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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 736/89 Date of decision: 7.11.94

UNION OF INDIA : Petitioners/Applicants

VERSUS

AUTHORITY UNDER THE PAYMENT OF WAGES ACT, 1936. : Non-Petitioner/Respondents

Mr. U.D. Sharma : Counsel for the Petitioners.

None present on behalf of the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. N.K. Verma, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Heard the learned counsel for the parties.

2. Labour Court accepted the petition of the applicant and held that the termination of the services of the applicant w.e.f. 5-12-84 was illegal and the applicant had the right to continue in employment and it is a case of clear violation. Mr. Sharma, appearing on behalf of the applicants submitted that vide Annexure A-4, the State Government referred the matter to the Tribunal. His contention is that the State Government was not competent to refer the case as the respondent is a Department of the Central Government.

3. However, it will not be out of place here to mention that the applicants have not raised the point before the Labour Court. Mr. Sharma relied upon the case of Union of India & Ors Vs. Baleshwar Singh, reported in (1994) 28 A.T.C. 77. Hon'ble Supreme Court has held that the decision given by the High Court in a matter despite inherent lack of jurisdiction, can be entertained by the Supreme Court though it is a new plea. The preposition laid down by the Hon'ble Supreme Court is not in dispute at all. It is not a case of inherent lack of jurisdiction. In the instant case, even if the reference is made by the State Government, the Labour Court which has decided the

.../2

application of the applicant will decide the matter. Thus, the court is the same, the dispute is about the competency of the authority making the reference. Whether the reference is made by the State Government or the Central Government, the Labour Court will decide the matter, and in fact, the Labour Court had entertained the petition and decided the matter. It will not be out of place to mention here that the labour disputes can be agitated before the Labour Courts under the I.D. Act. Apart from that the I.D. Act, Second Schedule provides that the Labour Court will have the jurisdiction in all matters pertaining to discharge or dismissal of workmen including reinstatement of workmen wrongfully dismissed. It is a case of wrongful discharge of a workman and for this reason, Second Schedule applies in the instant case and the Labour Court is having the jurisdiction. Mr. Sharma submits that Second Schedule does not apply in the facts and circumstances of the case. He submits that item 10 of Third Schedule applies. This relates to retrenchment of workmen and closure of establishment. The word "and" as used in item no. 10 relates to the closure of the establishment and the retrenchment of the employee on account of the closure of establishment. It is not a case of closure of establishment and retrenchment on account thereto. The case U/S 25H will definitely fall within Schedule Second. However, the case of S.25H cannot be equated with the case of S.25N. Without entering into the merits of the case, we would like to mention that the petition which was pending since 1985 before the Labour Court was decided on 16.10.87. The question of jurisdiction was not raised. The doctrine of favour will apply. The dispute is about the reference - who is the competent authority to refer the case to the Labour Court. In the instant case, the State Government has referred the case to the Labour Court and we are of

.../3

the view that it has rightly done so. Even it is assumed that there was a mistake on the part of the State Government, though it is not so, even then the present applicants should have raised this point before the Labour Court stating therein that the reference is bad, as such, the petition cannot be entertained. Apart from that, the petition has been filed on 11.9.89 and the judgment is dated 16.10.87. So, the judgment of the Labour Court cannot be challenged after one year and 11 months, under Section 21 of the A.T. Act. The question of daily worker is before us and we will not like to disturb the findings of the Labour Court on this point. After the judgment of the Labour Court, the applicant filed the petition for execution of the order before the Authority under the Payment of Wages Act and the same has been disposed of on 12.7.89. This petition is nothing but execution of the decree or order passed by the Labour Court and unless that decree or award is set aside, Annexure A-5 cannot be disturbed. Once there is a decree and that decree has not been challenged within time and even no objection was raised, in such circumstances, we would not like to disturb the findings of the Payment of Wages Authority and because it is a ministerial act of the Authority which is to be performed on the basis of the Award given by the Labour Court.

4. In the facts and circumstances, we do not find force in the petition filed by the Union of India and the same is dismissed, with no order as to costs.

(N.K. VERMA)
Administrative Member

(D.L. MEHTA)
Vice-Chairman