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

+ W.P.(C) 13445/2022

RAKCON CONTRACT KARAMCHARI UNION AND ANR

..... Petitioners

Through: Ms. Kawalpreet Kaur, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Manish Mohan, CGSC with
Mr. Jitendra Kumar Tripathi,
Advocates.

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Date of Decision: 20th September, 2022.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed by the petitioners aggrieved of the orders dated 01.09.2021 and 08.09.2021, whereby, the Government of India, Ministry of Labour & Employment has declined to make a reference under Section 10 of the Industrial Disputes Act, 1947 on the ground that there does not exist employer-employee relation between the disputant workers and the management of Kalawati Saran Children's Hospital and Rajkumari Amrit Kaur College of Nursing.

2. Learned counsel for the petitioners submits that the Union of India could not have declined to refer the disputes for adjudication. Reliance has been placed upon *Telco Convoy Drivers Mazdoor Sangh and Another vs. State of Bihar & Ors.*: (1989) 3 SCC 271.



3. Issue notice. Sh. Manish Mohan, learned Central Government Standing Counsel accepts notice and submits that though there is no employer-employee relationship between the parties, however, still if a direction is issued, the appropriate Government will refer the disputes to the Labour Court/Tribunal.

4. The Supreme Court in the judgment in ***Telco Convoy Drivers Mazdoor Sangh*** (supra) has *inter alia* held as under:-

“11. It is true that in considering the question of making a reference under section 10(1), the government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference, should be made or not, the Deputy Labour Commissioner and/or the government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the government which is, undoubtedly, not permissible.

12. It is, however, submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in Section 2(k) of the Act. It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the government is whether the persons



who are raising the disputes are workmen or not within the meaning of the definition as contained in section 2(k) of the Act.

13. *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. State of M.P., [1985] 2 SCR 1019 and Shambhu Nath Goyal v. Bank of Baroda, Jullundur, [1978] 2 SCR 793.*

14. *Applying the principle laid down by this Court in the above decisions, there can be no doubt that the government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the person raising the dispute are workmen or not, the same cannot be decided by the government in exercise of its administrative function under section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case, 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, the government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the government to do so would be to render Section 10 and section 12(5) of the Act nugatory."*

5. Learned counsel for the petitioners has also submitted that the petitioners came to know of the orders of the Ministry of Labour & Employment only when the petitioners were terminated from their service



and thereafter they invoked the jurisdiction of this Court under Article 226 of the Constitution. During the proceedings of W.P.(C) No.5784/2022, wherein the order of termination was challenged, the respondent informed the petitioner that they have declined to make the reference under Section 10 of the Industrial Disputes Act, 1947.

6. This Court considers that Section 10 of the Industrial Disputes Act, 1947, though gives power to the appropriate Government to form an opinion whether any industrial dispute exists or apprehended but in doing so, it may not go into the question on the merits of the case. The action of the Ministry of Labour & Employment, to decline to make the reference on the ground that there does not exist any relationship of employer-employee, is taking away the power of Labour Court/Tribunal. The question as to the relationship of employer-employee is a matter to be adjudicated by the industrial adjudicator on the basis of the evidence placed before it by the parties. The Union of India/Management will get sufficient opportunity to lead the evidence before the industrial adjudicator for adjudication on this question and other attendant issues.

7. In view of the discussion made herein above, the Union of India is directed to make a reference of the disputes to the Labour Court/Tribunal in accordance with law within the period of 4 weeks.

8. With these observations, the present writ petition stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 20, 2022/st