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

+ **W.P.(C) 5719/2006**

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Reserved on: 13th November, 2017
Date of Decision: 21st November, 2017

M/S HOTEL CORPORATION OF INDIA Petitioner
Through Ms. Kritika Sachdeva, Advocate

versus

THE WORKMEN Respondent
Through Mr. Som Dutt Sharma, Mr. Gaurav
Bhardwaj and Mr. Syedd Muztara,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India to set aside and quash the Award dated 07.03.2005 passed by the Presiding Officer, Industrial Tribunal-II, Delhi (in short, called 'the Tribunal').

2. I have heard the learned counsels for the parties and have also gone through the written synopsis filed by them.

The claim of the workmen and written statement of the Management as noticed by the Tribunal is as follow:-

"2. In statement of claim it is submitted that the claimants are permanent employees of Hotel Corporation of India Ltd., Chefair Flight Catering and are being represented by Hotel Corporation of India Karamchari Union. It is submitted that the management is having its several units situated at Indira Gandhi International

Airport, Gurgaon Road, New Delhi. The pay and allowance of the claimant have undergone change/revision from time to time persuasion of wage negotiation between the management and union. It is submitted that there is a settlement on 3.11.2000 between the management and union to some of the term and condition of the service of workmen including the pay and allowances and the settlement was duly registered with Govt. of NCT of Delhi on 11.5.2001. It is submitted that settlement makes a provision for providing up to a maximum of three stagnation increments to those employees who are stagnated. The management has decided to grant stagnation increment in every year of service w.e.f. 1.2.1997 and the same was given for a period of one year, however, after one year the management has withdrawn the same and the payment made was recovered from the employees. It is submitted that the management has failed to implement the provision of the settlement and did not grant the revised scale w.e.f. 1.2.1997 for every year increment. It is submitted that the management has illegally withheld the revised pay scales of the workmen.

3. *Management has filed the written statement in which it is submitted that the management and union arrived at an amicable settlement and signed a memorandum of understanding on 3.11.2000. The said settlement was registered on 5.11.2000 and it came into force w.e.f. 1.2.1997. In the settlement it was provided that in case of employee who are stagnated upto a maximum of 3 stagnation increment will be given for those who reach the maximum of their pay scale. It is submitted that the stagnation increment was given to the employees, however, the said increment was rectified as per provisions, laid down in Regulation No.46 of Employees Service Regulation, which read as under:-*

“Subject to the general conditions laid down in Regulation No.44(1) and the provisions of sub-regulation (ii) hereof, the employees of such categories as may be specified by the Corporation for a secretary increment of every three year’s service from the date on which they reach the maximum of their grade.”

It is submitted that as per General Clause (2) of General Conditions of settlement, the union has agreed that all the employees will refund any excess amount received by them. The employees in their individual capacity also gave their undertaking to that effect. It is denied that the management in any way has reduced the basic pay of the employees, however, appropriate rectifications were made in regard to stagnation increment. It is submitted that the management has fully implemented the provisions of the agreement and accordingly revised pay scale has been implemented. It is submitted that the management has not withheld the revised pay scale of the workman as alleged.”

3. Ms. Kritika, learned counsel for the petitioner submits that the Tribunal went beyond its jurisdiction after having answered in the negative that the workmen be given stagnation increment each year, when it further held that the Management is required to be directed to give three stagnation increments to the workmen alternatively within six years.
4. Learned counsel for the petitioner also submits that the Tribunal not only exceeded its jurisdiction but also went beyond the Reference by stating that the workmen be given stagnation increment in alternative years within a span of six years i.e. once in every two years, rather than sticking to answer whether the workmen are entitled for the stagnation every year or not.
5. Learned counsel for the petitioner also relied upon judgments titled as ***Mahendra L. Jain and Others v. Indore Development Authority and Others***, (2005) 1 SCC 639 and ***State Bank of Bikaner & Jaipur v. Om Prakash Sharma***, (2006) 5 SCC 123.
6. Learned counsel for the petitioner also put reliance upon Clause 46 (i) of Hotel Corporation of India Employees' Service Regulation which reads as under:-

“46(i) Subject to the general conditions laid down in regulation 44(i) into the provisions of sub regulation (ii) hereof, the employees of such category as may be specified by the corporation for a secondary increment for every 3 years service from the date of which they reach the maximum of their grade.”

7. *Per contra*, learned counsel for the respondent has drawn the attention of this Court towards Memorandum of Settlement dated 03.11.2000 (Annexure –I). Relevant portion of Clause (1) (a) of the Settlement reads as under:-

“In case of employees who are stagnated upto a maximum of 3 stagnation increments will be given for those who reach the maximum of their scales.”

Learned counsel for the respondent also submitted that Memorandum of Settlement makes a provision for providing upto a maximum of three stagnation increments to those employees who reach at maximum of their scales. The Management had decided to grant stagnation increment in every year of service w.e.f. 1.2.1997 and the same was given for a period of one year, however, after one year, the Management had withdrawn the same and the payment already made was also recovered from the employees.

