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

+ W.P.(C) 10007/2015 & CM Nos. 24507-08/2015

HSBC INVESTDIRECT SECURITIES (INDIA) PVT. LTD.

..... Petitioner

Through Mr. Sumit Bansal, Mr. Ateev Mathur,
Ms. Jagriti Ahuja and Mr. Amol
Sharma, Advocates.

versus

UNION OF INDIA & ORS

..... Respondent

Through Mr. Shubhra Parashar, Senior Panel
Counsel with Mr. Santosh Kumar
Pandey, Government Pleader for
respondent Nos.1 and 2.
Mr. Robin R. David & Mr. Dhiraj
Philip, Advocates for respondent No.
3.

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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30.11.2017

Petitioner has filed the present writ petition against the respondent seeking quashing of the order dated 26.08.2015 passed by the respondent no. 1 in case no. L-12012/87/2015-IR(BI) with respect to services of respondent no. 3 and also seeking quashing of report No. ALC-II/8(35)/2014 dated 26.07.2015 of Assistant Labour Commissioner (Central), New Delhi.

Learned counsel for the petitioner submitted that the petitioner

is not a banking company and the Central Government is not the appropriate government to refer the dispute.

Learned counsel for the petitioner further submitted that the dispute ought to have been dealt with and referred under sections 2 (a) (ii) of the Industrial Disputes Act.

Learned counsel for the petitioner submitted that the reference order which was passed by the Section Officer, Ministry of Labour, Government of India, reads as under:

“Whether the applicant, Sh. Anil Kumar Gupta, is entitled to absorption in the newly named company, i.e. HSBC Invest Direct Securities (India) Ltd. By virtue of having worked in the same company under a different name is legal and justified? If not, to what relief is he entitled to?”

Counsel submitted that the above said reference order in view of the statutory provisions was beyond the jurisdiction of the respondent no. 1. Respondent no. 3 ought to have raised this dispute before the State Government and then on consideration of the facts, the Government of NCT Delhi could have made the reference, if any.

Learned counsel for the petitioner further submitted that he raised this objection before the Assistant Labour Commissioner (Central), Delhi in a letter dated 28.05.2014, stating that “appropriate authority in the present matter is State Government and not Central Government.” However, the concerned Assistant Labour Commissioner (Central), Delhi did not decide about the same in his report.

On the other hand, learned counsel for the respondent submitted that the matter since stands referred by the Central Government to the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court No. 1, New Delhi (hereinafter referred to as “the Tribunal”), which can adjudicate upon this question and may treat it as a preliminary issue. In case, the Tribunal holds that the appropriate authority in this matter is State Government, the matter may be raised by the respondent No. 3 before the State Government, thereafter.

In view of the submissions and since some documentary evidence may be required by the Tribunal to decide the question whether the appropriate authority is the State Government or the Central Government in the present case, I deem it appropriate to direct the Tribunal to frame and decide this issue as a preliminary issue. In case, the Tribunal comes to the conclusion that the appropriate authority is State Government, then the respondent no. 3 may pursue the matter with the appropriate Government i.e. the State Government, in accordance with law.

The reference was made vide order dated 26.08.2015 and more than two years have lapsed. Hence, the Tribunal is directed to frame the issue immediately in this regard and decide the same preferably within two months.

Both the parties, to appear before the Tribunal on 12.12.2017 at 10:00 AM, as prayed.

Learned counsel for the petitioner also submitted that liberty be granted to the petitioner, in case the Tribunal decides that the impugned reference has been properly made by the competent

authority of the appropriate Government i.e. the Central Government, then in that eventuality, the petitioner may approach this Court, to challenge the same. As prayed, liberty is granted.

Accordingly, the present petition stands disposed of.

CHANDER SHEKHAR, J

NOVEMBER 30, 2017

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