Delhi High Court
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All India General Mazdoor Trade ... vs T.C.I.L. And Ors. on 16 August, 1999
Equivalent citations: 81 (1999) DLT 225
Author: A Sikri
Bench: A Sikri
JUDGMENT

A.K. Sikri, J.

1. Petitioner is a trade union. Present petition is filed by it on behalf of nine persons, the particulars of whom are given as Annexure 'A' to the writ petition. It is stated that they were the employees of respondent No. 1 namely, Telecom Consultants India Limited (hereinafter referred to as 'TCIL', for short) and they are working for a long period as sweepers and are entitled to regularisation. It is stated that they were employed as contract workers through M/s. Everest Enterprises/respondent No. 3 which was not permissible. Prayer is made that they should be regularised in service.

2. Respondent No. 1 filed counter-affidavit contesting the claim of the petitioner. However, it is not necessary to go into the merits of the case inasmuch as it is admitted by the petitioner union that petitioner has raised industrial dispute regarding regularisation of these very workmen and the same stands referred to the Industrial Tribunal and is pending adjudication. It is therefore appropriate that the matter be decided by the Industrial Tribunal which provides alternate efficacious remedy and would decide the matter after recording evidence and taking necessary material on record. This position was accepted by the learned Counsel for the petitioner also and therefore he did not press this relief.

3. However, the only argument raised by the petitioner was that during the pendency of the reference before the Industrial Tribunal there should be a stay restraining the respondents from terminating the service of the petitioner. It is contended that the petitioner cannot claim such relief from the Industrial Tribunal as Industrial Tribunal has no power to grant such stay. Learned Counsel for the petitioner has contended that he has a right to file the writ petition as certain contemplated action of the respondent in terminating the services of the petitioner would amount to infringement of petitioner's right under Article 21 of the Constitution of India and such an action on the part of the respondents is not permissible. Petitioner has cited in support of his argument the following judgments :

(i) 1990 SCC (Crl.) 110 -- S.M.D. Kiran Pasha v. Government of Andhra Pradesh and Ors..

(ii) 1982 L1C 1646 -- People's Union for Democratic Rights and Ors. v. Union of India and Ors..

(iii) 1981 LIC942--T. Gattaiah and Ors. v. The Commissioner of Labour and Anr.

4. The aforesaid judgment have no application to the facts and circumstances of the present case. It is a case where the petitioner-union has already raised industrial dispute and the matter is referred to the Industrial Tribunal for adjudication which provides for complete machinery for adjudication of such disputes. It is not permissible for the petitioner to choose this Forum after having invoked adjudicatory machinery provided under the Industrial Disputes Act. When more than one FORA are available to a litigant it may be in his discretion to choose one of such Forum out of the FORA available. This "doctrine of election" further mandates that once a litigant has chosen one Forum he cannot thereafter look to the other Forum provided for the same purpose. Therefore, in view of the fact that petitioner has already gone to Industrial Tribunal and the matter is under adjudication the present writ petition is not maintainable. The rights of the petitioner is not extinguished and the petitioner will be at liberty to raise all these points before the Industrial Tribunal and Industrial Tribunal would deal with these points before answering the reference in its award and before determining whether petitioner-workmen on whose behalf the petitioner has raised dispute are entitled to any

relief or not.

5. Once this petition is held to be not maintainable as the respondents have invoked the machinery provided under the Industrial Disputes Act, the relief prayed for by the petitioner cannot be granted. It is needless to mention that machinery provided under the Industrial Disputes Act is a complete machinery. There are catena of judgments of Supreme Court as well as of this Court to the effect that when such alternate remedy is available the appropriate course for the workmen is to approach the said machinery rather than filing the writ petition. It would suffice to refer to the recent judgment of Supreme Court in the case of Scooter India v. Vijai E.V. Eldred, . It is also well established that once a litigant chooses his Forum he chooses the same with all its limitations. The petitioner cannot be permitted to invoke the machinery provided under the Industrial Disputes Act for part of the relief and come to this Court by way of Article 226 for another part of the relief. Moreover, the petitioners are not remedy less inasmuch as the Labour Court has got the power to pass interim award. Not only this the petitioners are protected in view of the provisions of Section 33 of the Industrial Disputes Act which provides that conditions of service etc., of the workmen are to remain unchanged under some circumstances, till pendency of proceedings, inter alia, before Labor/Industrial Tribunal.

6. In view of the aforesaid position in law, as the matter is already pending before the Industrial Tribunal for adjudication no further orders are called for in this writ petition. Writ petition stands disposed of accordingly.

No order as to costs.