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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ W.P.(C) 5844/2005 & CM APPL. 4367/2005

M/S IBP COMPANY LIMITED

.....Petitioner

Through: Mr. Sauresh Rai, Mr. Neeraj Kumar
and Ms. Upasna Singh, Advs.

versus

MR SHAILENDRA KUMAR & ANR

.....Respondents

Through: None

CORAM:**HON'BLE MS. JUSTICE SHAIL JAIN****JUDGMENT****SHAIL JAIN, J**

1. The present Writ Petition has been filed under Article 226 /227 of the Constitution of India, inter-alia, assailing the Order dated 05.08.2004 (hereinafter '*Impugned Order*') passed by the learned Labour Court X, Karkardooma Courts, Delhi under the Industrial Dispute Act, 1947 (hereinafter '*the Act*').

2. The Learned Labour Court dismissed the application filed by Petitioner challenging the jurisdiction of the Labour Courts at Delhi *inter alia* on the ground that the Petitioner cannot agitate and press same point already raised before parallel Court. Further holding that if, the management was aggrieved of the said order they should have approached to the Higher Court.

**BRIEF FACTS:**

3. The Petitioner is a Government (Central) company under the administrative control of the Ministry of Petroleum and Natural Gas, having establishments across India.

4. The Respondent No. 1 was appointed as a Fitter on 01.09.1984 and was subsequently transferred to the Petitioner's Lucknow Division on 01.09.1985, where he continued to discharge his duties.

5. In April 1986, certain acts of alleged misconduct were attributed to the Respondent No. 1 during the course of his employment at Lucknow. Pursuant thereto, Charge-Sheets were issued in the years 1987 and 1988. A domestic enquiry was conducted at Lucknow in which the Respondent participated.

6. The Enquiry Officer, by Report dated 22.12.1989, found the Respondent guilty of the charges leveled against him. After considering the reply to the Show Cause Notice, the Petitioner passed an Order dated 19.07.1990 dismissing the Respondent from service with effect from 23.07.1990.

7. Aggrieved by his dismissal, the Respondent raised an industrial dispute before the Conciliation Officer at Delhi in the year 1991. The Petitioner herein contested the maintainability of the proceedings *inter alia* on the ground that the entire cause of action had arisen at Lucknow and that the authorities at Delhi lacked jurisdiction to decide the dispute. The conciliation proceedings culminated in failure, and a report under Section 12(4) of the Act, was submitted.

8. Thereafter, by Order dated 08.07.1992, the Delhi Administration, referred the dispute to the Labour Court, Delhi for adjudication on the



question as to whether the dismissal of the Respondent was illegal and/or unjustified and to what relief he was entitled. The terms of reference is extracted as under:

"Whether the dismissal of services of Shri Shailendra Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?"

9. The Respondent filed his Statement of Claim before the Labour Court, to which the Petitioner filed its written statement raising, *inter alia*, objections regarding territorial jurisdiction as well as the competency of the appropriate Government under Section 2(a) of the Act.

10. On the basis of the pleadings of the parties, the Labour Court on 06.01.1997 framed issues, including the questions of jurisdiction and validity of the enquiry. The issues framed are as following:

- "1. Whether Secretary (Labour) NCT of Delhi is the competent authority to make the present reference. In view of the objection taken on behalf of the Management regarding territorial jurisdiction?*
- 2. Whether the Court has jurisdiction to entertain the present reference?*
- 3. Whether the enquiry conducted by the Management was not fair and proper? and*
- 4. As in terms of reference."*

11. After hearing the parties at length and considering the various judgments relied upon by the Petitioner, the Ld. Labour Court (**LABOUR COURT X, TIS HAZARI, DELHI**) vide Order dated 21.09.1999, rejected the Petitioner's objection regarding the competence of the appropriate Government. The said Order reads as under:



“7. The reference was made on 8.7.92. Delhi is a Union Territory. It is clear that Secretary(Labour), exercised his powers delegated to him by the Central Government under provision of Sec. 39 of the Act. The legality of Notification was questioned before the Hon’ble Delhi High Court in case of M/s Leela Separators Pvt. Ltd. 1981(43) FLR 171, wherein the validity of the aforesaid notification was upheld.

8. Even otherwise the rule 2(f) of the Industrial Disputes (Central) Rules, 1957, contemplated that in relation to the industrial dispute in an Union Territory for which the appropriate government is the Central Government reference to the Central Government of the Government of India shall be construed as a reference to the Administrator to the Territory and the reference to the Chief Labour Commissioner (Central) and the Asstt. Labour Commissioner (Central) shall be construed as reference to the appropriate authority, appointed in that behalf by the Administrator of the Territory. On the strength of the above rule, it is clear that the Secretary (Labour), Delhi was competent to refer the dispute for adjudication to this Tribunal.

