
(2003) 05 RAJ CK 0061

In the Rajasthan High Court

Case No : .S.A. (W) No"s. 357 and 358 of 2003

Alcobex Metals Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2004) 3 LLJ 886

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Advocate : P.K. Lohra, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned counsel for the appellant. These two appeals are directed against the common judgment passed by the learned single Judge dated March 8, 2002 by which the writ petitions filed by the petitioner-appellant challenging the two orders of references made by the appropriate Government of an industrial dispute between the petitioner-appellant and its workmen, were dismissed. These two appeals are identical on facts and raise common question and therefore, they are being heard and decided together as was done by the learned single Judge.

2. The facts giving rise to these appeals are that the respondents-workmen Mala Ram and Chhela Ram in D.B. Civil Special Appeal (Writ) No. 357/2003 arising from S.B. Civil Writ Petition No. 1871/2001, had been appointed ostensibly by a fixed term appointment on September 14, 1993 for a period of six months and their services were terminated on March 17, 1994. A complaint against this termination was lodged before the Joint Labour Commissioner, Jodhpur soon after vide complaint dated May 16, 1994 through an Authorised Representative of Metal Engineering and Auto Works Union. According to this complaint, on September 14, 1993 the workmen were employed as Helpers on a work, which was of permanent nature, on daily wages @ Rs. 30/- per day. They were not

taken back on duty on March 17, 1994 when they appeared at the gate for discharging their work. It was further alleged in the complaint that at the time of termination of services of these workmen, some new employees were employed by the employer on the same post and they are continuing, though junior to them with the establishment. A demand was raised for taking them back on duty on May 3, 1994, but the same was not responded to. A claim for reinstatement with back wages was laid,

3. In response to this notice, the employer before the Joint Labour Commissioner stated" that the termination of the said workmen is governed by Section 2(oo) (bb) of the Industrial Disputes Act, 1947 (in short "the Act of 1947") and therefore, it does not come within the purview of retrenchment. As the termination: has taken place under the agreement, no industrial dispute in that situation arises. This was replied on behalf of workmen on June 23, 1994 further alleging that the termination is in violation of Section 25G of the Act of 1947. On the failure report by the Joint Labour Commissioner, in the first instance the appropriate Government i.e. Government of Rajasthan refused to refer the dispute to the Labour Court by the following order:

"Vernacular matter omitted."

4. Thereafter, the petitioner came to know about the reference having been made on review application filed on behalf of workmen vide order dated November 6, 1999 (Annexure-P9) when he received notice from the Labour Court about receipt of reference.

5. Aggrieved with the aforesaid order, the petitioner filed Writ Petition No. 1871/2001 in respect of the aforesaid two workmen.

6. The other (sic) Writ Petition No. 1876/2001 was in respect of workmen Adu Ram and Kalu Ram. In the case of Adu Ram and Kalu Ram, it was alleged that appointments were given to them on September 1, 1993 as daily rated workman @ Rs. 30/- per day against the permanent work. After their appointments, certain other persons were also appointed on the same post who are continuing on the post. The workmen asked for permanent status after completion of six months period. It was indicated that on March 1, 1994 when they will come on duty, they will be offered such status, but they did not allow them to join duties on March 1, 1994 when they reported. It was also stated in their claim before the Joint Labour Commissioner that they are working against the posts, which are permanent in nature and persons appointed, after the workmen, are continuing and therefore, their termination is illegal and invalid and their request for taking them back on duty has not been responded to.

7. A like reply as was given in the case of Mala Ram and Chhela Ram, was given by the employer on June 13, 1994 and failure report submitted by the Joint Labour Commissioner, an order was made in the very same terms as in the case of Mala Ram and Chhela Ram refusing to make a reference as under:

"Vernacular matter omitted."

8. Apparently, in both cases the State Government has adjudicated the dispute by recording its own findings on the material placed before it with failure report and because of such finding, the reference was declined.

9. Thereafter, on a review, the Appropriate Government by order dated November 6, 1999 the following disputes have been referred to the Labour Court, Jodhpur in each case:

In D. B. Civil Appeal No. 358/2003

[S.B. Civil Writ Petition No. 1876/2001]

"Vernacular matter omitted."

