

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

Date of decision: April 18, 2017

+ **W.P.(C) 307/2012**

K.L. CHHABRA

..... Petitioner

Through: Ms. Monica Kapoor, Advocate

Versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Jagat Arora and Mr. Rajat
Arora, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

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The Appropriate Government had made the following Reference:-

“Whether the action of the management of Punjab National Bank, New Delhi in not paying payment of the recovery of due amounts & benefits as mentioned in the claim application dated 7.5.2007 and benefits of Shri K.L. Chhabra is just, fair and legal? What relief the workman concerned is entitled to and from which date?”

After framing of issues and upon recording of evidence, learned Central Government Industrial Tribunal (hereinafter referred to as the “Tribunal”) has answered the first issue by holding that the Reference made did not come within the ambit of Industrial Dispute for want of

proper espousal. The finding returned by learned Tribunal on this aspect is as under:-

“26. Now I would turn to the facts of the present controversy to assess as to whether the dispute is an individual dispute or an industrial dispute. In his affidavit Ex.WW1/A the claimant draws a blank on the issue that his dispute was adopted by a union of the workmen of the bank. He had also not put forward a case that his claim was espoused by a substantial number of workmen. It is not a case relating to discharge, dismissal, retrenchment or otherwise termination of services of the claimant. Therefore, it is evident that no evidence worth name was projected by the claimant to show that his dispute was espoused by a recognized trade union of the establishment of the bank or by a substantial number of workmen. It is not a case which acquires a character of an industrial dispute by use of legal fiction enacted in section 2-A of the Act. Therefore, it is evident that the dispute projected by the claimant before the Conciliation Officer had not acquired a character of an industrial dispute, without being espoused by a recognized union of the establishment of the bank or substantial number of workmen. Individual dispute raised by the claimant can not be referred for adjudication. Consequently it is concluded that an individual dispute was referred by the appropriate Government to this Tribunal for adjudication. Issue is, therefore, answered in favour of the bank and against the claimant.”

The second issue on merits has not been answered by the Tribunal by holding that it has no jurisdiction to entertain the Reference.

To assail the impugned Award of 30th November, 2010, learned counsel for petitioner submits that Supreme Court’s decision in *National*

Engineering Industries Ltd. v. State of Rajasthan and Others, (2000) 1 SCC 371 has declared that Industrial Tribunal is creation of a statute which gets jurisdiction on the basis of Reference and it cannot go into the validity of Reference. Petitioner's counsel submits that learned Tribunal has erred in doing so, as the espousal was made by the General Secretary of the Union. To assert so, attention of this Court is drawn by petitioner's counsel to espousal of 17th September, 2007 (*Annexure P-5*). While relying upon decision of a Coordinate Bench of this Court in *Mahipal Singh Vs. Presiding Officer, Industrial Tribunal-III* 2010 SCC OnLine Del 1930, it is submitted by petitioner's counsel that learned Tribunal be called upon to decide the Reference on merits and not to turn down the Reference on hyper-technical ground.

Respondent's counsel relies upon Supreme Court's decision in *Workmen of M/s. Dharam Pal Prem Chand (Saugandhi) v. Dharam Pal Prem Chand (Saugandhi)*, AIR 1966 SC 182 to submit that the dispute raised by dismissed employee cannot become an industrial dispute unless it is supported by Union and in the instant case there is no proper espousal by the Union and so, the Reference has rightly not been entertained. Reliance is also placed upon Supreme Court's decision in *Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Co. Ltd.* (2014) 6 SCC 434 to submit that this Court refrains from interfering with the Award unless there is serious error of law or if findings recorded suffer from an error apparent on the face of record and since there is no patent illegality in impugned Award, so, this petition deserves dismissal. Nothing else is urged on behalf of counsel for the parties.

Upon hearing and on perusal of impugned Award, material on record and decisions cited, I find that this court in exercise of its powers under Article 227 of Constitution of India cannot act as an Appellate Court or reappreciate the evidence and can interfere with the Award only if there is a serious error of law or the finding recorded suffers from error apparent on the face of it. Supreme Court in *Workmen of M/s. Dharam Pal Prem Chand (Supra)*, has gone into the aspect of espousal and has emphasized that the broad policy underlying the espousal is to discourage frivolous, unreasonable and undesirable disputes. The espousal (*Annexure P-5*) clearly shows that it has been supported by the General Secretary of P.N.B. Karamchari Union, Delhi. It may not be on the letter head of aforesaid Union but by that itself would not justify the conclusion that the espousal made is not proper. The Reference made to trial court cannot be said to be frivolous or unreasonable.

Supreme Court in *National Engineering Industries Ltd. (supra)* declares that Industrial Tribunal is creation of a Statute and it gets jurisdiction on the basis of Reference. No decision to the contrary has been cited. By applying the dictum of Supreme Court in *National Engineering (Supra)* to the facts of the instant case, I find that impugned Award refusing to entertain the Reference made, suffers from serious error of law and is hence liable to be set aside.

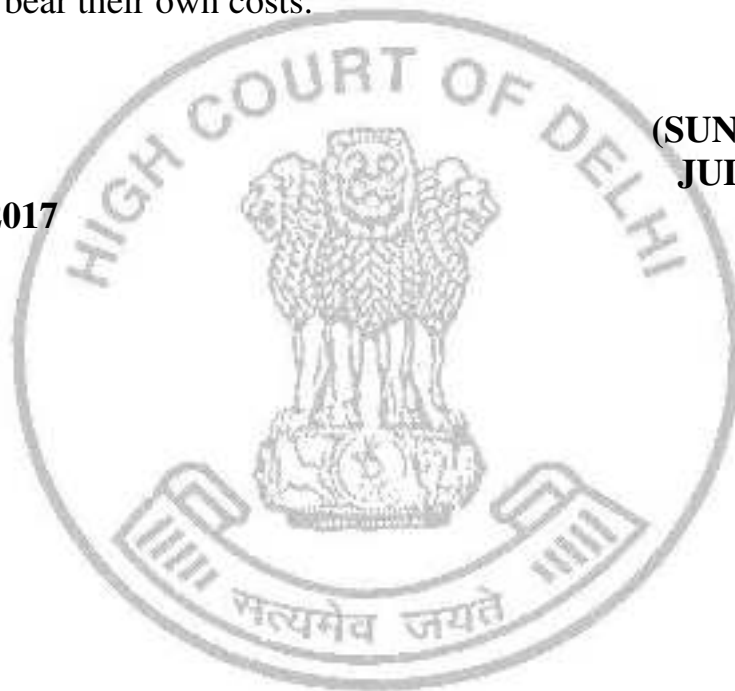
Consequently, impugned Award is set aside while deciding the first issue in favour of petitioner by holding that espousal was validly made and with direction to the Tribunal to decide the second issue on merits on the basis of evidence already recorded. Parties are directed to appear

before the Tribunal on 29th April, 2017 at 2:00 p.m. to enable expeditious hearing and disposal of Reference made. It is expected that the Tribunal shall make all the endeavours to decide Reference within a period of six months from the date fixed i.e. 29th April, 2017 and if it is not so done, extension of time be sought from this Court upon showing valid reasons for inability to do so.

With aforesaid directions, this petition is disposed of while leaving the parties to bear their own costs.

APRIL 18, 2017

s/r



**(SUNIL GAUR)
JUDGE**