

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

+ **W.P.(C) 447/1996**

% **Date of decision: 5th May, 2010**

SHRI TEJPAL SINGH Petitioner
Through: Mr. Anuj Aggarwal, Advocate.

Versus

THE GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Ms. Sana Ansari for Ms. Zubeda Begum,
Advocate for R-1/GNCTD.
Ms. Neha Mittal, Advocate for R-
2/DDA.
Ms. Paromita Mukherjee for Ms. Shejel
Trehan, Advocate for MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported
in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. This writ petition impugns the order dated 25th September, 1995 of the Secretary (Labour) of the Government of NCT of Delhi holding the dispute raised by the petitioner workman to be not a fit case for reference to the Industrial Tribunal or Labour Court for adjudication. The petitioner workman also seeks a mandamus directing the respondent no.1 Government of NCT of Delhi to consider the case of the petitioner workman for reference in accordance with law.

2. The claim of the petitioner workman before the Conciliation Officer was that he had joined the employment of the respondent no.2 DDA w.e.f. 21st February, 1984; that he was posted under Executive Engineer, Electrical Division

No.10; that he was assigned the job of a Typist-cum-Clerk but was being paid wages as fixed and revised from time to time under the Minimum Wages Act, 1948 for unskilled casual workers; that he was regularized as a work-charge *Khalasi* instead of being regularized in the post of Typist-cum-Clerk. The petitioner workman contended that the action of respondent no.2 DDA of regularizing his services on the post of *Khalasi* instead of Typist-cum-Clerk is wholly illegal, bad, unjust and *mala fide*. He pleaded that he fulfils all the qualifications and requirements for the job of Typist-cum-Clerk and large number of posts of Typist-cum-Clerk were lying vacant. It was further his claim that though he had been regularized as a *Khalasi* but was working even then as a Typist. He thus contended that employing persons for the jobs of higher skill and paying them wages/salary of lesser post amounted to unfair labour practice within the meaning of Section 2 (ra) r/w Item No.10 of the Vth Schedule of the Industrial Disputes Act, 1947. The petitioner workman thus claimed the relief of regularization of his services on the post of Typist-cum-Clerk and in the pay scale of that post.

3. The stand of the respondent no.2 DDA before the Conciliation Officer was that the petitioner workman had been employed as a *Khalasi*, first on muster roll basis and subsequently regularized as a *Khalasi*; it was denied that the petitioner workman was ever directed to work as or worked as Typist-cum-Clerk.

4. During the pendency of the proceedings before the Conciliation Officer, the petitioner workman was transferred from respondent no.2 DDA to Delhi Water Supply & Sewage Disposal Undertaking under the respondent no.3 MCD. The respondent no.3 MCD also filed a reply before the Conciliation Officer stating that the petitioner workman was working with it as and drawing a salary of *Khalasi*.

5. The conciliation proceedings failed. The Secretary (Labour) of the Government of NCT of Delhi held the case to be not a fit case for reference to Industrial Tribunal or Labour Court for adjudication for the following reasons:-

“Since Sh. Tejpal Singh was employed with DDA as *Khalasi* on muster roll on 21.2.1984 and regularized on work charged establishment as *Khalasi* on 19.9.1989. He was transferred to DWS

& SDU (MCD) on 22.4.1993 as *Khalasi*. As such no case of regularization of workman as Typist-cum-Clerk has been made out.”

6. Aggrieved therefrom, present petition was preferred. The contention of the petitioner workman is that the question whether he has been working as a Typist-cum-Clerk is a question of fact to be decided by the Industrial Tribunal/Labour court and it is not within the competence of respondent no.1 to adjudicate upon the same. Reliance in this regard is placed on *M.P. Irrigation Karamchari Sangh Vs. State of M.P.* AIR 1985 SC 860, *Telco Convoy Drivers Mazdoor Sangh. Vs. State of Bihar* AIR 1989 SC 1565 and the *Rajasthan State Road Transport Corporation Vs Krishna Kant* AIR 1995 SC 1715.

7. Notice of this petition was issued. Rule was issued in the petition on 17th August, 2000. The respondent no.1 has filed the counter affidavit justifying the order refusing the reference on the ground that the petitioner workman has failed to make out any case for his regularization as Typist-cum-Clerk and further contending that the petitioner workman had not placed any material whatsoever before the Conciliation Officer to show that he was made to work as or working as Typist-cum-Clerk and not as a *Khalasi* to which post he was posted. It is contended that as such it was not found to be a fit case for making a reference to the Industrial Tribunal/Labour Court. The respondent no.2 DDA has also filed a counter affidavit denying that the petitioner workman was made to work or worked as a Typist-cum-Clerk; it is further contended that upon the petitioner being transferred from the respondent no.2 DDA to the respondent no.3 MCD where he is now working, there is no longer any relationship of employer and employee between the petitioner workman and the respondent no.2 DDA and there can, therefore, be no industrial dispute between them. It is further pleaded that the petitioner workman never raised any industrial dispute relating to his transfer. The respondent no.3 MCD has also filed a counter affidavit pleading that the petitioner workman was transferred from the respondent no.2 DDA to the respondent no.3 MCD as a *Khalasi* and has been working with the respondent no.3 MCD as a *Khalasi* and thus the question of his regularization in the respondent no.3 MCD as a Typist-cum-Clerk did not arise.

8. The Supreme Court recently in *Sarva Shramik Sangh Vs. Indian Oil Corporation Ltd.* (2009) 11 SCC 609 has held that the reference of dispute to Industrial Tribunal in exercise of power under Section 10(1) of the ID Act is an administrative and not a judicial or *quasi* judicial function; the Government cannot consider merits of the dispute and decide a lis; only where the demand is frivolous or perverse, reference can be denied. In that case the writ of mandamus was issued directing the Government to reconsider the refusal to make a reference.

9. I may notice that the petitioner workman has before this Court also not placed any material whatsoever to show that he was made to work as a Typist-cum-Clerk. However since that is a question of fact and which question of fact can be proved by evidence other than documentary evidence only, howsoever remote chance of such proof may be, and further since the appropriate Government in exercise of power under Section 10(1) is not empowered to on the material before it determine whether *prima facie* there are merits in the claim raised or not, it cannot be said that at this stage that the demand of the petitioner workman is frivolous. No case of the same being perverse is made out.

10. As far as the contentions in the counter affidavits of the respondent no.2 DDA and the respondent no.3 MCD is concerned, the claim of the petitioner workman is of having joined and worked as a Typist-cum-Clerk with the respondent no.2 DDA and to regularization in the respondent no.2 DDA as a Typist-cum-Clerk instead as a *Khalasi*. If the petitioner workman succeeds in proving the same, certainly his transfer to the respondent no.3 MCD as a *Khalasi* would be bad. Reference thus cannot be denied on this ground also. The presence of both the respondent no.2 DDA as well as respondent no.3 MCD is necessary for adjudication of the dispute.

11. The Secretary (Labour) of the respondent no.1 has in the impugned order examined the merits of the dispute and judged/adjudicated/determined the dispute and which is impermissible.

The writ petition therefore succeeds. Mandamus is issued to the respondent no.1 to, within three months of today, reconsider the refusal of reference of the dispute

and to take an appropriate decision on the request of the petitioner workman for reference of dispute to the industrial adjudicator.

The writ petition is disposed of.

The parties to bear their own costs.

RAJIV SAHAI ENDLAW
(JUDGE)

5th May, 2010

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