



2024:DHC:4653



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

% **Date of order: 29th May, 2024**

+ **W.P.(C) 6827/2022 & CM APPL. 20772/2022**

**HINDUSTAN ENGINEERING AND GENERAL MAJDOOR
UNION THROUGH ITS GENERAL SECRETARY NARAYAN
SINGH** Petitioner

Through: **Mr. Mahesh Srivastava and Mr.
Pankaj Srivastava, Advocates**

versus

KAPSON WORLDWIDE Respondent

Through: **Mr. Anil Kumar Hajelay, Advocate
(Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 of the Constitution of India has been filed on behalf of the petitioner challenging the impugned order dated 29th September, 2021 passed by learned Presiding Officer, Labour Court – IX Rouse Avenue District Court, New Delhi (“Labour Court” hereinafter), in LIR No. 2998/2019.

2. The brief facts relevant for the adjudication of the instant petition are as under:

- a. The petitioner (“petitioner/petitioner union/petitioner workmen” hereinafter) is a Union registered under the Trade Unions Act, 1926 representing majority of the workmen working with the



respondent and the respondent (“respondent/respondent management” hereinafter) is M/s Kapsons Worldwide.

- b. It is stated by the petitioner that 60 workmen were employed by the respondent to perform the job of tailor from the year 2008 onwards and these workmen were working with the respondent at C-74A, Mayapuri Industrial Area, Phase - II, New Delhi 110064.
- c. Thereafter, the respondent management decided to transfer its workmen from the abovesaid address to M/s Kapson World Wide, D-33, Sector 63, Noida, U.P. (“new address” hereinafter) *vide* order dated 20th April, 2019.
- d. The petitioner workmen claiming that no establishment of the respondent existed at the new address raised their grievances of being terminated under the garb of transfer and conciliation proceedings commenced between the petitioner and the respondent.
- e. Subsequently, *vide* order dated 1st October, 2019, the Joint Labour Commissioner referred the dispute to the learned Labour Court for adjudication in the case bearing LIR No. 2998/2019, in the following terms:

"Whether the allege termination/denial of duties without giving proper notice to the workmen Sh. Uma Shankar Bhagat (Age - 48) S/o. Dinanath Bhagat & 59 Other workmen (As per enclosed annexure 'A') under the garb of order/notice of



transfer from C- 47 A, Mayapuri Industrial Area, Phase -II, Delhi to D - 33, Sector 63, Noida (U.P.) by the Management of M/s Kapsons Worldwide, especially when there exit no factory/establishment/office of this management at the place/address of transfer, is legal and justified and if so, to what relief an individual workman in this dispute are entitled and what directions are necessary in this regard"

- f. Against the order of the Joint Labour Commissioner, the respondent filed a writ petition bearing WP(C) No. 904/2022 before this Court which was disposed of vide order dated 9th February, 2022 whereby, the Coordinate Bench of this Court directed the presiding officer of the Labour Court to adjudicate the reference by giving ample opportunity to both the sides to present their case.
- g. In the abovesaid industrial dispute, the petitioner filed statement of claim on 29th September, 2021, and the respondent orally raised an objection regarding the maintainability of the reference.
- h. Thereafter, the learned Labour Court passed an order dated 29th September, 2021 directing the individual workman to approach the Joint Labour Commissioner to make the reference individually as it is not case of collective dispute. The Labour Court further directed the Joint Labour Commissioner to act in terms of the said order.



- i. Being aggrieved by the aforesaid impugned order, the petitioner has approached this Court seeking setting aside of the same.
3. Learned counsel appearing on behalf of the petitioner submitted that impugned order is bad in law and is liable to be set aside since the same is contrary to Section 10 of the Industrial Disputes Act, 1947(“ID Act/the Act” hereinafter).
4. It is submitted that the present dispute is very specific as respondent intended to terminate the services of the workmen under the garb of transferring the workmen from C-74A Mayapuri Industrial Area, Phase - II to D-33, Sector 63- Noida, U.P., knowingly that respondent does not have any office or establishment at the given address.
5. It is submitted that Section 2(s) of the Act only relates to the individual workman and not for many collective grievance of the workmen, therefore, the impugned award is bad in law as while defining the term ‘workman’, the Section 2(s) of the I.D Act also includes workmen collectively.
6. It is submitted that the Coordinate Bench of this Court while disposing of the W.P.(C) 6470/2004 had held therein that there is no legal bar in making a reference in respect of industrial dispute containing the claim of several workmen together before labour court or the industrial tribunal.
7. It is further submitted that this Court had while deciding the abovesaid writ petition had directed the Presiding Officer of the Labour Court to adjudicate the reference by giving ample opportunity to both the sides.