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10. For the reasons stated above, the application is dismissed. File be consigned to record room.”

12. Subsequently, the Petitioner moved an application dated 21.08.2003 before another Labour court (**LABOUR COURT X: KARKARDOOMA: DELHI**) seeking adjudication of the issue of territorial jurisdiction as a preliminary issue. The said application came to be dismissed by the Labour Court *vide* order dated 05.08.2004, holding that the Petitioner could not be permitted to re-agitate the very issue once it has been dealt with and rejected. The said Order reads as under:



“Once it was held by Sh. A.S. Yadav, the then Presiding Officer, Labour Court, in this matter, it does not upon the management to agitate and press same point. If the management was aggrieved of the said order they should have approached to the Higher Court.”

13. Aggrieved by the aforesaid **Impugned order** dated 05.08.2004, the Petitioner has preferred the present Writ Petition, *inter alia*, seeking quashing and setting aside of the same.

ISSUES INVOLVED:

14. The sole question before this Court at present is:

- ***Whether the Learned Labour Court was justified in rejecting the plea of Petitioner regarding competence of jurisdiction, thereby upholding the reference?***

SUBMISSIONS OF PARTIES:

15. As for the submissions of the parties, Id. Counsel for the Petitioner urged that the Petitioner/Company, being an establishment, has its branches/offices in different states including branches at Delhi, Lucknow and Kolkata.

16. Id. Counsel for the Petitioner has raised the plea that the sole question involved in the present Writ is whether the Delhi Administration who made the reference and the Labour Court at Delhi who had passed the **Impugned Order**, were the competent authorities in the present case or not. In support of his arguments, the Petitioner has placed reliance on Section 2 of the Act, stating that, from this provision it is evident that the appropriate Government is the Central Government in present case; consequently, the reference ought to be from an authority appointed by the Central



Government and not by the Delhi Government. Therefore, it is submitted that the ***Impugned Order*** suffer from inherent lack of jurisdiction which can be rectified at the stage of Writ Petition only. Hence, it is prayed that the Impugned Order be set aside.

17. Ld. Counsel for the Petitioner has placed reliance on the judgment rendered by a co-ordinate bench of this Court in ***D.L.F. Universal Ltd. Vs. Govt. Of National Capital Territory, Delhi and Ors. MANU/DE/0386/2002*** to support his contention with reference to the competent authority.

18. Since none appears on behalf of the Respondent(s) despite ample opportunity, this Court is left with no other option but to proceed with the matter *ex parte*.

19. Respondents have not been appearing before this Court for a considerable period and have remained unrepresented on several dates of hearing. Accordingly, their stand is noticed only on the basis of the counter affidavit and other documents filed on record. (*As Emerging from the Counter Affidavit on Record*)

20. The Respondent submits that the present Petition is wholly misconceived and amounts to an abuse of the process of law, being directed against an interlocutory order where no final award has been passed by the Labour Court.

21. It is contended that the issue of jurisdiction already stood concluded *vide* Order dated 21.09.1999 passed by the learned Labour Court, which was not challenged by the Petitioner and thus attained finality. The subsequent Application dated 21.08.2003, raising identical objections, was



rightly dismissed on 05.08.2004. The present Petition, founded on the same grounds, is merely a device to delay the proceedings.

22. The Respondent further submits that the Petitioner has suppressed material facts and placed a distorted record before this Court to obtain interim relief, and reserves the right to place the correct documents on record.

23. It is also contended that the Petitioner has consistently adopted dilatory tactics, despite evidence having commenced as far back as 1998, and has prolonged the adjudication by repeated adjournments and belated applications.

24. On merits, it is submitted that the Respondent was appointed at Delhi and continued to remain under the control and supervision of the Delhi office. The salary was disbursed from Delhi, and both the Charge-Sheet and the Order of termination were issued from Delhi. In these circumstances, the Labour Court at Delhi rightly exercised jurisdiction.

ANALYSIS & FINDING:

25. Having considered the rival submissions, it is evident that the controversy lies within a narrow compass. The principal grievance of the Petitioner is not with respect to the entitlement of the Respondent to any relief per se, but rather concerns the very competence and jurisdiction of the authorities that have entertained the dispute and are seized of adjudicating the claim.

