

18.11.2021
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18 to 22
ns/pg Ct.16

M.A.T. 1863 of 2017
Bikash Ghosh.
Vs.
The Union of India & ors.

With

M.A.T. 1880 of 2017
Sri Santosh Das.
Vs.
The Union of India & ors.

With

F.M.A. 110 of 2020
Sri Gauranga Patra.
Vs.
The Union of India & ors.

With

F.M.A. 111 of 2020
Surjya Narayan Pattanayak.
Vs.
The Union of India & ors.

With

F.M.A. 113 of 2020
Sri Dharendra Nath Dey.
Vs.
The Union of India & ors.

With

F.M.A. 144 of 2020
Sri Raju Kahar.
Vs.
The Union of India & ors.

With

F.M.A. 162 of 2020
Shambhu Sarkar.
Vs.
The Union of India & ors.

Ms. Malabika Saha,
 Mr. Saptarshi Chattopadhyay,
 Mr. R. Chattopadhyaya ... for appellants.
 (in all the appeals)

Mr. Sahasrangshu Bhattacharjee,
 Ms. Sucharita Biswas .. for respondents.

Grievances ventilated in this batch of appeals by the appellants are common and hence, the same have been heard analogously. This common order shall dispose of all the appeals.

This mandamus appeal (M.A.T. 1863 of 2017) is directed against the order dated 23rd August, 2017 passed in W.P. No.16883(W) of 2017. The said writ petition was filed by the petitioner challenging the correctness of the order passed by the Ministry of Labour, Government of India dated 28th December, 2016 refusing to refer the dispute raised by the petitioner and other similarly placed persons for regularisation of their services in the Rifle Factory, Ichapur. The learned Single Bench had, by the impugned order dismissed the writ petition primarily on the ground that the reasons assigned by the Government for refusing to refer the dispute raised stems out of a decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs. Uma Devi (III)** reported in **(2006) 4 SCC 1**. Further, the learned Single Bench held that while

exercising the jurisdiction under Article 226 of the Constitution of India, the writ Court cannot examine the merits of the decision taken by the Government while refusing to refer the dispute. Aggrieved by the same, the writ petitioners are before this Court by way of these appeals.

The learned counsel for the appellants, at the outset, submitted that the third respondent is the Chairman, Ordinance Factory Board, S. K. Bose Road, Kolkata – 700 001 and as of now, the Board has been dissolved and it has become the Government of India company called “Advanced Weapons and Equipment India Limited”. Though there may be a technical requirement to amend the cause title, it may not be very necessary because the Ordinance Factory Board has been fully taken over by the newly formed company and this judgement would bind the newly formed company which steps into the shoes of the third respondent.

The following facts would be required to consider as to whether the petitioner and other similarly placed persons would be entitled to the reliefs sought for. The petitioner and others, through their trade union namely, Contractor’s Workers Mazdoor Sangh, Rifle Factory, Ichapur submitted a representation to the Regional Labour Commissioner, (Central – II), Calcutta demanding absorption and regularisation of their employment in the rifle factory. The trade union stated

that 500 casual workers have been engaged in the rifle factory under different contractors for past 10 to 15 years and they are at the relevant time, engaged through different contractors and they consist of unskilled and semi-skilled workers and they have been in employment for 16 years and their services are indispensable and therefore, they have to be regularised as workers of the rifle factory by ignoring the artificial veil created by having a contractor in between themselves and the employer. Further, they stated that they have been rendering service to the factory irrespective of the contractors who had engaged them and their employment has been continuous and there is a need for such employment. Furthermore, it was stated that the Contract Labour Prohibition Act endeavours to eradicate the flaws and exploitations rampant in the contractual engagement of labourers and workers. A reference was made to the office memorandum issued by the Government of India, Ministry of Labour and Employment dated 23rd January, 2013 and it was submitted that the continuous employment of the workmen as contract labourers is illegal and requested for extending the benefit of regularisation. Apart from the representation given by the trade union, the individual workman has also given representation and we find one of such representations has been given by Sri Surjya Narayan Patnayak. The Conciliation Officer took up the matter for consideration

and by the order dated 20th September, 2016 submitted a failure report as there was no consensus between the parties. The failure report was forwarded to the Central Government and by order dated 28th December, 2016, the Government declined to refer the dispute for adjudication. The reason assigned by the Central Government for refusing to refer is as follows:-

“It is stated that As per Hon’ble Supreme Court Judgment in Secretary State of Karnataka & Others. V/s Uma Devi (3) & Others, 2006 4 SCC 1, Wherein when a person enters a contractual employment he is aware of the consequences of the appointment being casual in nature. The theory of legitimate expectation cannot be successfully advanced by temporary employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are to make them permanent. The theory cannot be invoked to seek a positive relief of being made permanent in the post. In view of above this case is not fit for reference to the adjudication.”

The correctness of the order dated 28th December, 2016 was subject matter of the writ petition.

The learned counsel appearing for the appellants submitted that the Central Government having entered into the merits of the matter and declined to refer, by an order which is to be held to be illegal and the dispute

ought to have been referred to the Central Government Industrial Tribunal (for short "CGIT"). In support of the contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of **TELCO Convoy Drivers Mazdoor Sangh & anr. Vs. State of Bihar & Ors.** reported in **AIR 1989 SC 1565**. Further, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of **Vice Chancellor Anand Agriculture University Vs. Kanubhai Nanubhai Vaghela & anr.** in **Civil Appeal No.4443 of 2021** dated **26th July, 2021** and prayed for setting aside the order passed by the Central Government dated 28th December, 2016 and issuing a writ of mandamus directing the matter to be referred to the CGIT.