8. It is submitted that the learned Labour Court proceeded with the matter without directing the respondent to file the written statement, and refused to adjudicate the dispute on the ground that it is an individual dispute and passed the impugned order.

9. It is submitted that the action of the respondent is contrary to law as well as the provisions contained under the Industrial Employment (Standing Orders) Act, 1946.

10. It is submitted that in view of Section 2A of the Act, no espousal is required by the Union or any fellow workmen, and even so, the cause of the workmen has been properly espoused by the Union and the General Secretary, thereto, is empowered to file the present writ petition.

11. Therefore, in view of the above submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent-management has vehemently opposed the instant petition submitting that the same is devoid of any merit and hence is liable to be dismissed.

13. It is submitted that the present writ petition is a gross abuse and misuse of the process of law, the petitioner has not come with clean hands before this Court and has suppressed material particulars.

14. It is submitted that the present petition is not maintainable in law since the petitioner has not raised any substantial question of law.

15. It is submitted that the instant petition is not maintainable since the learned Presiding Officer has not passed any wrong order by directing the



workmen to file individual statement of claims, since the ID Act empowers the Labour Court to adopt its own evolved procedure for adjudicating upon a dispute.

16. It is submitted that the petitioner has concealed material fact as it was aware that the respondent has sold its property situated at C-74A Mayapuri Industrial Area, Phase – II, New Delhi way back in 2020 and shifted to a new unit in D-22, Sector-63, Noida, Gautam Buddha Nagar.

17. It is further submitted that this fact was well within the knowledge of the petitioner as it was a party in W.P.(C) No. 904/2022 before this Court which was disposed of *vide* order dated 9th February, 2022, and despite such knowledge the petitioner has not changed the address so that the service of summons could not be affected upon the respondent.

18. It is submitted that the writ petition is even otherwise not maintainable as the petitioner union has no *locus standi* to file the present writ petition on behalf of all the 60 workmen because out of said 60 workmen, Sarvesh Kumar, Ram Avtar, Satish, Hari Lal and Pankaj Thakur have already filed their separate claims of gratuity before the controlling authority under the Payment of Gratuity Act, 1972 through another union namely Delhi Parades Kamgar Ekta Sangh which implies that these workmen are no longer members of the petitioner union and hence the petitioner has no authority to file any petition or application etc. on behalf of these workmen.

19. It is submitted that the present writ petition is not maintainable as it is based on wrongful interpretation of the impugned order whereby the learned Labour Court had directed the workmen to submit individual claim



statements considering the possibility of delay in collectively adjudicating the reference for all 60 workmen hence, it is wrong in arguing that the learned Labour Court has refused to adjudicate the reference.

20. It is submitted that the petitioner has not filed the minutes of meetings pertaining to espousal, and has failed to mention time, date, month and even year in support of the espousal to the cause of these workmen, which shows that the petitioner has failed to properly espouse the dispute. Therefore, it is submitted that in the absence of espousal, the petitioner union has no locus to file the present petition on behalf of the workmen concerned.

21. It is submitted that the petitioner's reliance on the decision of this Court in W.P.(C) No. 6470/2004 is misplaced as the facts of the case were not similar to the present case. Further, even in that case *vide* order dated 14th November, 2006, this Court held that it is for the Labour Court to decide the manner in which a claim is to be proceeded with, i.e., whether a joint statement of claim could be entertained or each individual workman should be asked to file his own individual claim.

22. It is submitted that in view of para 10 of the order dated 9th February, 2022 of this Court, the question as to whether any factory or establishment of the respondent exists at the new address or not is to be determined by the presiding officer of the learned Labour Court, and the non-existence of such establishment/factory cannot be proceeded with as an admitted fact.