26. The sole and consistent objection raised by the Petitioner throughout the proceedings is that neither the Conciliation Officer nor the Labour



Court accorded even minimal consideration to the foundational issue of jurisdiction.

27. It is the specific case of the Petitioner that the Company, being a Public Sector Undertaking under the administrative control of the Ministry of Petroleum and Natural Gas, Government of India, and having oil depots and installations across various parts of the country, would fall within the purview of the Central Government, as the “appropriate Government” in terms of Section 2(a) of the Act, for the purposes of any industrial dispute is Central Government and not state government.

28. The Petitioner has further contended that the industrial dispute raised by the Workman is otherwise not maintainable in law, inasmuch as the entire cause of action arose at Lucknow. It is submitted that the alleged misconduct was committed at Lucknow, the Charge-Sheet was issued there, the domestic enquiry was conducted at Lucknow, the Enquiry Officer is based there, and the Workman was employed and continued to discharge his duties at the Lucknow establishment of the Company. In these circumstances, the institution of the industrial dispute at New Delhi is without jurisdiction, and consequently, the Reference Order issued by the Labour Secretary, Delhi Administration, is liable to be held as unsustainable in law.

29. The record reveals that the issue of jurisdiction had already been raised earlier before the learned Labour Court and was adjudicated *vide* Order dated 21.09.1999. The said order rejected the Petitioner’s objection regarding the competence of the appropriate Government. The relevant reasoning recorded by the Labour Court was that the reference had been made in Delhi, which is a Union Territory, and that the Secretary (Labour)



had exercised powers delegated by the Central Government under Section 39 of the Act. The Labour Court further relied upon the Industrial Disputes (Central) Rules, 1957, to hold that the Secretary (Labour), Delhi was competent to refer the dispute for adjudication. The aforesaid reasoning, being supported by the applicable statutory provisions and judicial precedent, cannot be said to suffer from perversity or illegality.

30. Subsequently, the Petitioner moved another Application dated 21.08.2003 before the learned Labour Court at Karkardooma seeking adjudication of the same issue of territorial jurisdiction as a preliminary issue. The said Application came to be dismissed *vide* Order dated 05.08.2004. The reasoning assigned by the learned Labour Court while rejecting the Petitioner's application is that the Petitioner had already exhausted its remedy by raising the very same objection before the another court, with the same supporting case law, and therefore, the issue could not be permitted to be re-agitated. The Labour Court observed that if the Petitioner was aggrieved by the earlier Order, the proper remedy was to approach the higher Court. The relevant extract of the impugned order reads as under:

“Once it was held by Sh. A.S. Yadav, the then Presiding Officer, Labour Court, in this matter, it does not upon the management to agitate and press same point. If the management was aggrieved of the said order they should have approached to the Higher Court.”

31. In essence, the learned Labour Court has declined to entertain the Application on the ground that the issue had already been adjudicated earlier, and that the appropriate remedy for the Petitioner, if aggrieved, was to challenge the said Order before a superior forum rather than seeking



reconsideration before the same court.

32. The reasoning of the learned Labour Court is legally sustainable and can be justified on well-settled principles governing judicial discipline and finality of proceedings.

33. The settled position of law is that, once an issue particularly one relating to jurisdiction has been specifically raised, argued, and adjudicated by a competent court, the same cannot be permitted to be re-agitated at the instance of the same party in the course of the same proceedings. In the case at hand, the predecessor Presiding Officer had already applied his mind to the objection of jurisdiction and rendered a reasoned decision. In such circumstances, the Successor Court is bound by the earlier determination, and entertaining the same objection again would amount to sitting in appeal over a Coordinate Bench's Order, which is impermissible in law.

34. The principle underlying this approach is akin to finality of judicial decisions and the doctrine of constructive *res judicata*, which prevents parties from repeatedly raising the same issue once it has been decided. Even though strict rules of *res judicata* may not apply with full rigour to industrial adjudication, the broader principle namely that there must be an end to litigation applies with equal force. Permitting repeated challenges on the same ground would lead to procedural uncertainty and protract adjudication. It will be apposite to extract Section 11 of Code of Civil Procedure, 1908:

“ 11. **Res judicata.**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom



they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

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Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

35. Section 11 of the Code embodies the principle that a matter once directly and substantially in issue between the same parties, and finally adjudicated by a competent court, cannot be reopened in subsequent proceedings. By virtue of Explanation IV, even those grounds which ought to have been raised in the earlier proceedings are deemed to have been in issue, thereby precluding parties from re-agitating the same or related issues at a later stage. Accordingly, the Petitioner cannot be permitted to reopen the same grievance at that stage, even assuming that the earlier objection was not elaborately considered by the predecessor, an assumption which, in any event, does not arise in the present case.

