

ORDER BELOW EX.C- 5 IN REFERENCE IDA NO. 140/08

1. The first party moved the application that, as per section 7 of the Industrial Dispute Act, the '*illegal retrenchment*' does not come within the jurisdiction of this court.

The second party filed reply that, the application is moved only to prolong the matter , that is pending since long.

2. I heard to both sides at length. Following points arises for my determination. I have recorded my findings against each of them for the reasons given below:

Point	Findings
1 Whether the application is tenable ? No

Reasons

3. The learned counsel for the first party argued that, the Labour court has no jurisdiction to decide the reference. He cited case , **Abdul Rahiman Sahib (T) –vs— State of Mysore and others , Writ Petition No. 514 of 1964**, decided on 9-June-1966, in that case, the Hon'ble Lordship pleased to discuss that, “*the Reference for schedule III of the Industrial Dispute Act.*”
4. The learned counsel for the second party argued that, for filing written statement, the first party caused delay. According to him, the labour court has to decide the dispute. He argued that, the first party wants to prolong the case hence cost is necessary.
5. The reference is referred under Section 10(1) clause “ c” of the Industrial Disputes Act, 1947. Proceeding before the Dy. Commissioner of Labour, Aurangabad to refer the reference speaks that, “*The allegations from the workman was that, artificial breaks were introduced and those breaks were not involuntary unemployment. The defence of the first party was that previously the dispute was u/s 2(k) and said dispute was withdrawn and then the dispute u/s 2(A) of the Industrial Disputes Act is raised though the workman who was appointed as temporary workman.*”
- It appears that, the first party has objection about the withdrawal of previous u/s 2(k) dispute and then to refer it under Section 2(A) of the Industrial Disputes Act, 1947.

The reference is referred to reinstate with full back wages and continuity of services. The reason to refer the reference is that, without giving notice the workman/second party is terminated from service. The first party contended that the workman has not completed 240 days as required. In the statement of claim, the second party alleged that, the first party used to issue 07 months appointment order with view to escape from laws. He alleged the violation of 25-F, 25-G and 25-H of the I.D. Act, 1947.

6. The Labour Court has powers in respect of Interpretation of Standing Orders, Violation of Standing Orders, Discharge or dismissal of a workman, Withdrawal of any customary concession or privilege, Illegality or otherwise of a strike or lock-out, Other matters which are not under Industrial Tribunal, Second Schedule of the Act.
7. It clearly shows that, when question of illegal or justified retrenchment arises, then it covers item 3 of Schedule II of I.D. Act, 1947.
8. Thus it clearly shows that, the above reference has to be decided by this court. As documents & pleading are before me. Only question is retrenchment in dispute comes within items of Schedule II so, such legal objection does not require to frame Preliminary Issues as it is a challenge to reference referred as discussed above. The case law cited by the first party is not applicable to the reference in dispute. On perusal of record, it clearly shows that, the first party has taken ample time to file the written statement. The reference is pending since 2008. Hence considering the nature of reference, in my view, it is necessary to saddle costs.

ORDER

Application is rejected. The First party to pay Cost Rs.300(Three Hundred) to second party.

Date : 21.07.2015

(S.R.Salkute),
Judge, Labour Court, Aurangabad.