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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3307 OF 2019

Maharashtra Employees Union	}	
Mishra Niwas, Kokani Pada, Kurar Village,	}	
Malad (East), Mumbai-400 097.	}	Petitioner

Versus

1. Union of India	}	
Government of India, Ministry of Labour and	}	
Employment, Shram Shakti Bhavan, Rafiq	}	
Marg, New Delhi-110 001.	}	
	}	
2.The Deputy Regional Labour Commissioner	}	
(Central)	}	
Office of the Deputy Chief Labour	}	
Commissioner @, Shram Raksha Bhavan,	}	
Eastern Express Highway, Sion (East),	}	
Mumbai-400 022.	}	
3. Oil and Natural Gas Corporation Ltd.	}	
NBP Green Heights, Bandra (East),	}	
Mumbai-400 051.	}	
4. CIS Bureaus Facility Services Pvt. Ltd.	}	
302, 3 rd Floor, Center Point, Near Kohinoor	}	
Hotel, Andheri Kurla Road, J.B. Nagar,	}	
Andheri (East), Mumbai-400 059.	}	Respondents.

Mr. Arshad Shaikh a/w. Ms. Seema Chopda with Mr. T.R. Yadav for the
Petitioner.

Mr. V.M. Palshikar for the Respondent nos. 1 and 2.

Mr. Shailesh Naidu a/w Mr. G.D. Talreja i/by G.D. Talreja and Associates for the Respondent no. 3.

Mr. Yash Vyas for the Respondent no. 4.

**CORAM : SMT. SADHANA S. JADHAV &
SURENDRA P. TAVADE, JJ.**

RESERVED ON : AUGUST 4, 2021.

PRONOUNCED ON : NOVEMBER 23, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The Petitioner has filed the present Writ Petition to espouse the cause of its two workmen namely Mr. S.C. Pandey and Mr. Keshav Gosavi who were working as security guards with the Respondent no.3. It is prayed as follows:-

a) That this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, Order and direction in the nature of certiorari calling for the records and proceedings from the Conciliation Officer and after perusing the legality and propriety of the impugned order dated 20.08.2019 at Exhibit "H" hereto quash and set aside the same or direct the Respondent No.1 to refer the said Industrial Dispute as raised by the Petitioner by Demand Letter dated 10.09.2018 at Exhibit "C" to the Industrial Tribunal for adjudication ;

2. The Petitioner, Mr. Pandey was working with the Respondent no. 3, Oil and Natural Gas Corporation Ltd. in short (ONGC) since 24th April 1992, whereas Mr. Gosavi was working since 6th October 1989. It is the case of the petitioner that the said two workmen had not received payment from December 2013 to December 2014 and therefore, the Oil Field Employee's Association filed an application claiming unpaid wages before the wages authority. The authority by an order dated 9th October 2015 directed the Respondent no.3 not only to pay the wages to the members but to pay an additional sum of Rs.39,000/- towards compensation. The Respondent no.3 had hired the Respondent no.4 - CIS Bureaus Facility Services Private Limited as it was a security agency. The wages of the Petitioners was not being paid from January 2015 onwards and therefore, the Oil Field Employee's Association were constrained to file proceedings before the Wages Authority. The said application was dismissed on the ground that it was beyond the purview of the said Act.

3. The workmen had then resigned from Oil Field Employee's Association on 14th December 2017 and joined the Company of the Petitioner. They were assured that they would get the response. A demand letter was filed on behalf of the workmen by the Company on 10th September 2018 and therefore the Petitioner by a letter dated 24th September 2018 requested the Deputy Regional Commissioner (Central)-Respondent no.2 to call Respondent no.3 for negotiation and amicable settlement. The Respondent no.3 filed a reply before the Deputy Regional Commissioner (Central) contending therein that it is the policy of the company to rotate the workers every six months. The

two workmen for whom the Petitioner was seeking negotiation and amicable settlement continued to work at the same place for a long time which was basically against the practice of rotation.

4. That the two workmen were issued redeployment orders. The said orders were not accepted by the two workmen. Several reminders were sent and finally their services were terminated by a letter dated 24th September 2018. Since the workmen failed to report to their redeployed locations, their contract was also terminated. The conciliation proceedings were put to an end and reported as 'failed' vide letter dated 20th August 2019. The said report was submitted by the conciliation officer to the Secretary to Government of India, New Delhi. The said failure report was conveyed to the Petitioners vide letter dated 20th August 2019 on the ground that the dispute raised by the petitioners is not substantiated by material documentary evidence. That the workmen were terminated w.e.f. 1st December 2013, therefore the adjudication was unwarranted. The said communication refusing adjudication dated 20th August 2019 is challenged before this Court.

