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

Date of decision: 23rd July, 2021

\+ **W.P.(C) 8235/2020 & CM APPL. 26694/2020**

SAPNA ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate.

Versus

GOVERNMENT OF INDIA & ORS. ..... Respondents
Through: Ms. Arti Bansal, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The Petitioner in the present petition has challenged the impugned order dated 10th June, 2019, passed by the Section Officer, Ministry of Labour, Government of India, by which it has been held that an industrial dispute of a contractual employee working with the Ministry of Labour is not covered under the Industrial Disputes Act, 1947 (*hereinafter, "ID Act"*), as the Ministry of Labour, executing a sovereign function for the Union of India is not an "*industry"* under the ID Act. The reference moved by the Petitioner, under Section 10 of the ID Act, has been rejected by the Respondent in the following terms:

> *"Sir,*
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> *I am directed to refer to the Failure of Conciliation Report No. ALC-III/8(95)17 dated*

> *01/03/2018 from the ALC(Delhi) received in this Ministry on 31/01/2018 on the above mentioned subject and to say that, prima facie, this Ministry does not consider this dispute fit for adjudication for the following reasons:*
> *"Industrial dispute of a contractual employee working in the Ministry of Labour is not converted under ID Act as Ministry of Labour executing sovereign function for the Union of India is not an industry as defined under the ID Act 1947."*

3. The brief background of the petition is that she was working as a *sweeper*, *peon* etc., on daily wage basis, from 12th May 2007 up to August 2014, in the Ministry of Labour and Employment, Govt. of India, located at Shram Sakti Bhawan, Rafi Marg, Delhi. She claimed to be performing her duties continuously and was an unskilled labourer in the Group- D category. She claimed that her position was thereafter designated as MTS i.e. Multi-Tasking Staff, after implementation of the 6th Pay Commission, and was merged with the Group- C category. She claimed that the salary etc. were paid to her directly from the Social Security Division of the management.

4. According to the Petitioner, her services were terminated on 31st August, 2014. Thereafter, she filed a statement of claim before the Deputy Labour Commissioner (Central) for being referred to the labour court under Section 10 of the ID Act. The prayer in the said statement of claim was for reinstatement, with full back wages, and continuity of service with consequential benefits. In the written statement filed before the Labour Commissioner, the Ministry took a possession that it is executing a sovereign function with the Union of India, and it does not constitute an "*industry*" under the ID Act. The conciliation proceedings also resulted in a failure and thereafter the impugned order came to passed on 10th June, 2019.

5. Mr. Anuj Aggarwal, ld. Counsel appearing for the Petitioner submits that the issue at the time of reference under Section 10 of the ID Act is purely administrative. He submits that the legal question as to whether the Ministry of Labour would constitute an "*industry"* or not, is not an issue which is to be determined at the stage of reference, by the said Ministry itself. He submits that this is an issue which would have to be adjudicated upon on merits by the labour court. He, thus, relies upon the judgment of the Delhi High Court in ***All India and General Mazdoor Union v. GNCTD, 106 (2003) DLT 208,*** to urge that the Ministry cannot, by itself, decide on merits on question of reference under section 10 of ID Act, and not refer the claim to a labour court by holding that the Ministry itself is not an *"industry"*. This according to him would be completely contrary to law, as a determination of an administrative authority cannot result in the rejection of a claim. If the said issue as to whether the Ministry of Labour is an *"industry"* or not has to be considered, it could have only been considered by the appropriate labour court, and not by the Government at the time of making a reference to the labour court under section 10 of the ID Act.

6. On the other hand, Ms. Bansal, ld. Counsel, submits that as per the definition of an *"industry"* under section 2(j) of the ID Act, the Ministry itself does not indulge in any manufacturing activity, and hence it could not qualify to be an *"industry"* under the said Act. She accordingly, defends the rejection of the reference by the ministry.

7. Heard ld. counsels for the parties and perused the record. This Court has considered the definition of an *"industry"* under Section 2(j) of the ID Act, and has also considered section 10 of the ID Act.

