

Id No. 147/2015

17.01.2022

Present:- Proxy A/R for the claimant.
Shri Deepayan Mandal, Ld. A/R for the management No.1.
None for the management No.2.

The matter stands posted today for orders on petition filed by the respondent no.1 challenging the maintainability of the reference. Reply to the said petition has been filed and taken on record.

A reference was received from the Appropriate Government to adjudicate on the following.

“Whether Shri Shyam Kumar Pathak is entitled to absorption in IGL? If not to what relief he is entitled to subsequent to his removal/termination of service w.e.f 01.10.2013.”

After completion of pleading issues were framed, and both parties were called upon to adduce evidence. Issue NO.3 was framed to the following effect.

- Can Akhil Bhartiya Karamchari Trade Union espouse the claim of the claimant? If so its effect?

The claimant besides examining himself also examined the General Secretary of the said union as WW2. During cross examination of the said witness it was elicited that the said trade union is not the registered trade union of IGL Employees or the employees of CNG Station Sector 122 Noida. The witness further admitted that the union is not the registered Trade Union of IGL or like industries. Basing on that admission of WW2 the present petition has been filed by the respondent No.1. Argument was heard from both the parties. On behalf of the respondent it has been pleaded that for want of espousal by a competent trade union the dispute cannot be treated as an industrial dispute and liable to be dismissed on the point of maintainability without further evidence. The Ld. A/R for the management while urging from dismissal of the proceeding submitted that this is not an industrial dispute against the respondent and it can at best be treated as an individual dispute. In support of his stand he has relied upon the judgment of the Hon’ble Supreme Court in the case of **Workmen of M/s Dharampal Prem Chand vs. Dharampal Prem Chand (1965)3 SCR394**.

In reply the Ld. A/R for the claimant submitted that when there is an issue already framed as issue no.3 the present petition should not have been filed and liable to be rejected. He also submitted that the

dispute may not be a dispute u/s 10(1) of the ID Act. But can be treated as an individual dispute and the tribunal is empowered to adjudicate the same.

In the case of **Aviempo of India Limited vs. State of West Bengal and others** decided by the Hon'ble High Court of Kolkata it has been held that at this stage it is not desirable to go into the very depth of the matter to undo the case of the claimant on its intrinsic merits. It is well known that the satisfaction of the appropriate authority in the matter of making a reference u/s 10(1) of the Act is a subjective satisfaction and unless perversity ex-facie can be shown the order of reference should not be quashed at its inception. Even if there are contradictory claim made by a workman at a different stage of the proceeding, yet that itself the subject matter of the dispute to be resolved by the Industrial tribunal to which the dispute is referred.

In view of the principle decided in the aforesaid judgment it is not felt proper to quash the proceeding at this stage on the point of maintainability. The petition filed by the respondent no.1 is rejected keeping it open for him to argue the matter at the time of final argument. Call the matter on _____ for further evidence by the claimant.

Presiding Officer
17.01.2022