

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

% *Judgment Reserved on : 30.01.2018*
Date of Judgment: 28.02.2016

+ **W.P. (C) 185/2016**

VINOD SINGH YADAV Petitioner
Through: Mr. Syed Sajad, Advocate.

Versus

M/S SECURITANS INDIA PVT LTD Respondent
Through: Mr. Arun Mehta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this writ petition under Article 226/227 of the Constitution of India by the petitioner is the Award dated 02.11.2015 in case vide LIR No.393/2012 on making a reference dated 22.06.2012 by Deputy Labour Commissioner, Govt. of NCT of Delhi under Section 10 (1) (c) and 12 (5) of Industrial Disputes Act, 1947 (in brief I.D.Act) with the terms of the reference “Whether services of Sh.Vinod Singh Yadav have been illegally and/or unjustifiably terminated by the management, and if yes, to what relief is he entitled?” and the Labour Court-XIX, Karkardooma Courts, Delhi (In short ‘Industrial Adjudicator’) returned the findings that it has no

jurisdiction to try and adjudicate the industrial dispute and the claim of the petitioner was not maintainable.

2. The petitioner claimed that he had joined the employment of the respondent as 'Gunman' in May, 2007. Since the petitioner along with the other workmen raised the demand of overtime and other statutory benefits, the respondent/management suspended him on 02.04.2011 by levelling allegations that the petitioner had misbehaved with his superior. Sh. U.C. Notiyal was appointed as Inquiry Officer. After enquiry, a show cause notice was issued to the petitioner and ultimately, the service of the petitioner was terminated on 26.07.2011.
3. Learned counsel for the petitioner argued that the respondent had informed the petitioner about the appointment of Sh. U.C. Notiyal as Inquiry Officer from its Head Office in Delhi vide letter dated 03.05.2011. He submitted that the Inquiry Officer had also conveyed to the petitioner that the enquiry proceedings would be conducted in Delhi Office by his letter of even date. He referred to a show cause notice dated 30.06.2011 issued to the petitioner after conclusion of the enquiry proceedings by the respondent from its Delhi Office. He argued that the letter of termination of the services of the petitioner dated 26.07.2011 was also issued by the respondent from its Delhi Office. He urged that since part of cause of action has accrued in Delhi, Courts in Delhi has jurisdiction to adjudicate the dispute.

4. He emphasised that if the respondent had any grievance with regard to the Reference, the remedy for the respondent was by way of a challenge in writ petition in the High Court and the Industrial Adjudicator could not have entertained the defence of the respondent that he lacked jurisdiction to answer the reference.
5. Per contra, it is submitted by learned counsel for the respondent/management that there is no infirmity in the findings of the Industrial Adjudicator which is a well reasoned one. He has relied upon a Full Bench judgment of the Patna High Court in **Paritosh Kumar Pal Vs. State of Bihar & Ors, 1984, Lab.IC 1254** wherein it was held that situs of the employment of the workman would be a relevant factor to determine the territorial jurisdiction of the Industrial Adjudicator. He submitted that since the petitioner was posted in Noida and removed from his services while being posted there, the Government of NCT of Delhi had no jurisdiction to refer any industrial dispute. He submits that the Head Office of the Management was in Bombay and they have the corporate office in Delhi and since the termination of the services of the petitioner became effective in Noida, Labour Court in Delhi had no jurisdiction and the NCT of Government of Delhi could not have made the reference.
6. I have heard learned counsel for the parties.

7. To appreciate the rival contentions of the parties it would be profitable to refer to Sub Section (1) of Section 10 and Sub Section 5 of Section 12 of the I.D. Act which reads as under:-

10. Reference of disputes to Boards, Courts or Tribunals.-

(1) where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof, or refer any matter appearing to be connected with or relevant to the dispute to a Court for Inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication;

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other

proceedings under this Act in respect of the dispute may have commenced.

Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

12. Duties of Conciliation Officers.-

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

8. A conjoint reading of sub section (5) of Section 12 read with sub section (1) of Section 10 of the I.D. Act reflects that these provisions confer the power on the appropriate government which after formation of an opinion about the existence/apprehension of industrial dispute between the parties to make a reference to a Board for promoting a settlement thereof or to the Labour Court, Tribunal or Industrial Tribunal.
9. Here it would be relevant to refer to sub section (4) of Section 10 of the I.D. Act which is a mandate to the Labour Court/Tribunal or National Tribunal that it shall confine its adjudication to those points and matters incidental thereto

which have been specified in the Reference. Sub section (4) of Section 10 reads as under:-

10. Reference of disputes to Boards, Courts or Tribunals.-

(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.

10. It is clear as crystal from a reading of Section 10 (4) of I.D. Act, that the Labour Court/Tribunal/National Tribunal cannot go beyond the points of reference and is mandatorily required to confine its adjudication to the points of reference and matters incidental thereto.
11. It has been held by the Hon'ble Supreme Court in **National Engineering Industries Ltd. Vs. State of Rajasthan AIR 2000 SC 469** that the Industrial Tribunal is the creation statute and gets its jurisdiction on the basis of reference. It cannot go into the question on the validity of the reference.
12. In **Bikash Bhushan Ghosh versus Novartis India Ltd.(2007) 5 SCC 591** the Hon'ble Supreme Court has held that the State where the part of the cause of action has accrued would have the jurisdiction to make a reference. The Apex Court has also held that the communication of order of termination itself gives rise to the cause of action as the order of termination takes

effect from the date of communication of the said order. It is further held that in view of the provisions contained in Section 21 of the Code of Civil Procedure unless the respondent suffered any prejudice, they could not have questioned the jurisdiction of the Court.