23. It is submitted that the services of all the workmen were transferred by the respondent in consonance with the clauses of their appointment letters and with the Certified Standing Orders of the company. It is further



submitted that prior to the said transfer, the respondent had rented premises at the new address and set up tailoring machines there.

24. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

25. Heard the learned counsel appearing on behalf of the parties and perused the record.

26. It is the case of the petitioner that the impugned order is bad in law as the learned Labour Court failed to appreciate that a reference made to it in respect of multiple workmen may be adjudicated and considered collectively in respect of all of them. It is stated that the Labour Court is required to adjudicate the issue in view of the order dated 9th February, 2022 of this Court. Moreover, under Section 2(s) the definition of the workman also includes workmen collectively, and a reference regarding termination of services of workmen, similarly employed, under the garb of transfer has to be adjudicated by the Labour Court, especially since the same has been espoused properly by a Union.

27. In rival submissions, the respondent submits that the learned Labour Court is competent to adopt its own manner of adjudicating dispute, whether individually or collectively. Moreover, the present dispute has not been properly espoused by the union and therefore the union cannot represent the workmen before this Court. Further, the definition of *workman* as per Section 2(s) of the Act does not encompass workmen as a group, and therefore, the learned Labour Court was right in directing that separate references may be made in respect of each of the workmen.



28. Therefore, the issue before this Court is to decide whether the impugned order deserves to be set aside by interference of this Court under Article 226 of the Constitution of India, and in order to adjudicate upon this, this Court deems it necessary to frame the following issue:

“Whether separate references are needed for the same subject matter in respect of each of the workmen party to the industrial dispute in order for adjudicating the same?”

29. Now before delving into the merits of the instant petition in order to adjudicate upon this issue, it is pertinent to state the settled position of law regarding scope of the term *workman* as has been used under the Act, and whether a reference in respect of multiple workmen may be made to a Labour Court for adjudication.

30. While discussing the ambit of ‘*industrial dispute*’ as envisaged under the Act, **OP Malhotra’s *The Law of Industrial Dispute Vol. 1, 6th Edition* (Edited by Prof. EM Rao)**, at page 200, is reproduced herein below :

“The first point, therefore, to be noticed, which is perhaps self-evident, is that in the phrase ‘employer and workmen’, the plural may include the singular, on either side or any permutation of singular or plural, the masculine including the feminine.”

31. Further, in a 3-Judge Bench decision, the Hon’ble Supreme Court in a case titled ***Manager, Hotel Imperial v. Chief Commr., 1959 SCC OnLine SC 160*** has held to the effect that where the dispute is of general nature relating to the terms of employment or conditions of labour as a body, it is not necessary to mention in the order of reference the names of the particular



workmen who might have been responsible for the dispute. The relevant extract from the said judgment is reproduced below:

“3. Equally, we see no force in the other ground of attack, namely, that the reference is bad because it does not specify how many of the 480 workmen of thirty different categories were involved in the dispute. It is in our opinion unnecessary for the purposes of Section 10 where the dispute is of a general nature relating to the terms of employment or conditions of labour of a body of workmen, to mention the names of particular workmen who might have been responsible for the dispute. It is only where a dispute refers to the dismissal etc. of particular workmen as represented by the union that it may be desirable to mention the names of the workmen concerned. In this case, the dispute was also about workmen to whom notice of dismissal had been given and in that connection the names of the workmen concerned were mentioned in the order of reference. We may in this connection refer to State of Madras v. C.P. Sarathy [(1952) 2 SCC 606 : (1953) SCR 334] where a similar attack on the competence of a reference was made on the ground of vagueness. In that case the reference was in these terms:

“WHEREAS an industrial dispute has arisen between the workers and managements of the cinema talkies in the Madras City in respect of certain matters:

AND WHEREAS in the opinion of His Excellency the Governor of Madras, it is necessary to refer the said industrial dispute for adjudication;”

Thereafter followed the order of reference, which did not even contain the terms of reference. The order however indicated that “the Industrial Tribunal may, in its discretion, settle the issues in the light of a preliminary enquiry which it may hold for the purpose and thereafter adjudicate on the said industrial dispute”. The Commissioner of Labour was requested to send copies of the order to the managements of cinema talkies



concerned. It was held there that “the reference to the Tribunal under Section 10(1) of the Industrial Disputes Act, 1947, cannot be held to be invalid merely because it did not specify the disputes or the parties between whom the disputes arose”. It was further held that “the Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement. But, beyond this no obligation can be held to lie on the Government to ascertain particulars of the disputes before making a reference under Section 10(1) or to specify them in the order”.

