



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 04, 2022

+ W.P.(C) 3689/2022 & CM APPL. 12784/2022

BHARAT HEAVY ELECTRICALS LTD.

..... Petitioner

Through: Mr. Raj Birbal, Sr. Adv. with
Ms. Raavi Birbal and Mr. A.K. Roy,
Advs.

versus

RAM RAJ AND ORS.

..... Respondents

Through: Ms. Asha Jain Madan and
Mr. Mukesh Jain, Advs.

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner / Bharat Heavy Electricals Ltd. (BHEL) with the following prayers:

“On the foregoing facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(i) Quash/set aside the Order dated 18.11.2020 vide Ref: No. ALC-11/8(33)/2020-AKB under Section 2A of the Industrial Disputes (Amendment) Act 2010, passed by the Assistant Labour Commissioner(Central) Delhi, in the capacity of Conciliation Officer,



(ii) Quash the Notice dated 16/08/2021 issued to the Petitioner in I.D.No.116/2021, by the Ld. Presiding Officer, CGIT-Cum Labour Court-II, in pursuance of the Reference being made to the said Tribunal for adjudication of Industrial Dispute u/s 2-A of the I.D. Act, 1947 and the proceedings consequential thereto.

(iii) pass such other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case."

2. In substance, the challenge in this petition is to an order dated November 18, 2020, of the Assistant Labour Commissioner (Central) Delhi ('ALC', for short), in his capacity as Conciliation Officer and also to a notice dated August 16, 2021, issued to the petitioner in I.D.No.116/2021, by the Presiding Officer, CGIT-Cum Labour Court- II ('Labour Court', for short) in pursuance to reference being made to the Labour Court for adjudication of the dispute under Section 2A of the Industrial Disputes Act, 1947 ('ID Act', for short). The order dated November 18, 2020, reads as under:

*"NO: AL-C-11/8(33)/2020-AKB Dated: 18.11.2020
Certificate to be issued by the Conciliation Officer as provided under section 2A of the Industrial Disputes Act, 1947.*

(TO WHOM SO EVER IT MAY CONCERNED)

This is to certify that Sh. Ram Raj, Sh. Chander Mohan, Sh. Ajay Prakash and Sh. Shiv Kumar filed an industrial dispute Through Delhi Rajya General Workers Union received in this office on 24.02.2020 under section 2A of the Industrial Disputes (Amendment) Act, 2010 in the office of Asstt. Labour Commissioner (Central), New Delhi-against the management of BHEL, M/s Aroon Aviation Services Pvt. Ltd., M/s Oynx Management Services Pvt. Ltd.

The Conciliation officer took up the matter in conciliation on Various dates. As on date no settlement could be reached. Now, the applicant wants to discontinue the present conciliation process and to take up the matter with the Central Government Industrial Tribunal-cum-Labour Court directly under the sub-section (2) and (3) of Section 2A of the Industrial Disputes (Amendment) Act, 2010.



The mandatory 45 days of filing his/her dispute before the Conciliation Officer as provided under “Section 2A(2) of the Industrial Disputes (Amendment) Act, 2010 has been completed on 9.4.2020.

This certificate is being issued to him exclusively for the purpose of enabling him to approach the Central Government Industrial Tribunal-cum-Labour Court for adjudication of the said dispute. The workmen are advised to file their dispute before the concerned CGIT-cum-Labour Court, Rause Avenue Court Complex, Deen Dayal Upadhyay marg, New Delhi.”

3. It is a conceded case, that pursuant to the aforesaid order, the respondents herein have filed a claim petition before the Labour Court on which notice has been issued on August 16, 2021.

4. The submission of Mr. Raj Birbal, learned Senior Counsel appearing along with Ms. Raavi Birbal, for the petitioner is that the ALC could not have issued the order dated November 18, 2020, advising the respondents to approach the Labour Court directly under Section 2A of the Industrial Disputes (Amendment) Act, 2010, rather the matter should have been sent to the appropriate government regarding the failure of the conciliation proceedings with reasons and it was for the appropriate government to apply its mind and exercise its power to refer the dispute to the Labour Court or not. In other words, it is their submission that by resorting to the impugned order dated November 18, 2020, the appropriate Government has been denied the power to exercise its discretion for referring the matter to the Labour Court.