8. The aforesaid pleadings clearly demonstrate that the case of the workmen is that they have been given stagnation increment in one year. However, no case was made out by the parties, more specifically, in the statement of claim by the workmen/respondent that the stagnation increment be given in alternate years, i.e. once in every two years or that the Management was required to give three stagnation increments to the workmen alternatively within six years. It is also not the case of the

respondent on the record that the stagnation increment was given in alternate years, i.e. once in every two years. The respondent seems to be aware about the statutory limitation in this behalf in view of the settlement arrived at between the Management and the Union which was exhibited as Ex.MW1/1, the relevant portion of which has already been extracted above.

9. The Management has relied upon in its written statement before the Industrial Tribunal, the Regulation No.46 (i) of the Employees' Service Regulation which reads as under:-

“46(i) Subject to the general conditions laid down in Regulation No.44(1) and the provisions of sub-regulation (ii) hereof, the employees of such categories as may be specified by the Corporation for a secondary increment of every three year's service from the date on which they reach the maximum of their grade.”

10. It was also submitted in the written statement that as per general Clause (ii) of the General Conditions of Settlement, the Union has agreed that all the employees will refund any excess amount received by them. The employees in their individual capacity also gave their undertaking to that effect. It was denied that the Management, in any way, has reduced the basic pay of the employees; however, appropriate rectifications were made in regard to stagnation increment. It was also submitted in the written statement that the Management has fully implemented the provisions of the agreement and accordingly, the revised pay scale has been implemented. The Management has not withheld the revised pay scale of the workmen, as alleged.

11. Learned counsels for the parties, on the query of the Court, stated that the Memorandum of Settlement is still in force. Learned counsel for the

petitioner submitted that the terms and conditions of the settlement stand implemented and are being complied with. Consequently, the benefits are being given/ paid by the petitioner to the respondent. Counsel further submitted that in total, three stagnation increments are being given by the petitioner to the respondent as per their entitlement after every three years, i.e., once in every three years, in terms of Regulations 46(i) and 46(ii) of the Staff Regulation of the Hotel Corporation of India Employees' Service Regulations. Learned counsel for the respondent, however, submitted that the Management has not paid stagnation increment to the respondent as per their entitlement. Counsels for the parties submitted that it is/was not stated anywhere in the pleadings or written submissions or the arguments of the Management/Petitioner that the case of the Management is that the stagnation increment is given in alternate years, i.e., once in two years, as stated in the Impugned Award dated 07.03.2005.

12. Now, let me examine the law regarding the Reference and the constructions thereof. In the matter of **Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. & Anr.**, AIR 1979 SC 1356, the Supreme Court has held as under:

“11. Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether

there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management."

13. In the matter of ***Delhi Cloth and General Mills Co. Ltd. v. The Workmen and Ors.***, AIR 1967 SC 469, while dealing with Section 10(4) of the Industrial Disputes Act, 1947 (in short, called 'the ID Act'), the Supreme Court held as under:

"10. Proceeding in the order in which the arguments were addressed, we propose to deal with issues 3 and 4 first. Under s. 10(1) (d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring "the dispute or any matter appearing to be connected with, or relevant to, the dispute..... to a Tribunal for adjudication." Under s. 10(4) "where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

11. From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word

'incidental' means according to Webster's New World Dictionary:

"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:"

12. "Something incidental to a dispute" must therefore mean something happening as a result of or; in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lock-out 'and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a lock-out. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lock-out was improper. The third issue has also a sub-issue, namely, if the lock-out was not legal, whether the workmen were entitled to wages for the period of the lock-out. Similarly, the fourth issue proceeds on the basis that there was a sit-down-strike in the Swatantra Bharat Mills on 23-2-1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike.

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26. So far as the fourth proposition is concerned, Mr. Chari argued that the Tribunal had to examine the pleadings of the

parties to see whether there was a strike at all. In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under s. 10(4) of the Act it is not competent to the Tribunal to entertain such a question.”

14. Taking into consideration the scope of Section 10(4) of the ID Act and the construction thereof, the Supreme Court, way back in 1962, in the matter of ***Express Newspapers Ltd. v. Their Workers and Staff & Ors.***, 1962 SC (1) LLJ 227, held as under:

“It is hardly necessary to emphasise that since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under S.10 is limited by S.10 (4) to the points specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided.”

15. An examination of Section 10(4) of the ID Act clearly shows that the Labour Court/Industrial Tribunal is required to confine its adjudication to

the points of disputes referred and the matter incidental thereto.

16. It is not in dispute that the Industrial Tribunal do derive its jurisdiction from the Reference made by the State Government while being bound to act within the four corners thereof and it could not and cannot enlarge the scope of the Reference nor can/could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have gone into by the Industrial Tribunal being not the subject matter thereof. The Reference in this matter was quite specific in the following terms:-

“Whether workmen who have reached the maximum of their pay-scales are entitled to stagnation increment each year upto a maximum of three increments as per memo of settlement dtd. 3.11.2000 and if so, what directions are necessary in this respect?”