4. The present reference as compared to the reference in the case cannot be called vague at all. Here the parties to the dispute are clearly specified, namely, (i) the management of the hotel, and (ii) its workmen. The nature of the dispute is also specified in the terms of reference. It was in our opinion entirely unnecessary to mention in the order of reference as to who were the workmen who were responsible for the dispute. We are therefore of opinion that this attack on the ground of vagueness also fails. There is no force in this appeal and it is hereby dismissed with costs to Respondent 3. In view of the fact that more than three years have passed since the reference was made, we trust that the Additional Industrial Tribunal will now dispose of the matter as expeditiously as it can.”

32. The Hon’ble Supreme Court in the aforesaid decision, upheld the decision of the Circuit Bench of Punjab and Haryana High Court in ***Manager, Hotel Imperial v. Chief Commr. 1956 SCC OnLine Punj 208***, in respect of which such appeal had arisen wherein it was observed that the appropriate government should make a reference in writing indicating the parties to a dispute and the point of controversy and the parties might be



indicated individually or collectively with reasonable clearness. The relevant extract from the said judgment is reproduced below:

“17. In R. v. National Arbitration Tribunal, [1951] 2 A.E.L.R. 428, Lord Goddard, C.J. held a dispute between one employer and one workman to be within the definition of “trade dispute” which is defined in the English Act in language almost identical with section 2(k) of the Indian Act. The reference is made under section 10(1) which reads:—

“10(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—

*(a) * * **

*(b) * * **

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Tribunal for adjudication:

Provided that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced”.

18. and, therefore, whenever the Government forms the opinion that an industrial dispute exists or is apprehended, it can make a reference to the Tribunal. The section itself does not require that any parties to the dispute should be indicated. Counsel, however, relies on a judgment of the Supreme Court in State of Madras v. C.P. Sarathy, [1952] 4 F.J.R. 431, where it was observed—

“.....and it would involve no hardship if the reference also is made in wider terms provided, of course, the dispute is one of



the kind described in section 2(k) and the parties between whom such dispute has actually arisen or is apprehended in the view of the Government are indicated either individually or collectively with reasonable clearness”.

19. In my opinion this requirement has been complied with. The dispute is stated in the reference to be between the management of the Hotel Imperial on one side and the workers of the Hotel as represented by the Union on the other which is an indication with “reasonable clearness”.

33. Further, in addition to the abovesaid judgments, relying on the decision by the Hon’ble Supreme Court in the case titled ***National Iron & Steel Co. Ltd. v. State of W.B., 1967 SCC OnLine SC 131***, it can be deduced that in exercise of the powers under Section 10, the appropriate Government may even make one order of reference with respect to a number of employees or establishments, if there is a functional integrality between them or, if it is necessary, for the sake of uniformity.

34. With respect to the need of espousal in order for a dispute of an individual workman to qualify as an industrial dispute, the Hon'ble Supreme Court in ***J.M Jhadav Vs Forbes Gokak Ltd 2005 (3) SCC 202***, has held that.

“there is no particular form prescribed to effect the espousal. Generally, Union passes resolutions, however sometimes proof of support by the Union may also be available aliunde. It would depend upon the facts of each case.”

35. With regard to the objectives of the Act in the context of *collective bargaining* between the management and the workmen, **OP Malhotra’s The Law of Industrial Dispute (supra)**, on page 202 states as follows:



“The policy behind this Act is to protect the workmen as a class, against unfair labour practices. What imparts to the dispute of a workman, the character of an 'industrial dispute', is that it affects the rights of the workmen as a class. Griffith CJ said:

The word 'industrial'...as used to the nature of quality of the disputes,....denotes two qualities which distinguish them from ordinary private disputes between individuals, namely (i) that the dispute relates to industrial matters, and (ii) that on one side at least of the dispute, the disputant are a body of men acting collectively and not individually.

