

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

% Date of decision: 08th April, 2015

+ W.P.(C) 6576/2014

WORKMEN AS REPRESENTED BY
MCD GENERAL MAZDOOR UNION Petitioner
Through: Mr. Varun Prasad, Advocate.

versus

UNION OF INDIARespondent
Through: Mr. Akash Vajpai, Advocate.

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

VED PRAKASH VAISH, J. (ORAL)

1. By this petition under Articles 226 and 227 of the Constitution of India the petitioner impugns order bearing F.No.L-42011/113/2012-IR(DU) dated 09.04.2014 passed by Section Officer, Ministry of Labour and Employment, Government of India whereby it was observed that the matter raised by the Union cannot be considered for adjudication.

2. Mr. Akash Vajpai, Advocate accepts notice on behalf of respondent and submits that he does not want to file reply/ counter affidavit.

3. With the consent of learned counsel for the parties, the matter is taken up for final disposal.

4. Learned counsel for the petitioner urges that on 21.11.2011 the petitioner made a representation to the MCD requesting for merger of supervisory post i.e. Sr. Field Worker with Assistant Malaria Inspector w.e.f. 01.01.1996. Thereafter, the petitioner filed statement of claim before the Regional Labour Commissioner (Central), New Delhi which culminated into impugned order dated 09.04.2014 whereby it was decided that the matter raised by the Union cannot be considered for adjudication.

5. The only grievance of the petitioner is that the petitioner had approached the respondent for making a reference of the industrial dispute raised by him in respect of merger of supervisory post i.e. Sr. Field Worker into the category of Assistant Malaria Inspector, however, the respondent vide impugned order dated 09.04.2014 had illegally refused to make the reference on the ground that claim of the petitioner seems to be not justified and that too after a lapse of 16½ years.

6. In '**Telco Convoy Drivers Mazdoor Sangh and Anr. vs. State of Bihar and Ors.**', (1989) 3 SCC 271, the Apex Court observed as under: -

"11. It is true that in considering the question of making a reference under Section 10(1), the government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhushan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a

reference should be made or not, the Deputy Labour Commissioner and/ or the government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the government which is, undoubtedly, not permissible.

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16. It has been already stated that we had given one more chance to the government to reconsider the matter and the government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the government has persistently declined to make a reference under Section 10(1) of the Act, we think we should direct the government to make such a reference. In several instances this Court had to direct the government to make a reference under Section 10(1) when the government had declined to make such a reference and this Court was of the view that such a reference should have been made. *See Sankari Cement Alai Thozhilalar Munnetra Sangam vs. Government of Tamil Nadu; Ram Avtar Sharma v. State of Haryana; M.P. Irrigation Karamchhari Sangh v. State of M.P.; Nirmal Singh v. State of Punjab.*”

7. Learned counsel for the respondent submits that in view of the aforesaid decision in **Telco Convoy Drivers Mazdoor Sangh’s** case (supra) the matter can be remanded back to the concerned authority for passing a fresh order.

8. In view of the facts and circumstances of the case and the law laid down in **Telco Convoy Drivers Mazdoor Sangh’s** case (supra) the matter is remanded back to the respondent Union to reconsider the matter and pass a fresh order keeping in view the law laid down in the

aforesaid judgment expeditiously and preferably within a period of two months from today.

9. The petition stands disposed of accordingly.

(VED PRAKASH VAISH)
JUDGE

APRIL 08th, 2015
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