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

Decided on May 07, 2014

\+ **W.P.(C) 2412/1999**

RAJ KUMAR SHARMA ..... Petitioner

Represented by: Mr.Anuj Aggarwal, Advocate with Ms. Aarushi Aggarwal, Advocates

versus

P.O. INDUSTRIAL TRIBUNAL NO. 1 AND ORS. ..... Respondents

Represented by: Nemo

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

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this writ petition is to the award dated January 16, 1999 passed by the Industrial Tribunal whereby the Industrial Tribunal has held that the Tribunal has no jurisdiction to deal with the reference as cause of action arose at Agra, and therefore, appropriate Government to make reference was the State of U.P.

2. Some of the brief facts are, the Industrial Dispute was referred by the erstwhile Delhi Administration vide order dated July 27, 1994, on the following terms:-

> *"Whether the penalty of stoppage of five increments imposed on Shri Raj Kumar by the management is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?*

3. It was the case of the petitioner before the Industrial Tribunal that he was appointed as Boiler Attendant in Akbar Hotel vide letter dated

January 5, 1980 and thereafter posted in Hotel Agra Ashok vide letter dated June 17, 1986 due to the closure of Akbar Hotel. He was charge-sheeted on September 6, 1990 on the ground of mis-conduct and pursuant to an inquiry, a penalty of stoppage of five increments with cumulative effect was imposed on him vide letter dated September 19, 1991. It was also his case that thereafter he had filed Memorandum of Appeal to the Appellate Authority on December 13, 1991. According to him, the Appellate Authority failed to reply to the appeal. He has further stated that a demand notice dated June 23, 1992 was also served on the Appellate Authority. During the pendency of the appeal, the respondent No. 2-management had failed to clear his medical bills.

4. The respondent No. 2-management contested the claim of the petitioner by filing written statement, wherein it was the stand that the petitioner has presently been employed at Qutub Hotel, Delhi, which does not stand within the jurisdiction of the Tribunal. On merit, it was the respondent No. 2's case that because of the closure of the Akbar Hotel, all its employees were offered fresh appointment. Pursuant thereto, the petitioner had opted for Hotel Agra Ashok on the post of Senior Technician, Grade-III in the scale of Rs. 380-630/- on July 01, 1986. The respondent No. 2 had also averred that the petitioner was found guilty of misconduct and negligence of duty as he was found sleeping during duty hours. Pursuant to the inquiry, wherein full opportunity was given to the petitioner to prove his innocence, a penalty was imposed. The respondent No. 2-management had also stated that the petitioner had failed to submit appeal within 21 days of receipt of the penalty order as prescribed in the Model Standing Orders of the respondent No. 2-management inasmuch as the appeal was submitted

after 77 days before Senior Vice-President whereas his Appellate Authority was Area GM (North), HQs for Hotel Agra Ashok.

5. The Industrial Tribunal framed the following three issues:

> *1. Whether the Tribunal has no jurisdiction to deal with this matter for the reasons stated in preliminary Objection No. 1 in the written statement of the Mgt. (OPM).*
> *2. Whether the inquiry held by the respondent was not proper? OPW*
> 3. *As per terms of reference.*

6. In so far as the issue No. 1 is concerned, the Industrial Tribunal concluded that the Government of National Capital Territory of Delhi cannot be held to be the appropriate Government to make a reference in the instant case when the petitioner was posted in an independent unit of the respondent No. 2-management at Agra, which falls under the jurisdiction of the State of Uttar Pradesh. In other words, it was conclusion of the Industrial Tribunal that cause of action has arisen at Agra, therefore, the appropriate Government in this case to make reference for adjudication was the State of Uttar Pradesh and held that it had no jurisdiction to deal with the matter.

7. In view of the conclusion of issue No. 1 of the Industrial Tribunal, the other issues i.e. issues No.2 & 3 were not gone into.

