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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2625 OF 2015

Bhartiya Kamgar Sena ...Petitioner
vs.
Union of India and others ...Respondents

Mr.M.M.Agavekar for the Petitioner
Mr.J.N.Pandhi for the respondent Nos.1 and 2
Ms Mita Das a/w Mr.Vipul Bilve and Mr.Kund Kirpalani
I/b M/s.Mulla & Mull & Craigie Blunt & Caroe for
respondent No.3
Mr.Himanshu Kode and Ms K.Tavaria for respondent
No.5

CORAM : A.S.OKA, &
SANDEEP K. SHINDE,JJ.
DATE : DECEMBER 18, 2018

P.C.:

1 Heard the learned counsel for the petitioner, the learned counsel for the third respondent, the learned counsel for the fifth respondent and the learned counsel for the first and second respondents. Notice for final disposal has been already issued. The challenge in this petition under Article 226 of the Constitution of India is to the order made by the first respondent refusing to refer the dispute raised by the petitioner for adjudication to the Central Industrial Tribunal constituted under the Industrial Disputes Act,1947. The impugned order reads thus:

"I am directed to refer to the Failure of Conciliation Report No.B.ALC(C)-I/8(106)/2013 dated 8/8/2014 from the ALC(MUMBAI) received in this Ministry on 26.8.2014 on the above mentioned subject and to say that, prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons :

. The regularization of services to 64 Trolley Retrievers by the Management of M/s.Mumbai International Airports Ltd. (MIAL) cannot be considered since the Union failed to establish the employer and employees relationship between them. In fact, the disputant workers are the workers of M/s.Krystal Aviation Services Pvt.Ltd., who has entered into valid contract with M/s.MIAL. Moreover, the citation of judgments of Hon'ble Bombay High Court and Hon'ble Supreme Court of India by the Union do not fit in this case."

2 On plain reading of the order, it is apparent that the first respondent has assumed the role of an adjudicator of an industrial dispute and has recorded a finding that the employer-employee relationship has not been established by the petitioner.

3 After having heard the parties, we are

satisfied that the impugned order deserves to be set aside only on the ground that the first respondent had adopted the role of an adjudicator of industrial dispute.

4 Accordingly, we pass the following order:

- (I) Impugned order dated 29th April 2015 (Exhibit-G to the petition) is set aside;
- (II) We direct the first respondent to consider afresh the prayer for referring the dispute raised by the petitioner for adjudication to the Industrial Tribunal in accordance with law;
- (III) Appropriate decision shall be taken as expeditiously as possible;
- (IV) We make it clear that we have made no adjudication on merits of the controversy;
- (V) Writ Petition is disposed of on above terms.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)