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

% *Date of Judgment: 06th July, 2018*

+ LPA 180/2018

MAHENDER KUAMR

..... Appellant

Through: Mr Vishwender Verma, Adv.

versus

BSES YAMUNA POWER LTD & ORS

..... Respondents

Through: Mr Sandeep Prabhakar, Adv with
Mr Vikas Mehta and Mr Ishan Lamba,
Adv

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No. 13274/2018 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

LPA 180/2018

1. Challenge in this appeal is to the order dated 21.02.2018 (hereinafter referred to as the impugned order) passed by the learned Single Judge of this Court by which the writ petition filed by the appellant herein has been dismissed.

2. Before the submissions made by learned counsel for the appellant can be noticed, we deem it appropriate to re-produce the impugned order dated 21.02.2018 passed by the learned Single Judge.

“1. In the first round of litigation, petitioner had filed a civil suit seeking the same very declaration as sought in this petition. The said suit was decreed and the first appeal against it was dismissed. However, in the second appeal, respondent had succeeded as petitioner has been relegated to raise an industrial dispute before the concerned Labour Court. It is matter of record that petitioner had sought review of order of 24th May, 2016 in RSA No. 178/2013 BSES Yamuna Power Ltd. & Ors. Vs Mahender Kumar which has been dismissed vide order of 5th August, 2016. Petitioner had then preferred ‘Special Leave Petition’ which was withdrawn by him. Meaning thereby, the order passed in the Regular Second Appeal of relegating petitioner to raise an industrial dispute has attained finality. In this writ petition, petitioner seeks the same relief as sought in the civil proceedings which has already attained finality in the first round of litigation.

2. In the facts and circumstances of this case, this Court deems it inappropriate to exercise its jurisdiction under Article 226 of the Constitution of India to enter into the factual arena to consider petitioner’s claim in this petition as in the first round of litigation petitioner has been already relegated to avail of the remedy of raising an industrial dispute.

3. In view of the aforesaid, this petition is dismissed.”

We also deem it appropriate to reproduce the operative part of the order passed by the Delhi High Court in RSA 178/2013 dated 24.05.2016 which reads as under:-

“29. Thus, from the nature of the dispute raised by the respondent/plaintiff, it is very clear that it is an industrial dispute and, therefore, the Civil Courts would not have any jurisdiction to try the suit for payment for wages for a particular period for which the respondent/plaintiff was marked absent. That being the nature of the dispute, the judgment of both the Courts below are without jurisdiction and are therefore set aside. However, considering that the respondent/plaintiff is a workman, he is given the liberty to raise the dispute aforesaid before the Labour Courts for its adjudication.

30. The second appeal is thus allowed and disposed of in terms of above.”

(emphasis added)

3. Mr Verma, learned counsel appearing for the appellant submits that the appellant was working as a ‘Majdoor’ (Assistant Line Mate) with Delhi Electric Supply Undertaking, DESU which was under the MCD at the relevant time. He submits that as his attendance was not being marked, he was forced to file a suit for declaration and mandatory injunction seeking a direction that his attendance be marked in the year 1994. The suit was decreed in his favour and an appeal filed by the respondent was also

dismissed. However, in the second appeal filed in the High Court by the respondent, the appeal was allowed, the appellant was given liberty to raise a dispute before the Labour Court. Mr Verma submits that no doubt a review of the order dated 24.05.2016 was dismissed and the SLP was also withdrawn by him but the learned Single Judge has failed to consider the order passed on 08.12.2017 in the disposed of RSA when liberty was granted to him to file appropriate proceedings as available to him under law including the Labour Court. Counsel for the appellant contends that there is no bar in entertaining a writ petition and thus the order of the Single Judge is liable to be recalled and the writ petition filed by the appellant herein should be heard on merits.

4. Learned counsel for the respondents submits that the order passed in RSA 178/2013 by Justice Ashutosh Kumar has attained finality for the reason that a review petition filed before the same Judge also stands dismissed on 05.08.2016 and an SLP filed against the order passed in RSA 178/2013 was withdrawn by the appellant herein.

5. Mr Prabhakar further submits that a special leave petition filed by the appellant herein was withdrawn on 09.05.2017. Learned counsel for the respondents further submits that after the SLP was dismissed as withdrawn, the appellant herein filed another application seeking modification of the order dated 24.05.2016 which came up for hearing before another Single Judge of this Court and in the absence of the BSES Yamuna Power Ltd. the order was modified by which liberty was granted to the appellant to file appropriate proceedings as available to him under law including the Labour Court. Mr Prabhakar submits that no benefit can accrue in favour of the

appellant as by a detailed judgment dated 24.05.2016 passed in RSA 178/2013 a categorical finding was returned that the dispute raised by the appellant herein was an industrial dispute and being a workman he was granted liberty to raise a dispute before the Labour Court for adjudication. It is also contended by learned counsel for the respondents that the Single Judge has rightly held that it would be inappropriate to exercise jurisdiction under Article 226 of the Constitution of India to enter into the factual arena to consider the case of the appellant herein.

6. We have heard the learned counsel for the parties.

7. The basic facts of the case as detailed above are not in dispute. The appellant has been fighting for his rights since 1994. While deciding the RSA filed by the respondent herein, a Single Judge of this Court has returned a specific finding that the nature of dispute raised by the appellant is an industrial dispute. A review against the said order was rejected by the same Judge who had passed the order in RSA.

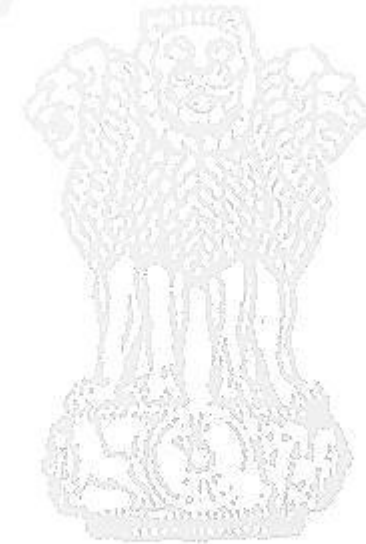
Meanwhile, the SLP filed by the appellant herein against the order dated 24.05.2016 passed in the RSA was withdrawn. It is post transfer of the Judge who passed the order dated 24.05.2016 passed in RSA and order dated 05.08.2016 passed in the review petition that the appellant filed an application for modification. Once the order passed in the RSA has attained finality, that the nature of dispute raised is an industrial dispute, we see no reason to interfere with the order passed by the learned Single Judge. Moreover, the Single Judge while dismissing the writ petition so filed has held that it would be inappropriate to exercise jurisdiction under Article 226

of the Constitution of India to enter into the factual arena. Disputed question of fact cannot be decided in proceedings under Article 226 of the Constitution of India. Accordingly, the appeal is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 06, 2018
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