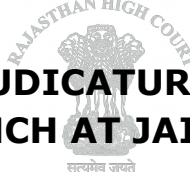




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 13929/2010

Mukesh Kumar S/o Shri Deena Ram Harijan, Resident of Shivsinghpura, Via Chomu Samod, Tehsil Shahpura, District Jaipur.

-----Petitioner

Versus

1. Union of India through Desk Officer, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001
2. Life Insurance Corporation of India through its Branch Manager, Branch Office Jhotwara (150S), R.K. Tower, Jaipur.
3. Divisional Manager, Life Corporation of India, Divisional Office, Jeevan Prakash, Bhawani Singh Road, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Ankul Gupta

For Respondent(s) : Mr. Jugal Kishore Agarwal

**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Order**

**12/08/2024**

1. The instant writ petition has been filed by the petitioner challenging the impugned order dated 05.07.2010 passed by the Ministry of Labour, Government of India by which the appropriate Government has refused to make reference for settlement of dispute arose between the parties.





2. Learned counsel for the petitioner submits that the petitioner was engaged on the post of Jalsewak by the respondents on 22.07.2008, but without any notice or without affording any opportunity of hearing, the respondents discontinued his services w.e.f. 06.02.2009. Counsel submits that the petitioner raised an industrial dispute by way of filing an application under Section 2A of the Industrial Disputes Act, 1947 (for short "the Act of 1947") before the Conciliation Officer. Counsel submits that the said application filed by the petitioner was rejected by the appropriate Government vide impugned order dated 05.07.2010 on the pretext that he was employed with the respondents for a period of 85 days only and he could not substantiate his claim for further employment with any documentary evidence. Counsel submits that the aforesaid order passed by the respondents is not sustainable in the eye of law as the said authority was not competent to adjudicate the dispute on its merits, hence under these circumstances, interference of this Court is warranted. In support of his contentions, he has placed reliance upon the judgment passed by this Court on 17.08.2023 in the case of **Gopiram Yadav vs. State of Rajasthan and Ors. (SB Civil Writ Petition No.11575/2019)**.

3. Per contra, learned counsel for the respondents opposed the arguments raised by the counsel for the petitioner and submitted that the petitioner has hardly worked with the respondents for a period of 85 days only





and he has not completed 240 days in a calendar year, hence under these circumstances, the provisions contained under Section 25F, 25G and 25H of the Act of 1947 are not attracted. Counsel submits that the petitioner was of the age of 30 years at the time of filing of the application, under Section 2A of the Act of 1947 in the year 2009, before the Conciliation Officer. Counsel submits that now the petitioner might have attained the age of superannuation, hence, under these circumstances, interference of this Court is not warranted. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **M/s Haryana State F.C.C.W. Store Ltd. and another vs. Ram Niwar and another** reported in 2002 (94) FLR 618.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. Perusal of the record indicates that the petitioner submitted an application under Section 2A of the Act of 1947 before the Conciliation Officer stating therein that he was engaged on the post of Jalsewak by the respondents on 22.07.2008 and his services were discontinued without issuing any notice and without providing any opportunity of hearing by the respondents, vide order dated 06.02.2009. Several grounds were raised by the petitioner including non-compliance of the provisions contained under Section 25G of the Act of 1947, while terminating the services of





the petitioner. Reply to the aforesaid application was submitted by the respondents and an objection was taken therein that the petitioner had hardly worked for only 85 days with the respondents, hence, under these circumstances, none of the provisions of the Act of 1947 were attracted and no dispute arose between the parties, which was required to be adjudicated by the Labour Court by making a reference.

6. Considering the application filed by the petitioner and reply submitted by the respondents, the competent authority refused to make reference only on a technical count that the petitioner has worked for 85 days only and he could not substantiate his claim for further employment with any documentary evidence.

7. Now, the question which remains for consideration of this Court 'whether under these circumstances, the order passed by the authority dated 05.07.2010 is legally sustainable in the eye of law or not?'

8. In the case of **Telco Convoy Drivers Mazdoor Sangh and another vs. State of Bihar and Others** reported in 1989 (3) SCC 271, the Hon'ble Apex Court had held that though while considering the question of making reference under section 10(1) of the Act of 1947, 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 its merits. While





exercising power under Section 10(1) of the Act of 1947, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function. It, therefore, cannot delve into the merits of the dispute and take upon itself the determination of the lis. The question whether the person raising the dispute was a workman or not, cannot be decided by the Government, in exercise of its administrative function under Section 10(1) of the Act. This dispute is required to be adjudicated by the competent Labour Court after its reference.

9. The judgment cited by the counsel for the respondent in the case of **M/s Haryana State FCCW Store Ltd** (supra) is not applicable in the facts and circumstances of the present case, as in the said matter, the Hon'ble Apex Court has dealt with the issue of term of the workman under Section 25F of the Act of 1947, while in the instant matter, the petitioner has not raised any ground of violation of Section 25F of the Act of 1947. In the instant matter, the issue of Section 25H of the Act of 1947 has been raised by the petitioner, which is required to be decided by the competent Labour Court/Industrial Tribunal, after affording due opportunity of hearing to both the sides.

10. Accordingly, the impugned order dated 05.07.2010 stands quashed and set aside. The matter is remitted to the appropriate Government for making reference of the dispute.





11. With the aforesaid directions, the instant writ petition stands disposed of. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J



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