In other words, 'an element of collective bargaining, which is the essential feature of the modern trade union movement, is necessarily involved in industrial adjudication'. It is the community of interest of the class as a whole-class of employers or class of work men-which furnishes the real nexus between the dispute and the parties to the dispute. In the words of Isaac J:

The very nature of an 'industrial dispute', as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees from the class of employers... It is a battle by the claimants, not for themselves alone.

Notwithstanding the fact that the language of s 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Act appears to contemplate that the machinery provided therein should be set in motion to settle only such disputes as involve the right of workmen as a class and that a dispute touching the individual rights of a workman, was not intended to be the subject of an adjudication under the Act.

The term 'industrial dispute' conveys the meaning that the dispute must be such as would affect large groups of workmen and employers, ranged on opposite sides. Even a single



employee's dispute may develop into an industrial dispute, when it is taken up by a union or a number of workers who make a concerted demand for redress. The applicability of the Act to an individual dispute, as distinguished from a dispute involving a group of workmen, is excluded, unless the workmen, as a body or a considerable section of them, make common cause with the individual workman."

36. Upon perusal of the aforementioned judicial decisions, it can be inferred that as per the spirit of the statute, as well as the strict letter of law which is followed in procedure, the term *workman* as used in the Act would refer to *workmen*, in plurality too. It is further observed that, it has long been in ordinary practice that after a common dispute pertaining to multiple workmen has been properly espoused by a union or otherwise, the Labour Courts or the adjudicating authorities, as the case may be, adjudicate the reference collectively for all workmen involved therein.

37. In order to further appreciate the above stated judicial dictum in the context of the issue involved in the present petition, it is important to analyse the findings of the impugned order dated 29th September, 2021. The relevant paragraphs of the impugned Award are reproduced herein below for reference:

"After hearing both the parties it is noted that the reference is filed collectively for 60 workers by the office of Joint Labour Commissioner. Ld. AR for management has submitted that reference for each individual workman is to be filed separately. On perusal of case file it is seen that the case of individual workman is of illegal termination and their monetary dues. Ld. AR for the management has submitted that as per Section.2 (s) of Industrial Disputes Act, 1947 the workman is mentioned for



individual workman and not for many workmen. Each case has to be filed separately.

Since the dispute pertains to illegal termination of each workman whose date of joining and their conduct as to termination has to be appreciated separately along with monetary dues. Therefore, it is desirable that the dispute of individual workman be taken separately. Under Sub-Section (2A) of Section 10 of Industrial Disputes Act, 1947 the collective dispute may also be considered but in some case there has to be, question of fact and law between the parties failing which trial of collective dispute may delay the case of such workman whose dispute can be decided earlier. Hence copy of this order be sent to Joint Labour Commissioner concerned along with copy of reference, so that matter may be referred keeping in view the fact that where question of fact involved in the case are. different or does not involve common question of law then they may be taken as separate reference. The workman may follow up necessary action with the office of Joint Labour Commissioner”

38. Upon perusal of the aforementioned Award, it can be observed that even after noting that collective dispute may also be considered in context of a reference under Section 10 of Act, the learned Labour Court has ordered that separate references may be presented for each of the workmen in order to adjudicate the dispute in time.

39. From a bare perusal of the records relating the factual matrix in the present petition, it becomes clear that the learned Labour Court has erred in its findings stated above.

40. It is apparent on the face of it that the dispute at hand pertains to termination of 60 workmen under the garb of transfer from establishments,



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and since the said orders are same in nature, this Court is of the view that there is no impediment in collective adjudication of the disputes raised by the workmen.

41. The law regarding adjudication of the dispute for more than one workman is clear where the above cited judicial dictum makes it crystal clear that the disputes, involving same question can be answered by the labour Court by passing a common award.

42. Therefore, this Court is of the firm view that the reasoning provided by the learned Labour Court does not hold any water and the impugned order, being contrary to the settled position of law, is liable to be set aside.

43. In view of the foregoing discussion, the impugned order dated 29th September, 2021, passed by the learned Labour Court is set aside and the matter is remanded back to the Labour Court.

44. The Labour Court is, therefore, directed to consider the reference as made by the appropriate Government and to adjudicate upon the same after giving due opportunity to the parties to present their case.

45. Accordingly, the instant writ petition stands disposed of along with pending applications, if any.

46. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

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Click here to check corrigendum, if any