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

% **Date of decision: 23rd April, 2015**

\+ W.P.(C) 6599/2014

MD. EARUL HOQUE & ORS. ..... Petitioners
Through: Mr. Varun Prasad, Advocate.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Ripu Daman Bhardwaj CGSC for UOI.

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 petitioners impugn order bearing F.No.L-42011/73/2012-IR(DU) dated 07.04.2014 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. With the consent of learned counsel for the parties, the matter is taken up for final disposal.

3. Brief facts of the case as borne out from the present petition are that the petitioners were appointed by CPWD between 02.01.1994 to 05.05.2004 under the supervision of Executive Engineer (Electrical), CPWD, Electrical Division, Safdarjung Hospital, New Delhi. The services of the petitioners

were terminated on 16.03.2010 without following the procedure as envisaged under the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act'). On 22.05.2010, the dispute against the illegal termination of the petitioners was raised before the Conciliation Officer but the Conciliation Officer even after expiry of more than 10 months did not refer the dispute to the appropriate government. Thereafter, the petitioners approached the labour court seeking regularization of their services, which was referred to Central Government, Industrial Tribunal-cum-Labour Court, New Delhi vide order dated 28.01.2001 (Annexure-P4).

4. On 17.03.2001, the petitioners approached the labour court directly and raised an industrial dispute qua the termination of their service under Section 2 (a) through Industrial Disputes Amendment Act (No. 24 of 2010). Award dated 08.05.2013 was passed with regard to the case of termination of the services of the petitioners wherein the Court held that the services of the petitioners being terminated cannot be entertained directly under Section 2 (a) as they need espousal and thus, has not acquired the status of industrial dispute. The petitioners made representation to refer the dispute for adjudication dated 03.03.2014 to Union of India. On 07.04.2014, respondent No.1 referring to earlier dispute qua regularisation of the services of the petitioners, refused to refer the dispute regarding the termination of services of the petitioners who passed the impugned order dated 07.04.2014.

5. Learned counsel for the petitioners contended that pursuant to the order dated 17.04.2012 passed in **'Indrapal v. UOI'**, *W.P.(C) No. 2110/2012*, respondent No.1 passed fresh order referring the dispute to the

Labour Court/Industrial Tribunal. Respondent No.1 has failed to appreciate that the earlier reference was for the regularization of the services of the petitioners, whereas the petitioners approached the court in the present case, for seeking reference for the termination of their services. Respondent No.1 should have not refused to refer the dispute qua termination of services of the petitioners to the appropriate Labour Court.

6. It was lastly contended that respondent No.1 has refused to refer the dispute to the Labour Court/Industrial Tribunal and decided the matter as if it was a Court itself by delving into the merits of the matter which is clearly impermissible.

7. I have heard learned counsel for the parties and have also perused the material on record.

8. 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 Karamchari Sangh v. State of M.P.; Nirmal Singh v. State of Punjab.*"

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

10. 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 respondent No.1, Union of India, 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.

11. The petition stands disposed of accordingly.

12. Trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

APRIL 23rd, 2015
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