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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 12, 2009
Date of Order: February 09, 2010

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09.02.2010

NTPC

Badarpur Thermal Power Station (BTPS)

Through: Mr. S.K. Taneja, Sr. Adv with Mr. Rajesh Gupta and Mr. Puneet Taneja,
Advocates

...Petitioner

Versus

Umesh Kumar Mishra

Through: Mr. Om Prakash authorized representative with respondent in person

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition petitioner has assailed the order dated 22.6.2009 passed by the Central Government Industrial Tribunal (fort short "CGIT") in ID No.25/2009.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent workman filed a complaint against the petitioner about dismissal from the service before the Assistant Labour Commissioner. The petitioner took a stand that respondent was not their employee and he was the employee of BTPS Club. The reconciliation failed and the Government vide order dated 22.10.2008 finalised the terms of reference as under:

"Whether the applicant is an employee of the Badarpur Thermal Power Station or Badarpur Thermal power Station Club? Whether the action of the management in terminating the services of Shri Umesh Kumar Mishra w.e.f. September, 2007 is just, fair and legal? If not, to what relief the workman concerned is entitled to and from which date?"

3. However, when the reference was sent to CGIT, the following reference order was sent instead of reference finalized by M.O. dated 22.10.2008:

“Whether the action of the management of Badarpur Thermal Power Station, New Delhi in terminating the services of their workman Shri Umesh Kumar Mishra w.e.f. September, 2007 is legal and justified? If not, to what relief the workman is entitled to?”

4. The reference sent vide order dated 6.2.2009 was further modified by a corrigendum dated 17.2.2009 and instead of date of September, 2007, January, 2008 was substituted.

5. The petitioner herein preferred a writ petition before this Court that the reference sent to CGIT was not the reference finalized respecting dispute which arose between the parties and the reference of M.O. dated 22.10.2008 was the reference to be sent to CGIT. During arguments on the writ petition, the counsel for Union of India conceded to the relief claimed in the writ petition and made a statement in the Court that the terms of reference as settled vide office memorandum dated 22.10.2008, would be sent for adjudication instead of reference already sent vide letter dated 6.2.2009. In view of this statement made by counsel for UOI the writ petition was disposed of and this Court specifically observed that the reference settled vide OM dated 22.10.2008 be sent for industrial adjudication. Accordingly UOI sent reference settled in OM dated 22.10.2008 to CGIT vide order dated 20.5.2009. In this order it was specifically mentioned by UOI that the previous reference was being superseded and fresh reference as stated in para 2 above was being referred. CGIT was directed to give its award on the reference sent vide order dated 20.5.2009. This order of UOI was received by CGIT. However, CGIT in total disregard of the order passed by the High Court and in disregard of the order made by UOI continued with the reference made to him earlier and clubbed the industrial dispute registered under old reference with the Industrial Dispute registered under new reference sent by UOI. In his order dated 24.6.2009 he continued with both the reference being ID No.12/2009 and ID No.25/2009. His orders after 22.6.2009 show that he was dealing with both references and treating them different IDs and was passing orders in both references. Vide his order dated

30.7.2009 after completion of pleadings, he observed that no other issue arose the one than referred by UOI and he asked management i.e. petitioner to lead his evidence first and conclude the same. It is at this stage that the petitioner approached this Court against the orders of learned CGIT on the ground that orders were without jurisdiction.

6. It is apparent on the face of the orders that these orders were passed by learned CGIT mindlessly and orders were even contrary to the reference sent to him. The earlier reference, for which ID No.12/2009 was registered, had been withdrawn by the Government vide order dated 20.5.2009 where the Government has categorically stated that the earlier reference was being superseded and fresh reference was being sent. Despite this clear order the learned CGIT continued with both the reference and observed that the second reference was merely a corrigendum of first reference and both reference would continue. It is also seen that CGIT does not seem to be aware of the principle of natural justice and basic principles of onus of proof. Since the workman had approached with the allegation of being an employee of the petitioner and also had claimed that he was assigned duties of BPTS Club, the onus was on the workman to prove the employer-employee relationship by producing evidence first. Whenever a claim is filed, onus to lead evidence first is on the party who files claim and is bound to fail if no evidence is led by it. In the present case CGIT, contrary to all legal norms, asked the petitioner to prove the negative i.e. that the respondent workman was not its employee. Nobody can be asked to prove the negative. An assertion is to be proved by the person who makes the assertion. Thus, it was respondent who was to prove his assertion of being an employee of the petitioner. Onus had to be on the respondent.

7. This petition is allowed in following terms: - CGIT shall only adjudicate reference made to him vide order dated 20th May, 2009 and it would be respondent/workman who will be asked to lead his evidence first and conclude to prove his case. No orders as to costs

February 09, 2010
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SHIV NARAYAN DHINGRA J.