17. In ***Mahendra L. Jain & Ors. v. Indore Development Authority & Ors.***, (2005) 1 SCC 639, the Supreme Court has held as under:

“34. We have noticed the provisions of the Act and the Rules. No case was made out by the Appellants herein in their statements of claim that they became permanent employees in terms thereof. There is also nothing on records to show that such a claim was put forward even in the demand raising the industrial dispute. Presumably, the Appellants were aware of the statutory limitations in this behalf. Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four-corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof.”

18. The Reference clearly demonstrates in its terms that the first question is whether the workmen who have reached the maximum of their pay-scales

are entitled to stagnation increment each year upto a maximum of three increments as per the Memorandum of Settlement and secondly, if so, what directions are necessary in this respect.

19. The aforesaid Reference clearly lays down in its terms that in case the workmen are entitled to stagnation increment each year, then only in that eventuality, the words 'if so' indicate, what directions would be necessary in that respect. The Reference does not in any manner lays down or asks for what directions, if it is not so held, may be given or are necessary. The word 'if so' is in continuity and in conjunction with the first part in terms of the Reference and cannot be read in isolation or separately; rather it has to be read as such, in continuity and conjointly. Accordingly, this Court is not convinced with the findings of the Industrial Tribunal to the extent, as argued by the learned counsel for the respondent that the stagnation increment is required to be given in alternate years, i.e. once in every two years, and on the basis thereof, holding that the Management is required to be directed to give three stagnation increments to the workmen alternatively within six years, as these findings are incidental to the first part of the Reference. It is always open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, however, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto.

20. The case of the workmen is that they be given stagnation increment every year and the same demand and dispute were raised by them. The

Government on the basis thereof made the Reference and referred the dispute for adjudication. The Reference having been limited to the narrow question as to whether the workmen who have reached the maximum of their pay-scales are entitled to stagnation increment each year upto a maximum of three increments as per the Memorandum of Settlement and if so, what directions are necessary in this respect, the Tribunal by the very terms of the Reference, had no jurisdiction to go further and enlarge the Reference by holding that the Management was required to be directed to give three stagnation increments to the workmen alternatively within six years.

21. In ***State Bank of Bikaner & Jaipur v. Om Prakash Sharma***, (2006) 5 SCC 123, the Supreme Court has held as under:

“12. In the instant case, the Award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing the Award, if the Labour Court exceeds its jurisdiction, the Award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The Award and the judgment of the High Court, therefore, cannot be sustained. Consequently, the appeal is allowed and the judgment of the High Court is set aside. The award is set aside to the extent of order of reinstatement with back wages. The writ petition filed by the appellant in the High Court is, thus, allowed.”

22. This Court in ***M/s. Delhi Press v. K.S. Sidhu***, 1979 (38) FLR 415, held that:

“...the interference by High Court can be on grounds of defects

of jurisdiction, violation of the principles of natural justice or any error of law apparent on the face of the record.The High Court will interfere only if the finding is based on no evidence or is such that it could not have been arrived at on the basis of the material before it.”

23. In the case titled as **Syed Yakoob v. K.S. Radha Krishan**, AIR 1964 SC 477, the Supreme Court has held as under:

“.....writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground

that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque.....”

24. The Tribunal, in this case, has decided correctly so far as first part of the Reference is concerned that the workmen are not entitled to stagnation increment each year. To this extent, there is no dispute. However, the Tribunal has gone further and stated that the Management is required to be directed to give three stagnation increments to the workmen alternatively within six years. No such dispute has been referred to the Tribunal. In other words, the Tribunal has been called upon to just answer whether workmen who have reached the maximum of their pay-scales are entitled to stagnation increment each year upto a maximum of three increments and if so, what directions are necessary in this respect? The direction of the Tribunal as contained in the later part that the Management is required to be directed to give three stagnation increments to the workmen alternatively within six years, cannot be termed as incidental, hence, the same is beyond the scope of Reference and must be struck down.

25. The Tribunal, in my opinion, has committed an error while answering the Reference holding that the Management is required to be directed to give three stagnation increments to the workmen alternatively within six years, as is also evident from the submissions made by the learned counsels for the

parties that it is/was not stated anywhere in the pleadings or the written submissions or the arguments of the Management/Petitioner that the case of the Management is that the stagnation increment is given in alternate years, i.e., once in two years, as stated in the Impugned Award dated 07.03.2005.

26. Consequently, the Rule is made absolute and the writ petition filed by the petitioner is allowed. The Award dated 07.03.2005 is quashed and set-aside to the extent of holding that the Management is required to be directed to give three stagnation increments to the workmen alternatively within six years, i.e. once in every two years. The parties shall bear their own costs.

CHANDER SHEKHAR, J

NOVEMBER 21, 2017

b/k/tp