of this Court, between the parties. It is liable to be declared bad in law, so also the communication dated 13/5/2015 and 27/5/2015.

6 The facet of seeking permission to approach the appropriate authority by the petitioner is also relevant factor in the background. The plain provisions of Industrial Disputes Act,

specifically Sections 2(a) 10(1)(d) and 11(A), we are inclined to observe that the Courts / Tribunal under these sections have a power after considering the issues with regard to domestic inquiry whether proper and/or not and can even record evidence, and if case is made out, even can direct the reinstatement with back wages. In the present case there are various factual aspects involved and, therefore, detail inquiry is necessary to deal with the challenge even of the domestic inquiry and the consequential order of termination based upon the same.

7 Therefore, in the interest of justice and to avoid further delay, we are inclined to pass the following order while dismissing the present writ petition. This is also for the reason that the learned Senior Counsel appearing for the respondent - management, on instructions, makes a statement that they will not raise objection regarding the maintainability of reference to the Labour Court u/s 10(1)(d) or other sections of the Industrial Disputes Act.

8 (i) Considering the submissions so raised by the petitioner, we are also inclined to dispose of present writ petition with liberty to the petitioner to file fresh reference or take out

appropriate proceedings within two weeks.

(ii) The concerned authority to deal with all the application/petition in accordance with law.

(iii) The Central Government Industrial Tribunal (CGIT) also to decide the same as early as possible, preferably, if possible, within six months, in accordance with law.

9 The petition is accordingly disposed of with no order as to costs.

10 All points are kept open.

(V. L. ACHLIYA, J.)

(ANOOP V. MOHTA, J.)

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