

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

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**Reserved on: 24<sup>th</sup> February, 2015**  
**Date of Decision: 20<sup>th</sup> March, 2015**

+ W.P.(C) 220/2013

MOHD. ARIF ..... Petitioner  
Through: Mr. Sanjoy Ghose Advocate

versus

CARDIO PRODUCTS CORPORATION AND ANR ..... Respondents  
Through: Mr. Rakesh Agarwal, Adv. for R-1

**CORAM:**  
**HON'BLE MR. JUSTICE VED PRAKASH VAISH**

**JUDGMENT**

1. The petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India for quashing and setting aside the order dated 31.08.2012 passed by the Presiding Officer, Labour Court – V, Karkardooma Court, Delhi in I.D. No. 1/2012.

2. Brief facts as borne out from the petition are that the petitioner was employed by respondent No.1 as a Sales and Service Engineer on probation for a period of six months. Respondent No.1 withheld the salary of the petitioner in August 2011 under the pretext of financial crunch. On 11.10.2011, the petitioner demanded his salary however, one Mr. Surender Singh, Chief Executive of respondent No.1 asked him to leave the premises of the respondent and his services were

terminated on the same day. Thereafter, the petitioner served a legal demand notice on respondent No.1 against his illegal termination and non-payment of his earned salary for the months from August 2011 to October 2011. Respondent No.1 did not reply to the same in consequence to which petitioner filed a statement of claim under Section 10(4A) of the Industrial Disputes (Delhi Amendment) Act, 2003 (hereinafter referred to as the 'Delhi Amendment Act') directly before the learned Presiding Officer, Labour Court – V, Karkardooma Court, Delhi, who vide order dated 31.08.2012 held that:

“...Therefore, it is apparent that the claim filed by the workman directly into the court on 11.01.2012 without approaching the Conciliation Officer for conciliation of his industrial dispute and lapse of 45 days in conciliation proceedings is not maintainable. Hence, claim filed by the workman is dismissed and disposed off accordingly.”

3. Feeling aggrieved by the aforementioned order dated 31.08.2012, the petitioner has preferred the present petition.

4. Learned counsel for the petitioner submitted that learned Labour Court ignored the fundamental and cardinal principles of labour law and of interpretation of any welfare statute that any ambiguity must be resolved in favour of the object of the statute i.e. in favour of the person, section or class in whose welfare the statute has been enacted. Learned Labour Court was not justified in holding that Section 10(4A) which was inserted in the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act') by way of Delhi amendment was inconsistent

with the amended Section 2A of the ID Act, 2010. Further he could not have held that the law made by the Parliament shall prevail over the law made under the Delhi Amendment Act. The petitioner was entitled to the benefits of Section 10(4A) inserted by the Delhi Amendment Act, notwithstanding the amendment of Section 2A by the Parliament in the ID Act. Section 10(4A) was inserted w.e.f. 22.08.2003 in the ID Act and has yet not been repealed. There is no repugnancy between the provisions of the Delhi Amendment Act and the Central Amendment Act.

5. In support of his submissions, the learned counsel for the petitioner has relied upon the judgments in **‘Hospital Employees Union and Others v. Union of India and Others’** (2002) 10 *Supreme Court Cases* 224 and **‘S. Gunasekaran and Anr. v. The Government of Tamil Nadu’** 2011(4) *CTC* 118.

6. *Per Contra*, Learned counsel for respondent No.1 urged that the amended Section 2A of the ID Act makes it mandatory for the workman to first of all move an application before the conciliation officer of the appropriate government for conducting of conciliation proceedings and the workman could approach the Labour Court or Tribunal only after expiry of 45 days from the date of his above referred application. Sub-Section (2) of amended Section 2A of the ID Act starts with the words “Notwithstanding anything contained in Section 10....” which clearly shows that it has an overriding effect over the Delhi Amendment Act. Article 254 of the Constitution of India clearly states that in case of a contradiction between the State

Law and the Central Law, the Central Law will prevail over the State Law to the extent of repugnancy and as such, Section 2A as amended by the Central Act, will prevail over Section 10(4A) as amended by the State Act. Amendment to Section 2A being later in time, shall prevail upon the amendment made in Section 10.

7. I have given my anxious thought to the submissions made by learned counsel for the parties and have also perused the material on record.

8. The entire dispute in the present case revolves around the issue i.e. whether there is any repugnancy between the amendment made to the ID Act under Section 2A pursuant to Central Amendment Act 24 of 2010, dated 18.8.2010 and the Delhi Amendment Act 9 of 2003 introducing Sub-Section 4A in Section 10 and if it is so, whether the provision of Section 10 (4A) stood eclipsed by Section 2A of the ID Act in the light of the Article 254(1) of the Constitution of India?

9. At the outset it would be pertinent to reproduce Section 2A and Section 10(4A) of the ID Act which read as:

**Section 10 (4A) added vide Delhi Act 9 of 2003 (w.e.f. 22.08.2003)**

**“10(4A):** Notwithstanding anything contained in Section 9C and this section, in the case of a dispute falling within the scope of Section 2A, the individual workman

concerned may, within twelve months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Delhi

Amendment) Act, 2003, whichever, is later, apply in the prescribed manner, to the Labour Court or the Tribunal, as the case may be, for adjudication of the dispute and the Labour Court or Tribunal, as the case may be, shall dispose of such application in the same manner as a dispute referred under sub-section (1).”