The learned standing counsel appearing for the respondents submitted that referring the dispute to the CGIT would be a futile exercise as the Central Government has declined to refer the dispute by relying upon a decision of the Hon'ble Supreme Court in **Uma Devi (supra)** and the said decision will bind the Government as well as the petitioners and other similarly placed persons and therefore, the order of refusing to refer the dispute is just and proper. The learned standing counsel has elaborately referred to the various paragraphs of the decision of the Hon'ble Supreme Court in **Uma Devi (supra)**. Further, it is submitted that the appellants / workmen have not proceeded under the

provisions of the Contract Labour (Regulation and Abolition) Act, 1970 but have to avail the remedy under the Industrial Disputes Act and in terms of Section 12(1), the Government has got power to refuse to refer the dispute and they are required to communicate the reasons for the same which has been done and as those reasons have been based upon a decision of the Hon'ble Supreme Court, the Learned writ Court rightly refused to interfere with the said order.

After we have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record, we are of the view that at the first instance, we need to take note of the legal position. The issue as to when the Government would be justified in refusing to refer the dispute for adjudication before an Industrial Tribunal is no longer *res integra*. In this regard, learned counsel for the appellants referred to the decision in the case of **TELCO Convoy Drivers Mazdoor Sangh & anr. (supra)**. In the said decision, the Hon'ble Supreme Court had referred to the various other decisions and held that in the said case, Government was not justified in deciding the dispute. In this regard, the Court referred to Section 10(1) of the said Act and held that the functions of the Government under the said provision is an administrative function and not a judicial or a quasi-judicial function and the Government, while performing its administrative function cannot delve into

the merits of the dispute and take upon itself the determination of the lis and if done so, it would be in excess of the power conferred on it under Section 10 of the Act. Further, it was pointed out that there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, a word of caution was also added by observing that the Government should be very slow to attempt an examination of the demand with a view to declining reference and the Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes and that to allow Government to do so, would render Section 10 and Section 12 (5) of the Act nugatory. Therefore, in the said case, the Hon'ble Supreme Court held that appropriate Government was not justified in adjudicating the dispute, namely, whether there is relationship of employer and employees between TELCO and its Convoy Drivers of Mazdoor Sangh. Accordingly, the order passed by the Government was set aside. A direction was issued to the State of Bihar to make a reference under Section 10(1) of the Act.

In the case of **Vice Chancellor Anand Agriculture University (supra)**, a contention more or less similar to the contentions advanced before us by the learned standing counsel was canvassed, namely, by

placing reliance on the decision of the Hon'ble Supreme Court in **Uma Devi (supra)**. The said contention was negated and the Court held that the decision rendered in **Gujarat Agricultural University Vs. Rathod Labhu Bechar & Ors.** reported in **(2001) 3 SCC 574** requires to be adhered to.

Bearing in mind the above legal principle, if we examine the order dated 28th December, 2016 which was impugned in these appeals, we have no hesitation to hold that the Government had entered into the merits of the dispute. When the Conciliation Officer submitted his failure report, it was solely on the ground that the parties could not arrive at a consensus. The Government while exercising power under Section 12 (5) of the Act, which being an administrative function, is required to examine as to whether the reference sought for was either perverse or frivolous. Admittedly, there is no such finding rendered by the Government as to whether the reference sought for is either perverse or frivolous. If that is the case, then the Government could not have referred the decision of the Hon'ble Supreme Court in **Uma Devi (supra)** and declined to refer the dispute.

In our considered view, the decision in **Uma Devi (supra)** was rendered in a different factual background where the "back door entrants" sought for regularisation of the services as that of the regular employees, who had undergone a process of recruitment. In such cases

concerning public employment where several organisations of the Government resorted to recruit the persons of their choice without undertaking a recruitment process, without notifying the vacancies and without complying with Articles 14 and 16(1) of the Constitution of India, in the background of those cases, the Hon'ble Supreme Court elaborately discussed all the issues and pointed out that persons who had illegally got employment without undergoing a recruitment process, cannot seek to get their services regularised after working for a considerable period of time. Therefore, in our considered view, the said decision may not be applicable to the facts and circumstances of these cases.

In any event, what the petitioner and other similarly placed persons sought for was a reference to the Industrial Tribunal for adjudicating their claim for absorption and regularisation in the rifle factory. Therefore, whether at all, the decision in **Uma Devi (supra)** can be applied to the case of the petitioner and others is a matter which is touching upon the merits of the individual case, which obviously could not have been a reason to refuse to refer the dispute for adjudication. Therefore, we are of the considered view that the order passed by the Government dated 28th December, 2016 calls for interference.

Accordingly, the mandamus appeals are allowed. The order passed in the writ petitions are set

aside. Consequently, the order passed by the Government of India on 28th December, 2016 is quashed and set aside and a direction is issued to the respondent nos.1 and 2 to refer the dispute raised by the petitioner and others, through their trade union and individually, to the Central Government Industrial Tribunal for adjudication.

Considering the fact that the dispute was raised by the workmen as early as in 2016, we direct the Government to refer the dispute within 12 weeks from the date of receipt of the copy of this judgment.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)