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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3495/2015 & CM APPL. 6250/2015**

UOI Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

RAJU KUMAR SHAH Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Adv.

+ **W.P.(C) 3496/2015 & CM APPL. 6252/2015**

UOI Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

RAMA KANT Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Adv.

+ **W.P.(C) 3497/2015 & CM APPL. 6254/2015**

UOI Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

DHEERAJ KUMAR Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Adv.

+ **W.P.(C) 3498/2015 & CM APPL. 6256/2015**

UOI Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

SANTOSH KUMAR Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Adv.

+ **W.P.(C) 3499/2015 & CM APPL. 6258/2015**

UOI Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

SANDEEP KUMAR Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Adv.

+ **W.P.(C) 3536/2015 & CM APPL. 6294/2015**

UOI Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

SANJEEV KUMAR Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

07.09.2018

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1. Mr. Amit Mahajan reiterated his submissions that office of the Controller General, Patents, Designs and Trade Marks cannot be treated as “industry” as functions discharged by it cannot be discharged by any private individuals. Their functions statutorily conferred on the said department by the Patent Act, 1970. He submits that, it is only the Controller General of Patents, which can administer penalties, which are provided under the said Act.

2. The administration of the said Act is not submission, the sole, entire and exclusive responsibility of his client and therefore, applying the well known test enunciated in *Bangalore Water Supply & Sewerage Board v. A. Rajappa (1978) 2 SCC 213*, to the effect that sovereign functions would be those which cannot be discharged by private individuals or group of individuals, the functions discharged by his client would well qualify as the sovereign functions thereby taking his client out of the para fairies. He points out this test, which has been applied by the Tribunal as well, arriving, however, at erroneous findings in para 18, as has already been noted in the order passed on the last date.

3. Mr. S.K. Bhattacharya, appearing for the respondents, answers this point by relying on para 11 to 15 of the impugned order of the Tribunal and submits that it is only “essential sovereign functions” such as administration of law and justice, security of borders, etc. which could be excluded from the province of the Act, and not ordinary functions discharged by the Government.

4. Apart from this, learned counsel for the respondents raises preliminary objection to the maintainability of this writ petition,

submitting that the petition, if at all would be maintainable only under Article 227 of the Constitution of India, and not under Article 226, or even under Article 226 read with Article 227 of the Constitution of India.

5. For this purpose, he relies on the following authorities :

- (i) ***Radhey Shyam & Anr. v. Chhabi Nath & Ors.,***
(2015) 5 SCC 423
- (ii) ***Sadhna Lodh v. National Insurance Compnay***
(2003) 1 SCR 567
- (iii) ***Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors.***
(2015) 9 SCC 1
- (iv) ***Dr. (Mrs.) Sushma Sharma etc. v. State of Rajasthan & Ors.***
1985 (3) SCR 243
- (v) ***New Meneckchowk Spinning & Weaving Co. Ltd. & Ors. vs.***
Textile Labour Association, Ahemdabad
(1961) 1 LLJ 521, 526 (SC)

6. Mr. Mahajan also submits that no case for reinstating the respondents, arose, as there was no discussion that there was any vacancy or that juniors have been appointed.

7. Mr. Bhattacharya, learned counsel appearing for the respondents points out that there is specific submission taken before the Tribunal that juniors had been retained. He further points out that even as on date, casual labourers were being engaged. As such, he submits that, no exception to the directions of the Tribunal, to reinstate the respondents could be taken.

Arguments heard.

Judgment reserved.

C.HARI SHANKAR, J

SEPTEMBER 07, 2018

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