**Section 2A amended vide Act 24 of 2010 (Central)  
(w.e.f. 15.09.2010)**

“Section 2A of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:-

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government. (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

10. It can be inferred from the aforementioned provisions that the Section 10(4A) ID Act gives the workman discretion to file his claim

directly in the concerned Labour Court, within a period of twelve months from the date of communication of his discharge, dismissal, retrenchment or termination to him, whereas, Section 2A ID Act requires a workman to move an application before the concerned Conciliation Officer of an appropriate government and only after the expiry of 45 days from the date of filing of this application before the Conciliation Officer, the workman can move his claim in the Labour Court. Clearly, the said two provisions provide for a different mechanism to the workman for redressal of his grievance under the ID Act and are repugnant to one another.

11. It is a settled law that in case of a conflict between the two provisions of an Act, one enacted by the State and other by the Centre, the Court is duty bound to see whether the provisions thereof can be read harmoniously and only in cases where the same is not possible the question of prevalence of one over another would arise and in that context Article 254 of the Constitution is referred. It appears that a harmonious construction of the aforementioned provisions is not possible. Therefore in order to resolve the repugnancy of the said two provisions it becomes important to refer to the provisions of Article 254 of Constitution of India which reads as follows:

**"254.Inconsistency between laws made by Parliament and laws made by the Legislatures of States.- (1)**If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject

to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2)Where a law made by the Legislature of a State [\*\*\*] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

12. When repugnancy between two provisions is under consideration, what is in issue is whether the provision of the State enactment though otherwise constitutionally valid, has lost its validity because the Parliament has made an amendment with a conflicting provision on allegedly the same matter. In order to decide the question of repugnancy it must be shown that the two provisions are inconsistent and that they cannot stand together or operate in the same field.

13. The Apex Court in '**Karunanidhi v. Union of India**' 1979 AIR 898 has laid down the following conditions to determine whether there is any repugnancy between a Central and State Act and observed as

under:

“24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”

14. Further if a repugnancy arises on the basis of the aforementioned conditions being satisfied it is settled that the provisions of the Central Act shall prevail over the State Act. The Apex Court in ‘**Govt. of A.P. And Another v. J.B. Educational Society And Another**’, (2005) 3 SCC 212 in this context held:

“10. There is no doubt that both Parliament and the State legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by the Parliament and the State legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non-obstante clause in Clause (1) of Article 246, the Parliamentary legislation would prevail notwithstanding the exclusive

power of the State legislature to make a law with respect to a matter enumerated in the State List.

11. With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

12. Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstante clause in Article 246(1), in the second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's assent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation.”

15. In the present case, the repugnancy between Section 2A and 10(4A) ID Act satisfies the three conditions laid down in **‘Karunanidhi v. Union of India’ (Supra)** and therefore applying the principles enumerated under Article 254 of the Constitution in the light of **‘Govt. of A.P. v. J.B. Educational Society’ (Supra)**, it is beyond any reasonable uncertainty that Section 2A ID Act (introduced by

Central Amendment Act 24 of 2010) shall prevail over Section 10(4A) ID Act (introduced by State Amendment Act).

16. Further Section 2A ID Act begins as, “(2) Notwithstanding anything contained in Section 10....” which implies that this Section has an overriding effect not only over the provisions of Section 10 ID Act but also its State amendments. I am of the view that the Central Amendment Act, 2010 was passed while keeping in perspective the amendments made to Section 10 and with the use of the aforementioned words it seeks to achieve an overriding effect over the amendments made to Section 10 of the ID Act.

17. The expression “Notwithstanding” was interpreted by the Apex Court in ‘**Chandavarkar Sita Ratna Rao vs Ashalata S. Guram**’ (1986) 4 SCC 447 wherein it was of the view that:

“67. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the

observations of this Court in *South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum* [AIR 1964 SC 207, 215 : (1964) 4 SCR 280]

68. It is well settled that the expression “notwithstanding” is in contradistinction to the phrase “subject to”, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject....”

18. Therefore, it is beyond any cavil that the Central Amendment Act inserting Section 2A has an overriding effect over Section 10(4A) not only because the former is a Central Amendment that has been given effect to from the year 15.09.2010 (i.e. 7 years from the date of Delhi State Amendment of 22.08.2003) but also because of usage of the words ‘Notwithstanding anything contained in Section 10’.

19. Thus, I find no illegality or infirmity in the Order dated 31.08.2012 passed by the learned Presiding Officer, Labour Court – V, Karkardooma Court, Delhi in I.D. No. 1/2012.

20. For the aforesaid reasons, the petition is devoid of any merit, deserves to be dismissed and the same is hereby dismissed.

21. Trial Court record be sent back forthwith.

**(VED PRAKASH VAISH)**  
**JUDGE**

**MARCH 20<sup>th</sup>, 2015/hs**