5. That apart, it is further stated that the claim is stale, as the respondents had worked with a certain contractor till 2017, and also due to the fact that in the absence of an employer-employee relationship, no remedy could have been availed by the respondent Nos.1 to 4 against the petitioner. The only remedy, if any, they



have is against their employer, i.e., the contractor. In support of their submission, Mr. Birbal / Ms. Birbal have relied upon the judgments in the cases of *National Engineering Industries Ltd. v. State of Rajasthan*, (2000) 1 SCC 371, *Nedungadi Bank Ltd. v. K.P. Madhavankutty*, (2000) 2 SCC 455, and *ITDC v. Delhi Administration*, 1982 LabIC 1309 Delhi.

6. On the other hand, Ms. Asha Jain Madan, learned counsel for the respondents would contest the submission made by Mr. Raj Birbal and Ms. Raavi Birbal by stating that there is no illegality in the order passed by the ALC, inasmuch as by the said order, the ALC has only referred the parties to the CGIT, which remedy in any case, is available to the respondents in law, under Section 2A of the ID Act to approach the Labour Court directly and challenge their termination. Even the notice dated August 16, 2020, which has been issued by the CGIT is on the claim petition filed by the respondents before the Labour Court.

7. Insofar as the submission made by Mr. Raj Birbal and Ms. Raavi Birbal that the claim is stale as the respondents have worked with the contractor till 2017 is concerned, Ms. Madan stated that the plea is misconceived and this issue can very well be looked into by the Labour Court. That apart, she stated, in any case, the plea that there is no employer-employee relationship can also be looked into by the Labour Court as the contractor has been made a party in the claim petition by the respondents.

8. That apart, insofar as the plea urged by Mr. Raj Birbal and Ms. Raavi Birbal, that by the impugned action, the ALC has effectively taken away the right of the appropriate government to apply its mind for making a reference on the failure of the conciliation proceedings is concerned, she stated the same is also untenable, in view of the provisions under Section 2A of the ID Act.

9. Having heard the learned counsel for the parties, I agree with the



submissions made by Ms. Asha Jain Madan for the simple reason that it is the case of the respondents that their services have been terminated and they are seeking their reinstatement and regularisation of the services. The question is, who has terminated the services of the respondents and who need to regularise them.

10. The right of the respondents to file claim petition is in terms of Section 2A of the ID Act, which I reproduce as under:

“Section 2A of the Industrial Disputes Act, 1947: Dismissal, etc., of an individual workman to be deemed to be an industrial dispute-

2A. (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”



11. Therefore, it can be seen that an individual workman can approach the Labour Court directly against his alleged termination, without the case being espoused by a Union. The submission of Mr. Raj Birbal and Ms. Raavi Birbal that the remedy for the respondents is to seek reference under Section 10 of the ID Act, and such reference can be made by the appropriate government, is a misconceived argument. No doubt, the case of termination / regularisation can also be referred to the Labour Court by the appropriate government but, that is not the only remedy available to a terminated workman, as he has a remedy under Section 2A of the ID Act as well. The respondents can file a petition under Section 2A of the ID Act and if filed, the same is required to be adjudicated by the Labour Court in accordance with law.

12. Insofar as the prayer that the claim is stale or there is no relationship between the petitioner and the respondents is concerned, surely the petitioner shall be within its right to take all pleas available, both on facts and in law before the Labour Court, and those aspects shall be adjudicated by the Labour Court by framing issues on which evidence shall be led.

13. Insofar as the reliance placed by Mr. Raj Birbal and Ms. Raavi Birbal on the judgment in the case of *National Engineering Industries Ltd. (supra)* is concerned, the Supreme Court was concerned with the facts wherein certain demands were raised by Workers' Union of the appellant company before the Conciliation Officer, resulting in a failure report. The State Government did not make any reference. The Workers' Union filed a writ petition in the High Court which required the state government to make a reference of the dispute to the Industrial Tribunal under the provisions of the Act. The writ petition was decided by a Division Bench of the High Court on March 23, 1989, whereby it was directed that the State Government should, by considering the failure Report of the