13. Very recently in the case titled as **Nand Ram Vs. Garware Polyster Limited (2016) 6 SCC 290**, the workman was employed in the year 1983 by the Management in Aurangabad; he was transferred to Silvassa (Gujarat) on 21.10.2000; by another order dated 20.12.2001 he was transferred from Silvassa to Pondicherry; due to closure of the unit at Pondicherry, his services were terminated on 15.04.2005 and the decision to close down the unit at Pondicherry was taken by the management company at Aurangabad. The **Hon'ble Supreme Court** has held that since the decision to terminate the service had been taken at Aurangabad, necessarily part of the cause of the action has arisen at Aurangabad. As a result, the **Hon'ble Supreme Court** has further held that since the services of the appellant was terminated while he was working at Pondicherry, the Labour Court at Pondicherry had jurisdiction to consider the case and that does not mean that the Labour Court in Aurangabad within whose jurisdiction the management is situated and decision was taken to close down the unit at Pondicherry and pursuant to which the appellant was terminated from the services also did not have the jurisdiction.

14. A single Bench of this Court in **Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd. 2009 (113) DRJ 620** has held that industrial dispute arises at the place where the employer is exercising effective control and the State Government having jurisdiction over the place from which the employer exercises effective control would have jurisdiction to make the reference. It was also observed that in the absence of any prejudice being shown to have suffered by the employer in contesting the proceedings in Delhi, the plea of territorial jurisdiction cannot be permitted to be taken especially in the matters relating to Industrial Disputes Act which is a social welfare legislation.
15. While considering the facts of the present case in the light of the above said legal position so discussed it is found that admittedly by letter dated 03.05.2011, the Respondent/Management company had informed the petitioner from its Delhi Office situated at House No.10, DDA Commercial Complex Nangal Raya New Delhi-110046 regarding the appointment of Sh.U.C. Notiyal as an Inquiry Officer. By another letter of the even date, Sh. U.C. Notiyal was informed by the respondent on its letter head from its New Delhi Office appointing him as Inquiry Officer into the charges against the petitioner vide charge sheet dated 08.04.2011. By this letter, the respondent directed him to conduct the enquiry proceedings at its premises 226, 3rd Floor, Satya Niketan, New Delhi-110021. By a communication dated 06.05.2011, the Inquiry Officer Sh. U.C. Notiyal had conveyed

the petitioner about his appointment as Inquiry Officer and he had fixed the date, time and place of enquiry as 20.05.2011 at 2:00 pm at 226, 3rd Floor, Satya Niketan, New Delhi-110021 and the petitioner was directed to come present and participate in the enquiry. A show cause notice dated 30.06.2011 was issued to the petitioner by the respondent from its office at House No.10 DDA Commercial Complex Nangal Raya, New Delhi-110046 to the effect that by the report of the Inquiry Officer dated 28.06.2011 the charges stand proved against him and he was directed to give explanation within three days to their proposed punishment of termination. By letter dated 26.07.2011 the respondent had communicated its decision to the petitioner to terminate his service from the date of the letter. This letter was also issued by the respondent from House No.10 DDA Commercial Complex Nangal Raya, New Delhi-110046.

16. No doubt the petitioner was posted in Noida but admittedly the respondent/management had taken the decision to appoint Sh. U.C. Notiyal as an Inquiry Officer which was communicated to the petitioner by letter dated 03.05.2011 from its Delhi Office. The enquiry proceedings were also conducted by the Inquiry Officer in Delhi Office of the respondent. After receiving the Enquiry Report the show cause notice dated 30.06.2011 was also issued by the respondent from its Delhi office to the petitioner. Ultimately, letter of termination dated 26.07.2011 was also communicated to the petitioner from its Delhi Office.

It is implied from these communications dated 03.05.2011, 30.06.2011 and 26.07.2011 that the respondent/Management exercises its effective control at its Delhi office. The decision to terminate the service of the petitioner was taken by the respondent in Delhi. Certainly the part of the cause of action had accrued in Delhi. Therefore, the Government of NCT of Delhi has rightly exercised its jurisdiction to refer the disputes between the parties to Labour Court in Delhi.

17. No justification has been given by the Respondent/management as to how and what prejudice would be caused to them if the Reference is adjudicated by the Industrial Adjudicator in Delhi. Sub section (4) of section 10 of the ID Act is a legal mandate to the Industrial Adjudicator that he shall confine its adjudication to the points of reference and matters incidental thereto only. The ID Act as postulated is a social welfare legislation enacted with an objective of taking care of the poor/labour class and travelling beyond the terms of reference while adjudicating any such dispute would unnecessarily lead to miseries of the workman.
18. In these circumstances, there was no occasion for the Industrial Adjudicator to raise its hands from adjudicating the disputes referred to it and not to answer the reference on the ground of lack of jurisdiction. Consequently order dated 02.11.2015 passed by the Industrial Adjudicator cannot be sustained and is liable to be set aside.

19. Here, it will not be out of place to refer the judgment of **the Apex Court in D.P. Maheshwari Vs. Delhi Administration (1983) 4 SCC 293** wherein the Apex Court has held that the Tribunals particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues.
20. In view of the above discussions, the order dated 02.11.2015 of the Industrial Adjudicator is set aside. Let the reference be answered in terms of its reference by the concerned Labour Court in accordance with law expeditiously within a period of 6 months. Since the petitioner/workman was made to suffer because of false and frivolous objection on the part of respondent/Management regarding lack of jurisdiction of Labour Court, let the respondent/Management pay the cost of Rs.50,000/- to the petitioner by way of Demand Draft before the Industrial Adjudicator within four weeks. Parties are directed to appear before the concerned Labour Court on 12.03.2018.

(VINOD GOEL)
JUDGE

FEBRUARY 28th, 2018
“sandeep”