

[2019] 5 S.C.R. 1046

A

SUNIL KUMAR BISWAS

v.

ORDINANCE FACTORY BOARD & ORS.

(Civil Appeal No.3290 of 2019)

B

MARCH 29, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

- Industrial Disputes Act, 1947 – s.10 – Reference of disputes*
- C *to Boards, Courts or Tribunals – Appellant and respondent nos.4-6 were working with Ordinance Factory Board (respondent no.1) for 25 years – They claimed regularisation of their services – Pursuant thereto, they filed OA against respondent No.1-3 before the CAT, which was dismissed – Writ petition filed by them was also dismissed*
 - D *– On appeal, held: The remedy of the appellant and respondent Nos.4-6 lied in applying to the Central Government to make an industrial reference to the Industrial Tribunal u/s.10 of the Industrial Disputes Act in relation to the dispute which has arisen between them and not to pursue their remedy for adjudication of their grievance by filing OA before the Tribunal or/and writ petition in the High Court – Service Law – Regularisation of service.*
 - E

Dismissing the appeal, the Court

- HELD:** 1. Having regard to the nature of the controversy raised by the appellant and respondent Nos.4-6, this Court is of the considered view that their remedy lies in getting their alleged dispute settled by the Industrial Tribunal in a reference under Section 10 of Industrial Disputes Act, 1947 . The reason is that such disputes once made are required to be adjudicated on facts and the evidence. The factual controversy cannot be adjudicated in OA by the Tribunal or by the High Court in a writ petition.
- F
 - G [Paras 10 and 11][1048-C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.3290 of 2019.

From the Judgment and Order dated 16.07.2015 of the High Court at Calcutta in W.P.C.T. No. 82 of 2015

H

Rajat Sharma, Subhasish Bhowmick, Advs. for the Appellant. A

Ms. Aakanksha Kaul, Adit Khorana (for Mukesh Kumar Maroria),
Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. B

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 16.07.2015 passed by the High Court at Calcutta in WPCT No.82 of 2015 whereby the High Court dismissed the writ petition filed by the appellant and respondent Nos.4-6 herein. C

3. A few facts need mention hereinbelow for the disposal of the appeal, which involved a short point.

4. The appellant and respondent Nos.4-6 herein approached the Central Administrative Tribunal (CAT), Calcutta against respondent Nos.1-3 (Ordinance Factory Board & Ors.) in OA No. 159 of 2013 praying therein for a relief that they have been appointed by the Contractor to render their services with the Ordinance Factory Board (respondent No.1 herein) which they have been doing from the last 25 years, therefore, they claimed a relief that their services be regularized. D

5. The Tribunal, by order dated 23.05.2013, dismissed the OA filed by the appellant and respondent Nos.4-6 which gave rise to filing of the writ petition by them before the High Court at Calcutta.

6. By impugned order, the High Court dismissed the writ petition and held that the remedy of the appellant and respondent Nos. 4-6 lies in approaching the Central Government in making a reference to the Industrial Tribunal under Section 10 of the Industrial Disputes Act, 1947(hereinafter referred to as “ID Act”). It is against this dismissal of the writ petition, the unsuccessful writ petitioners felt aggrieved and have filed this appeal by way of special leave in this Court. F

7. So, the short question, which arises for consideration in this appeal, is whether the Tribunal and the High Court were justified in dismissing the OA and writ petition. G

8. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal. H

- A 9. In our opinion, the High Court was right in observing that the remedy of the appellant and respondent Nos.4-6 herein (writ petitioners) lies in applying to the Central Government to make an industrial reference to the Industrial Tribunal under Section 10 of the ID Act in relation to the dispute which has arisen between them but not to pursue their remedy for adjudication of their grievance by filing OA before the Tribunal or/ and writ petition in the High Court.
- B 10. Having regard to the nature of the controversy raised by the appellant and respondent Nos.4-6, we are also of the considered view that their remedy lies in getting their alleged dispute settled by the Industrial Tribunal in a reference under Section 10 of ID Act.
- C 11. The reason is that such disputes once made are required to be adjudicated on facts and the evidence. The factual controversy cannot be adjudicated in OA by the Tribunal or by the High Court in a writ petition.
- D 12. We, therefore, find no good ground to take any other view than the one taken by the High Court while declining to entertain the writ petition.
- E 13. Needless to say, if the reference is eventually made to the Industrial Tribunal at the instance of the appellant and respondent Nos.4-6 by the Central Government on their request under Section 10 of the ID Act and issue in question is gone into on facts, the same shall then be decided strictly in accordance with law by the Industrial Tribunal uninfluenced by any observations made by the Tribunal, the High Court and this Court in these proceedings.
- F 14. The appeal thus fails and is accordingly dismissed.

Ankit Gyan

Appeal dismissed.