8. A perusal of the said definition of "industry" under section 2(j) of the ID Act shows that the definition includes any kind of trade undertaking, manufacture, or industrial occupation. The role of the Ministry i.e. the employer, at the stage of a reference under section 10 of the ID Act, is merely refer the dispute to the concerned Court. However, the rejection of this reference due to the reason given above, is in effect an adjudication which cannot be permissible. Hence, the determination as to whether the ministry is an industry or not is a legal question which would have to be decided by a judicial authority.

9. This Court has perused the judgment in ***All India and General Mazdoor Union (supra)*** referred to by the Petitioner, wherein it has been clearly held that the role of the employer at the stage of reference is only administrative, and the referring Authority cannot exercise a *quasi*- judicial or a judicial function. The relevant portion of the said judgment is set out below:-

> *4. In my view the above order declining the reference for the aforesaid reasons is not sustainable because by the said order the Secretary (Labour) has proceeded to adjudicate the plea as to whether the circuit House can be treated as an industry as per Section 2(j) of the Act. In my view the aforesaid finding adjudicating the dispute on merits between the parties can only be done by an adjudication under the Industrial Disputes Act and not at the stage of making a reference by the Labour Secretary, exercising administrative jurisdiction. The Labour Secretary has thus delved into a jurisdiction not vested with him in law. The plea whether the activities of Punjab Bhawan fall within the definition of 'Industry' under S.2(j) of the Act is a plea which can only be raised and adjudicated in a Labour Court/Industrial Tribunal.*

5. In Telco Convoy Drivers Mazdoor Sangh and another Vs. State of Bihar and others MANU/SC/0605/1989 : (1989) IILLJ 558 SC the Hon'ble Supreme Court has held a follows:-

> *"Though 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", but it is not entitled to adjudicate the dispute itself on merits. 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. 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."*

6. The impugned order adjudicating the question of whether Punjab Bhawan activities were 'Industry' thus clearly runs contrary to the position of law laid down in the aforesaid judgment which view has also been reiterated in Sharad Kumar Vs . Govt. of NCT of Deihi & Ors. MANU/SC/0313/2002 : (2002)IILLJ275SC .

7. Thus the order dated 27th August, 1997 is entirely unsustainable. The order dismissing the review dated 27th January, 1998 is equally unsustainable as in spite of having noticed that a similarly circumstanced dispute was referred for adjudication, the order is not reviewed on the erroneous stance that in the earlier case of Swami Nath, the State Government had not rebutted the claim of the workman for reference. Accordingly both the Review Order dated 27th January, 1998 and the original Order dated 27th August, 1997, declining reference are set aside.

> *8. In the aforesaid judgment in Telco Convoy Drivers Mazdoor Sangh and another Vs. State of Bihar and others (supra), the Hon'ble Supreme Court also held as follows:-*
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> > *" In several instances this Court had to direct the government to make a reference under Section 10(1) when the government had declined to make such a reference and this Court was of the view that such a reference should have been made. See Sankari Cement Alai Thozhilalar Munnetra Sangam V. Government of Tamil Nadu; Ram Avtar Sharma V. State of Haryana; MP. Irrigation Karamchari Sangh V. State of M.P.; Nirmal Singh V. State of Punjab."*

10. Moreover, the defence taken in the written statement, that the function is sovereign in nature is also quite puzzling, inasmuch as sovereign function cannot be stretched to employment of a sweeper or a peon, in the Shram Sakti Bhawan, where the Ministry of Labour is located.

11. Therefore, the impugned order which upholds the defence of the Ministry that it is executing a sovereign function, and hence the dispute need not be referred to a labour court, is completely untenable. The same is accordingly set aside.

12. Accordingly, the Secretary, Ministry of Labour and Employment, Government of India, is directed to make a reference of the disputes raised by the Petitioner to the concerned labour court, within a period of four weeks from today.

13. The petition is allowed in the above terms. It is made clear that the observations made in this order would not bind the labour court in any manner, which would adjudicate the claim of the Petitioner and the defence taken, if any, on merits in accordance with law.

14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

JULY 23, 2021
MR/AK