Conciliation Officer, decide whether to make a reference or not, within two months from the date of the judgment, i.e., March 23, 1989. The High Court also observed that it would be open to the appellant company to raise all the contentions before the State Government and the State Government would or would not make a reference, only after hearing the parties. However, before the decision was given by the High Court, the State Government issued the notification dated March 17, 1989, referring the disputes relating to the demands raised by the Workers' Union. The appellant company thereafter submitted a representation dated April 03, 1989, to the State Government drawing its attention to the decision of the High Court and requesting that the State Government to withdraw the reference and take a fresh decision after hearing the appellant company. This request was not acceded to. Since the State Government did not accept the request of the appellant company, it filed a writ petition before the High Court challenging the validity of the reference. The writ petition was dismissed by the learned Single Judge and the appeal filed by the company before the Division Bench also met the same fate. The issue raised by the appellant company before the High Court was also that there is no dispute pending at the time which could be the subject matter of the reference inasmuch as under the Tripartite Settlement, the members of the Workers' Union had already advantage of the benefits thereunder. Thus, the State Government had no jurisdiction to make the reference.

14. The Supreme Court *inter alia* held that once the Tripartite Settlement arrived at between the management of the Labour Union and the Staff Union, wholesale reference of all the disputes in the charter of demands of Workers' Union for adjudication is also bad inasmuch as many of such disputes were already the subject matter of the Tripartite Settlement and the same shows non-application of mind by the State Government in making the reference. Suffice to state, the said



judgment of the Supreme Court has no applicability in the facts of this case.

15. I have already said that under Section 2A of the ID Act, the respondents can independently approach the Tribunal challenging their termination. Even if the impugned order has been issued by the ALC, the same would not act as a bar for the respondents to approach the Labour Court individually / independently.

16. Insofar as the judgment in the case of **Nedungadi Bank Ltd. (supra)** relied upon by Mr. Raj Birbal and Ms. Raavi Birbal is concerned, the relevant paragraph 8 of the said judgment reads as under:

“8. It was submitted by the respondent that once a reference has been made under Section 10 of the Act a labour Court has to decide the same and High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that it is certainly subject to judicial review limited though it might be. High Court can exercise its powers under Article 226 of the Constitution to consider the question of very jurisdiction of the Labour Court. In National Engineering Industries Ltd. v. State of Rajasthan MANU/SC/0755/1999: (2000) ILLJ247SC this Court observed:

It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of Jurisdiction of the industrial dispute, which could be examined by the High Court In Its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate Government lacks power to make any reference.”

17. From the aforesaid paragraph, it is noted that the Supreme Court had relied



upon its judgment in the case of *National Engineering Industries Ltd. (supra)* to hold that, the plea that whether an industrial dispute exists for being referred under Section 10 of the ID Act can be examined by the High Court in writ jurisdiction, inasmuch as it is the existence of the industrial dispute which would clothe the appropriate government with the power to make the reference to the Industrial Tribunal for adjudication. If there is no industrial dispute in existence, the appropriate government lacks the power to make any reference.

18. It cannot be said that the issue raised by the respondents herein is not an industrial dispute. It is the case of the respondents that there is a relationship of employer-employee between the petitioner and the respondents and as such they have sought regularisation of their services with the petitioner, Bharat Heavy Electricals Ltd. (BHEL).

19. It is also noted that an Industrial Dispute with regard to 164 workers is already pending adjudication in I.D. No. 94/2013 and there is no reason to deny the remedy of approaching the Labour Court independently by way of a fresh petition, by these four workers.

20. Similarly, in the case of *ITDC (supra)* on which reliance has been placed by Mr. Raj Birbal and Ms. Raavi Birbal for a similar proposition, it was held that an order of reference is open to judicial review if it is shown that the appropriate government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. The said judgment has no applicability, inasmuch as the challenge in this petition is not a reference made under Section 10 of the ID Act, but to a petition filed under Section 2A of the ID Act.

21. I do not see any merit in the petition. Suffice it to state that the petitioner would be within its right to take all objections on the maintainability of the claim



petition, *inter alia* on the grounds that there is no employer-employee relationship, the claim is a stale claim, the petition is barred by delay and laches, etc., which objections shall be adjudicated by the Labour Court.

22. The petition is dismissed. No costs.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 04, 2022/aky