8. Mr. Anuj Aggarwal, learned counsel appearing for the petitioner would submit that since the Industrial Tribunal gets its power to adjudicate pursuant to the reference made by the appropriate Government, it could not have gone into the issue as to whether it had the territorial jurisdiction or not. In the eventuality, when in the given case, the Industrial Adjudicator does not have jurisdiction, then the other party i.e. management in this case was within its right to approach this Court for quashing of the reference. In the absence of such a remedy

having been availed by the respondent No. 2 in this case, the Industrial Tribunal could not have answered issue No. 1 in the manner it did in the impugned award. He would place reliance on the judgement of learned Single Judge of this Court in *Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd., CM(M) 1337/2007 decided on 27.10.2009* in support of his contention. Further, he would submit that against the order of the Disciplinary Authority, the petitioner had filed an appeal, the remedy as available under the Rules to the Senior Vice-President who is based in Delhi. According to him, even if the Area GM (North), HQs is the Appellate Authority, as is the stand of the respondent No. 2, then also the authority is based in Delhi, the Industrial Tribunal had the jurisdiction to decide the reference. He has drawn my attention to para 4 of the claim petition, wherein the petitioner has made a reference to the Memorandum of Appeal to the Appellate Authority at Headquarters in Delhi. It was his case, the Industrial Tribunal has erred in answering issue No. 1 in the manner it did. He would pray that the award of the Industrial Tribunal be set aside and the matter be remanded back to it for adjudication of the reference on merit.

9. No one appears on behalf of the respondent.

10. Having heard the learned counsel for the petitioner, I note that the Industrial Tribunal gets power to adjudicate the dispute pursuant to a reference made by the appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947. The adjudication by the Industrial Tribunal has to be in accordance with the terms of reference made to it. I note that the issue which falls for consideration in this writ petition has been decided by the learned Single Judge of this Court in *Raj Kumar Jaiswal's case (supra)*. The relevant portion of the aforesaid

case is reproduced as under:

> "*8. If the respondent/management in the present case had any grievance about the petitioner having approached the Labour Commissioner at Delhi and/or about the reference to the Labour Court being made by the Government of NCT of Delhi or if it was the case of the respondent/management that the jurisdiction if any was of the Government of Haryana, the stage for the respondent/management to take the said plea was at the time of reference or by way of challenge thereto. No such plea was taken by the respondent/management at that time and which proceeding before Labour Commissioner and reference to Labour Court at Delhi has attained finality. In my view, under Sections 10(4), 11 and 14 of the Industrial Disputes Act, the Labour Court to whom the dispute had been referred was not entitled to take a plea that it lacked territorial jurisdiction or to refuse the adjudication referred to it on that ground.*
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> *9. In workmen Employed by Hindustan Lever Limited v. Hindustan Lever Limited, the Supreme Court held that Section 10(1) of the Act confers power on the appropriate government to refer an existing dispute amongst others to, inter alia, the Labour Court for adjudication; the dispute therefore which can be referred for adjudication necessarily has to be an industrial dispute which would clothe the appropriate government with power to make the reference and the Labour Court to adjudicate it; it will thus be seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that the government from which reference is sought or which has referred the dispute was not clothed with the powers to refer the same or lacked the power to make the reference. The respondent in the present case did not challenge the authority of the government of NCT of Delhi which could refer the dispute to the Labour Court within its jurisdiction only, to make such reference.*
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> *10. A three judge Bench of the Supreme Court in National Engineering Industries Ltd. V. State of Rajasthan, has held that an Industrial Tribunal is the creation of a statue and it gets jurisdiction on the basis of*

reference, it cannot go into the question of validity of reference. Similarly in State Bank of Bikaner and Jaipur vs. Om Prakash Sharma also it was held that the jurisdiction of labour Court emanates from order of reference, it could not have passed an order going beyond the term of reference and if the Labour Court exceeds its jurisdiction the order suffers from a jurisdictional error capable of being corrected by the High Court.

11. Besides the aforesaid, I am otherwise also of the view that the industrial dispute arises at the place where the employer is exercising effective control. The state government having jurisdiction over the place from which the employer exercises effective control would have jurisdiction to make the reference under Section 2 of the Industrial Disputes Act. I the present case, the registered office of the respondent company is at Delhi and prima facie the erective control would be at Delhi. Nothing has been shown otherwise that there was a separate establishment at Gurgaon; only if a separate establishment had been proved could the dispute be said to have arisen at Gurgaon. Reliance in this regard can be placed on Workmen of Shri Rangavilas Motors (P) Ltd. V. Shri Rangavilas Motors (P) Ltd. The Supreme Court again in Bikas Bhushan Ghosh v Novartis India Ltd. has also laid down the test of part of the cause of action and held that even if a part of cause of action in the industrial dispute arises within the state, than that state will have jurisdiction to make a reference despite the fact that other states also have jurisdiction to make a reference. The petitioner in the present case has spent major time of his employment with the respondent at Delhi and for this reason also I am of the view that the reference was correctly made to the Labour Court at Delhi.