36. Further, the Labour Court correctly observed that if the Petitioner was aggrieved by the earlier Order passed by the predecessor Presiding Officer, the appropriate course of action was to challenge the same before a higher forum not before the same forum and an officer equal in rank to that of the officer who had passed the previous Order. Having failed to do so, the Petitioner was not at all just in indirectly reopening the issue by filing a fresh Application before the same Court. Such a course would defeat the hierarchy of remedies and undermine judicial discipline.



37. Additionally, allowing repeated objections on jurisdiction at different stages would disrupt the continuity of proceedings and delay the adjudication of the substantive dispute, which, regrettably, has happened in the instant case. The Labour Court, therefore, acted within its jurisdiction in declining to revisit an issue already decided and in directing the parties to proceed on the basis of the earlier determination.

38. Accordingly, the impugned reasoning reflects a proper exercise of judicial restraint, adherence to procedural propriety, and respect for the finality of orders passed by a Coordinate Bench.

39. It is well settled that while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, this Court does not act as a Court of Appeal over the findings recorded by the Labour Court. The scope of judicial review is limited and interference is warranted only where the **Impugned Order** suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored or irrelevant considerations have been taken into account.

40. It is also reflected from the records placed on record, particularly Order dated 21.09.1999 that the issue concerning the competence and jurisdiction of the Labour Court had already been framed and was *sub judice* before the learned Labour Court. In such circumstances, this Court is of the considered view that no interference was warranted at the interlocutory stage.

41. Once issues have been duly framed by the adjudicating authority, it is both the right and the obligation of the parties to lead evidence and advance submissions in support of their respective stands so as to enable the Court



to arrive at a just and reasoned determination.

42. Interference with interlocutory orders, particularly when the matter is actively under adjudication, ought to be exercised sparingly. Entertaining such challenges at a premature stage would unnecessarily impede the progress of proceedings and defeat the very purpose of expeditious adjudication under the Act.

43. The question of jurisdiction in the present case is not a pure question of law, but a mixed question of law and fact, which necessarily requires appreciation of evidence and factual determination. Such an issue is best left to be decided by the Labour Court upon culmination of the trial.

44. It is further evident that the Petitioner had earlier raised an identical objection before the learned Labour Court, which stood duly considered and rejected. The said determination having not been assailed before any superior forum has attained finality.

45. The subsequent attempt by the Petitioner to re-agitate the very same issue by filing another application before successor court having same jurisdiction amounts to an abuse of process. Such conduct partakes the character of **forum shopping**, which cannot be countenanced in law.

46. The proper course available to the Petitioner was to challenge the earlier Order before an appropriate forum. Having failed to avail of such remedy, the Petitioner cannot now be permitted to indirectly reopen the same issue at a later stage.

“At times, within the judicial system, the process itself tends to assume the character of a punishment, which ought not to occur on account of abstinence, whether on the part of counsel or from the Bench.”



47. In view of the foregoing discussion, this Court finds no infirmity, illegality, or jurisdictional error in the ***Impugned Order*** passed by the learned Labour Court.

48. Accordingly, the present Writ Petition is **devoid of merit** and is hereby **dismissed**. The parties are directed to appear before the learned Labour Court for expeditious adjudication of the dispute on merits.

49. In cases such as the present one, where a party has repeatedly sought to reopen settled issues and has indulged in dilatory tactics, the Court would ordinarily be justified in imposing exemplary costs so as to deter such conduct and to set a precedent. The record reveals that the present dispute has remained pending for nearly twenty-six years, a delay which cannot be countenanced and which is, to a considerable extent, attributable to the conduct of the Petitioner in repeatedly raising objections that stood conclusively decided. Such actions, evidently calculated to prolong proceedings, not only defeat the object of expeditious adjudication under the Industrial Disputes Act, 1947, but also result in grave prejudice to the workman, who is deprived of timely relief.

50. This Court cannot remain oblivious to the fact that, in several cases, such tactics are employed by managements to delay the outcome of industrial disputes and to evade their legal obligations, thereby causing undue hardship to the workman. The present case is a telling example of such misuse of process.

51. While this Court is strongly inclined to impose exemplary costs upon the Petitioner for abuse of the process of law, it refrains from doing so at this stage due to absence of Respondent/workman.



52. **Dismissed.** Pending application(s), if any, stand disposed off. No order as to cost.

**SHAIL JAIN
JUDGE**

APRIL 15, 2026/PT/HP