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

**Date of Decision:- 12.09.2019**

+ W.P.(C) 1831/2015

GOPAL

..... Petitioner

Through: Ms.Meghna De for Mr.Rajiv  
Agarwal, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr.Bhagwan Swarup Shukla, CGSC  
with Mr.Murari Prasad Shukla, Adv.  
for R-1.  
Mr.Arun Birbal, Adv. for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**REKHA PALLI, J (ORAL)**

1. Vide the present petition under Articles 226 & 227 of the Constitution of India, the petitioner seeks quashing of the order dated 05.02.2014 passed by the respondent no.1 declining to make a reference of the dispute raised by him through the workman's Union for adjudication to the Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947.

2. The petitioner, who is an employee of the respondent no.2 since May, 1976 having been placed in the pay scale of Rs.3200-4900/- by way of financial upgradation under the ACP Scheme in accordance with office order dated 26.07.2008 raised an industrial dispute claiming placement in the upgraded pay scale of Rs.4000-6000/- as

was allowed to similarly situated employees namely Sh. Ram Prasad S/o Sh. Gulab Singh and Sh. Ram Kumar S/o Sh. Sohan Lal. The conciliation proceedings failed and the petitioner, therefore, requested respondent no.1 to make a reference of the dispute raised by him to the Industrial Tribunal.

3. The respondent no.1 has vide the impugned order rejected the petitioner's claim by observing as under:-

*“ F.No.L-42012/68/2013-IR(DU)  
Government of India  
Ministry of Labour & Employment*

*New Delhi, 05 February  
2014*

*To*

*The Vice Chairman,  
Delhi Development Authority  
Vikas Sadan, B Block,  
1st floor, INA, New Delhi*

*General Secretary  
Municipal Employees Union, Agarwal Bhawan  
G.T.Road, Tis Hazari  
Delhi-110 054*

*Subject:- Industrial dispute between the  
Management of DDA vs Municipal Employees  
Union*

*Sir,*

*I am directed to refer to the Failure of Conciliation  
Report No.ALC-II/8(10)/2010 dated 1.5.2013  
received from ALC (C), Delhi 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:*

*"It is reported that the union had failed to prove that there is any violation of service condition in respect of pay fixation of pay of workman Shri Gopal. The workman cannot claim higher pay scale as he was not matriculate with Mathematics and Engineering drawing. Therefore, this is not a fit case to be refer for adjudication by CGIT ".*

***Hence, the matter raised by the Union cannot be considered for adjudication.***

*Yours faithfully,*

*Sd/-*

*(P.K.Venugopal)  
Section Officer"*

4. Learned counsel for the petitioner submits that once the petitioner had raised a clear dispute pointing out that he was drawing less salary than similarly placed employees namely, Shri Ram Prasad and Shri Ram Kumar, it was not open for the respondent no.1 to examine the merits of the case. She submits that in considering the question whether a case is made out for making reference under Section 10(1) of the Industrial Disputes Act (hereinafter referred to as the 'I.D. Act'), the appropriate Government is only required to examine whether a bona fide dispute had been raised, but it cannot usurp the power of the Tribunal to examine the merits of the dispute. She submits that in the present case, the respondent no.1 has taken

upon itself the task of adjudicating on the merits by observing that since the petitioner was not a matriculate with Mathematics and Engineering drawing, it was not a fit case for being referred for adjudication by the Central Government Industrial Tribunal (hereinafter referred to as 'CGIT').

5. On the other hand, Mr.Shukla, learned Standing Counsel for the respondent no.1 while supporting the impugnd order submits that while performing the statutory duty under Section 10(1) of the Act, the Central Government was fully justified in examining the record and it is not expected to act as a mere post office and refer every dispute, howsoever frivolous, for adjudication. He submits that in the present case once from the perusal of the record itself, it was evident that the petitioner was not meeting the educational criteria and was therefore not entitled to be granted the upgraded scale of R.4000-6000/-, the respondent no.1 was justified in declining to make any reference.

6. Mr.Birbal, learned counsel for the respondent no.2 also supports the impugned order and submits that once the petitioner had not even given any details of Shri Ram Prasad and Shri Ram Kumar with whom parity was sought to be claimed, the Central Government was fully justified in declining to make a reference.

7. At this stage, learned counsel for the petitioner submits that both Shri Ram Prasad, s/o Shri Gulab Singh and Shri Ram Kumar, s/o Shri Sohan Lal with whom the petitioner is seeking parity were working with respondent no.2 in the 7<sup>th</sup> Division, Laxmi Nagar which fact was always known to the respondents. She, therefore, prays that

the writ petition be allowed by directing the respondent no.1 to make a reference of the dispute raised by the petitioner as set out in his claim petition filed before the Conciliation Officer.

8. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

9. In my view, even though the appropriate Government is entitled to examine the record before making a reference, but the same examination cannot be a substitute for an adjudicatory process, which the Industrial Tribunal performs. The role of the Government while making a reference is primarily administrative in nature and the Government can refuse to make a reference only when it finds that the dispute sought to be raised is wholly perverse or frivolous.

10. Reference may be made to the observations of the Supreme Court in ***Telco Convoy Drivers Mazdoor Sangh & Ors. vs. State of Bihar & Ors.***, [(1989) 3SCC 271], wherein para 13 it was observed as under:-

*“Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, [1985] 3 SCR 686; M.P. Irrigation Kararnchari Sangh v. The State of M.P., [1985] 2 SCR 1019*

*and Shambhu Nath Goyal v. Bank of Baroda, Jullundur, [1978] 2 SCR 793.”*

11. In the present case, what emerges from the record is that the respondent no.1 has gone ahead to examine the qualifications of the petitioner vis-a-vis the recruitment rules and come to its own conclusion that the petitioner was not entitled to draw parity with Shri Ram Prasad and Shri Ram Kumar. In my view, such an approach was wholly unwarranted. The claim of the petitioner was that he had been placed at a lower pay scale vis-à-vis similarly situated employees. It is not as if the claim of the petitioner was found to be perverse or frivolous but, in fact, a perusal of the impugned order shows that the same has been rejected by respondent no.1 after it made its own assessment of the reasonableness of the petitioner's demand on merits. In the facts of this present case once there is no such finding that the claim of the petitioner was perverse or frivolous, it was incumbent upon the Government to refer the dispute to the Industrial Tribunal.

12. For the aforesaid reasons, the writ petition is allowed. The impugned order dated 05.02.2014 is set aside and the respondent no.1 is directed to make a reference of the dispute raised by the petitioner as set out in paragraph 2 of the statement of claim filed by him before the Conciliation Officer to the Industrial Tribunal under Section 10(1) of the I.D. Act within six weeks. It is however, made clear that this Court has not examined the merits of the petitioner's claims and it will be open for the respondent no.2 to raise all grounds as may be

permissible in law, before the Tribunal, opposing the petitioner's claim.

**(REKHA PALLI)**  
**JUDGE**

**SEPTEMBER 12, 2019**

gm