5. It is the contention of the petitioner that the Respondent no.3 ought not to have referred the dispute to the Tribunal for adjudication as non-payment of earned wages is an Industrial Dispute under the Industrial Dispute Act. It is also the contention of the learned counsel for the Petitioner that reference before the CGIT was pending since 2004 in respect of others and the application was made for the concerned workmen amongst others before the authority under the Payment of Wages Act, 1936. The said applications were allowed

by a letter dated 9th October 2015 and ONGC was directed to pay the unpaid wages within 30 days from the date of receipt of the order. However, the subsequent application dated 18th September 2017 made for unpaid wages was rejected on the ground of maintainability. That two workmen had resigned from the membership of the Union and have joined the Union of Petitioner and therefore the application was made by the petitioner.

6. It is the contention of the Respondent no.3, that the Respondent no. 3 has no jural relation with the workmen since the Respondent no.4 as a Security Service provider, under the Private Security Agencies, (Regulation) Act, 2005 had provided two security service guards for ONGC establishment and their staff Residential Colony. Respondent No. 4 holds licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970.

7. The application filed by the workmen were rejected by the Regional Labour Commissioner (Central) claiming wages for the period January 2015 to January 2017 as well as application from September 2017 to June 2018 was rejected. The said orders were impugned by the Oil Field Employer's Association before the Court of Small Causes (Appeal No. 1 of 2019) . The said appeal is pending. The Respondent no. 4 has terminated the services of two member with effect from 2013. Hence, the workmen would not be entitled for earned wages to post termination.

8. It is also submitted that the liability to pay earned wages to the Respondent no. 3 would arrive only in the eventuality that the Contractor fails to pay wages to worker while working in the establishment of ONGC. It appears from the record that the workmen had denied the transfer orders. On the date of raising of the claim the workmen were not even working with the Contractor with whom the Respondent No.3 had signed the agreement.

9. It is pertinent to note that a Reference pertaining to a bogus contract and absorption of workmen in services of ONGC is pending before the CGIT-1, Mumbai and therefore at present it cannot be said that there is an industrial dispute between Petitioner and Respondent no. 3. In the circumstances, it was submitted that there is no industrial dispute within the meaning of Section 2 (k) of the Industrial Dispute Act and hence there is no question of a reference of the purported dispute.

10. It is further pertinent to note that said two workmen were represented by the Oil Field Employee's Association before the payment of wages authority and the claim of the workmen was rejected. Subsequently, the workmen has changed the Union but that by itself would be sufficient to reject their claim. There was no different consideration for their re-adjudication.

11. The learned counsel for the Petitioner has placed reliance on the judgment of *Cedric D'silva V/s. Union of India*, in the said judgment, the Hon'ble the Apex Court has referred the judgment in the

case of ‘**Rajasthan State Road Transport Corporation and Anr. Vs. Krishna Kant etc.**’ reported in 1995 AIR 1715, in which it was observed as under :-

“The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, through it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication”.

12. The same is not applicable in the facts of the present case, indicate that the matter was remanded to the government for fresh consideration. On the consideration that there was application of mind by the government. The Court directed the appropriate government to make reference on the following question.

- Whether on the facts and circumstances Cedric D’silva is a workman and if so whether his termination is illegal and consequently what relief he is entitled to?

13. In that case then the authority had considered the secret report which was not the part of record and therefore it was not possible to determine as to which reason had weighed with the government.

14. The petitioner has failed to make out the case of any Industrial dispute between the workmen and the Respondent no. 3 which is a prerequisite of making a reference. Moreover, it cannot be said that a dispute is apprehended in near future for a simple reason that the workmen are not members of the Union which signed the contract with the Respondent no. 3.

15. In the present case there is a failure on the part of the Contractor to pay the earned wages and a claim is initiated under the payment of Wages Act for the period January 2015 to June 2018 and therefore the same claim cannot be raised under the Industrial Dispute Act.

16. We are of the opinion that under section 10 of Industrial Dispute Act the government had only to identify the dispute and if so bound to make the Reference.

17. A reference for an adjudication is an administrative decision in which judicial discretion is unwarranted unless it is found to be improper on admitted facts. Industrial Dispute Act was enacted for resolving dispute and facts on record should necessarily indicate the dispute exists which requires adjudication. The Respondent no.3 would not be liable to pay the earned wages of the said workmen as the impugned order dated 8th May 2019 is pending before the Court of Small Causes, Mumbai. The said appeal is filed by the Employees Association.

18. In view of the above discussion, the Writ Petition being sans merit deserves to be dismissed, which stands dismissed accordingly.

(SURENDRA P. TAVADE, J)

(SMT. SADHANA S. JADHAV, J)