12. Above all, the Industrial Dispute Act is a social welfare legislation. Today the boundaries between Delhi and Gurgaon have disappeared. No prejudice has been shown to be caused to the respondent company by continuation of the proceedings in the labour Court at Delhi. On the contrary, if the proceedings which have

been underway for long and in which the respondent has participated without objection, are terminated and the petitioner directed to approach the authorities at Gurgaon, his sufferance would be insurmountable."

11. Further I find that the cause of action has arisen in the year 1991 as the penalty order was issued by the Disciplinary Authority in the year 1991. Almost 23 years have elapsed. It would be too late in the day for this court to relegate the petitioner to raise an Industrial Dispute before the authorities in the State of Uttar Pradesh. Even otherwise, I find that even though the penalty was passed by the Disciplinary Authority in Agra, it is a conceded case of the respondent No. 2 that the Appellate Authority, be that Senior Vice-President or Area GM (North), HQ both are based in Headquarters which is situated in Delhi and it is also a conceded case that the Appellate Authority, had not considered and decided the appeal. If that is so, the non-consideration of the appeal filed by the petitioner in Delhi which is sequel to the order passed by the Disciplinary Authority would surely give a cause of action for the petitioner to raise an Industrial Dispute. Even looking from this perspective, the Industrial Tribunal has the jurisdiction to decide the matter on reference as referred to it by the appropriate Government.

12. Suffice to state, insofar as the judgments referred to by the Labour Court in the impugned order are concerned, I note that in the case of *Lipton Limited & Anr. Vs. Their Employees, AIR 1959 SC 676*, the Industrial Dispute arose relating to fixation of grades and scales and bonus, which was referred to Industrial Tribunal for adjudication. The management raised a preliminary objection relating to the jurisdiction of the Tribunal which was rejected. The

Court held that the Delhi State was the appropriate Government not only with respect to the workman employed in Delhi office but in other offices as well which were controlled by the Delhi office. The facts being different, the ratio of this case would not be applicable to the case in hand.

13. Insofar as the judgment in the case of *Lalbhai Tricumlal Mills Ltd. Vs. Vin D.M. & Ors., MANU/MH/0056/1955* is concerned, in this case as well, the facts are different inasmuch as after the penalty was imposed by the Disciplinary Authority in Agra, the petitioner had filed a memorandum of appeal to the Authority in Delhi, who failed to consider the appeal. Surely, as stated above, the appeal being sequel to the order passed by the Disciplinary Authority, the Court would have jurisdiction.

14. Insofar as the judgment in the case of the *Management of Indian Cable Co. Ltd., Calcutta Vs. Its Workmen, (1962) I LLJ 409 SC* is concerned, I note that the same would also be not applicable in the facts of this case. Similar would be the position in the case of of *Workmen of Shri Rangavilas Motors (P) Ltd. and Anr. Vs. Shri Rangavilas Motors (P) Ltd. & Ors., AIR 1967 SC 1040*. Further, the judgment of the Supreme Court in the case of *Hindustan Aeronautics Ltd. Vs. Workmen and Ors., (1975) 4 SCC 679* is peculiar to the facts of that case and as such, is not applicable to the present case.

15. The petition is accordingly allowed. The impugned award dated January 16, 1999 is set aside and the matter is remanded back to the Industrial Tribunal to proceed with the Industrial Dispute as if the same is maintainable and also proceed to decide issue Nos. 2 and 3 as

framed by it vide order dated August 09, 1996.

16. The parties to appear before the Industrial Tribunal on May 26, 2014 for further proceedings.

17. Since this is a dispute of the year 1994, it is expected that the Industrial Tribunal shall dispose of the reference within a period of six months positively.

18. No costs.

(V.KAMESWAR RAO)
JUDGE

MAY 07, 2014
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