

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

+ **W.P.(C) 2406/2002**

% **Judgment reserved on 12.02.2015**
Judgement pronounced on: 12.03.2015

INDIAN OIL CORPORATION LTD. Petitioner

Through: Mr Rajat Navet and Mr Rohan
Yadav, Advs.

versus

PRESIDING OFFICER LABOUR COURT ...Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner has challenged the order of the Labour Court dated 09.03.1989, whereby the Court had found the domestic enquiry as perverse and ordered for recording of the evidence to prove the misconduct and the order of the Labour Court dated 09.03.2001, whereby the Labour Court had set aside the dismissal of the workman and awarded a compensation of an amount of Rs. 1,50,000/- in lieu of reinstatement and continuity in service with back wages.

2. The workman had also challenged these orders vide his writ petition No. 6000/2001, however, the same was dismissed in default on 09.10.2013 as it was not being pursued by the workman.

3. The brief facts of the case are that the petitioner is a public sector

corporation dealing in the manufacturing and distribution of petrol and petroleum products. The respondent No.2-Md. Idris was its workman and in the year 1974, he was transferred to Mughal Sarai, U.P. from Delhi. This transfer was done in view of the exigencies of work and the place of transfer was near the native place of the workman which was at Barabanki, U.P. Subsequently, since the workman did not obey the transfer order, a chargesheet was issued to him and a departmental enquiry was constituted and vide order dated 14.03.1975, the workman was dismissed from service. The workman raised a dispute before the Delhi Administration and the Delhi Administration had referred the dispute vide its order dated 09.12.1975 to the Labour Court. Both the parties contested the proceedings before the Labour Court. On the basis of pleadings of the parties, following issues were framed by the Labour Court:-

- “1. Whether this Court has jurisdiction to entertain this case?
2. Whether the Domestic Enquiry was not conducted in a fair and impartial manner and the findings are perverse?
3. Whether the transfer order to Mughal Sarai of the workman was illegal and on account of victimisation?
4. Whether the order of dismissal is not legal?

5. As in the reference.”

4. Issues No.1 and 2 were treated as preliminary issue. The Labour Court vide its order dated 09.03.1989 decided the preliminary issues against the petitioner and the Labour Court had given its findings that the Delhi Administration was the appropriate Government in this case. The domestic enquiry, however, found to be defective as the findings of the enquiry were found to be perverse. Thereafter, the parties had led its evidence before the Labour Court regarding the validity of the enquiry. Vide its order dated 09.03.2001, the Labour Court had given its findings that the petitioner had failed to prove the charges against the respondent-workman and thus termination was illegal.

5. The petitioner has challenged the findings of the Labour Court on the ground that the findings are perverse. It is submitted that the reference made by the Delhi Administration was bad in law because in the case of petitioner, the Delhi Administration is not the appropriate Government. It is submitted that the petitioner being a controlled industry, the appropriate Government in this case is the Central Government and, therefore, the reference was incompetent and ultra vires. It is submitted that territorial jurisdiction alone would not confer jurisdiction on Delhi Administration to refer a dispute for

adjudication to Labour Court in Delhi. It is submitted that findings of the Labour Court, therefore, are without any jurisdiction. Reliance is place on the findings of this Court in the case of **Indian Oil Corporation Ltd. Marketing Division vs. Government of National Capital Territory of Delhi and Others** Civil Writ No.4303/1997, wherein vide order dated 06.12.1999, this Court had declared that the appropriate Government in case of the petitioner is Central Government and not Government of NCT of Delhi. It is submitted that in view of this fact the findings of the Labour Court are without any jurisdiction and liable to be set aside. The findings of the Labour Court are also challenged on merit.

6. I have heard the arguments of the learned counsel for the petitioner. No one has attended the Court proceedings on behalf of respondent No.2, i.e., the workman. It is also clear that the workman although had challenged the awards dated 09.03.1989 and 09.03.2001 vide writ petition No.6000/2001, he has not pursued the same and the said writ petition was dismissed in default on 09.10.2013.

7. In the present case, the following reference has been made to the Labour Court for adjudication on the basis of the dispute raised by the workman:-

“The Secretary (Labour), Delhi Administration, Delhi vide his order No. F.24(1990/75-Lab/44222) dated 19.12.75. The term of reference is as follows:-

“Whether the dismissal of Shir Mohd. Idris is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

8. Therefore, it is clear that the order of reference has been made by the Secretary, Delhi Administration. The Management in its written statement has taken the preliminary objection that the reference by Delhi Administration was bad in law because Delhi Administration was incompetent and thus, the reference was invalid as it was not made by the appropriate Government.

9. The Labour Court has treated this plea of respondent as preliminary objection. While giving its findings on this issue, it has held that since the dispute had arisen within territorial limits of Delhi, the appropriate Government to refer the dispute was Delhi Administration.

10. This Court in writ petition No.4303/1997 has given the following findings:-

“As Indian Oil Corporation Limited is a controlled industry, the appropriate Government in relation to Indian Oil Corporation Limited would be Central

Government and not Government of NCT of Delhi”

11. In view of this proposition of law whereby it is settled that the Government of NCT of Delhi is not the appropriate Government of the petitioner, the reference made by the Delhi Administration in the present case, was, therefore, without any authority and was bad in law and the entire proceedings held by the Tribunal pursuant to the said reference, therefore, was also bad in law. Since the reference is bad in law, no opinion has been given on the merits of the case. The findings of the Labour Court that the appropriate Government in present case is Delhi Administration are, therefore, an error apparent on the face of the record. The award is liable to be set aside on this ground alone. Since the orders on merit have been passed without a valid and appropriate reference, both the orders dated 09.03.1989 and 09.03.2001 are illegal.

For the foregoing reasons, the orders dated 09.03.1989 and 09.03.2001 are hereby set aside.

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

DEEPA SHARMA
(JUDGE)

MARCH _____, 2015
BG