In D.B. Civil Appeal No. 357/2003

[S. B. Civil Writ Petition No. 1871/2001]

" Vernacular matter omitted. "

10. While jurisdiction of appropriate Government to make a reference notwithstanding on earlier occasion it has been declined, has not been questioned by the learned counsel for the appellant and in our opinion, rightly so. The contentions raised before us as raised before the learned single Judge are:

(i) firstly, it was a clear case of fixed term appointment governed by Section 2(oo) (bb) of the Act of 1947, therefore, there was no invalidity of termination in cessation of employment. Such termination cannot give rise to any industrial dispute.

(ii) The second contention was that the claim when referred to the Labour Court in 1999 and already become stale and therefore, the State Government has exercised its powers without considering this aspect of the matter.

(iii) Lastly, it was contended that about existence of permanent nature of work and employment of another person on the same post after cessation of the employment of the workman to discharge the same duties, is not supported by any cogent material in the complaint lodged before the Conciliation Officer. Therefore, there was no material before the State Government on the basis of which it could come to the conclusion that any industrial dispute exists between the parties notwithstanding ostensibly appointment was a fixed term appointment.

11. In support of his contention learned counsel for the appellant relied on number of decisions viz, in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, ; The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, ; Workmen v. I.I.T.I. G. Krishna Murhty and others Vs. State of Orissa, Birla VXL Ltd. Vs. State of Punjab and Others, ; Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., .

12. On the question of constructing pleadings a relief to be granted, reference was made to Management of Hindustan Steel Ltd. Vs. The Workmen and Others, and Municipal Committee Tauru Vs. Harpal Singh and Another,

13. Learned counsel for the appellant further tried to distinguish the decision of the Supreme Court in Binny Limited Vs. Their Workmen, one of the cases relied by the learned single Judge as not applicable to facts of the present case.

14. The learned single Judge has, after referring number of decisions, held that there can be no force in the contention raised by the petitioner that once the Appropriate Government refuses to make a reference in 1995, there was no jurisdiction to make a reference as such. This contention about the jurisdiction of the Appropriate Government to make a reference in case where on earlier occasion it has refused, is not the contention before us. Therefore, we need not dwell on that aspect of the matter.

15. After accepting the contention of the learned counsel for the petitioner that order passed by the Appropriate Government refusing or making reference of the alleged industrial dispute, is subject to judicial review. The scope of judicial review has been stated by the learned single Judge as under:

"The settled legal proposition, which emerges, is that the Appropriate Government, before making a reference, may prima facie examine that the representation made by the workman or union is not for a stale/frivolous/vexatious adjudication or the case may primarily not even fall within the ambit of the Act, but certainly does not have the power to adjudicate upon the issue involved and refuse the reference after examining the merit of the case. Moreso, as the refusal to make a reference is purely an administrative order and not of a judicial or quasi-judicial nature, second reference even without issuing notice to the employer, is not prohibited".

16. This part of the conclusion is also not in dispute in the present case.

17. The two-fold conclusions, which emerge from above conclusion are:

(i) that Appropriate Government does not have jurisdiction to adjudicate the dispute itself; and

(ii) the scope of consideration by Appropriate Government while considering to make a reference u/s 10 is to consider: (a) whether the claim is not frivolous; (b) whether the claim is not vexatious; (c) whether the claim has become stale.

All these aspects have direct nexus with prima facie conclusion about existence of a live industrial dispute, when it is raised.

18. On the contention that in view of fixed term employment given to aggrieved workmen no dispute could arise or exist on cessation of; employment by efflux of time, which could require adjudication by the Labour Court, as was the reason that prevailed with the State Government on earlier occasion and therefore, the earlier order having remained unchallenged, the Appropriate Government could

not have taken a different view of the same matter while re-examining the issue on review was not countenanced by the learned single Judge.

19. Learned single Judge after considering this aspect of the matter said that even after it is assumed that appointment was made for a particular period, it is still open to the workmen to contend that the appointment for a particular period itself was an unfair labour practice depriving them of the benefit of the Act as the work, on which they were employed, had been of the perennial nature and by offering appointment for a particular period, the employer may deprive the workmen from the benefit of the Act.

20. The Court further notices vide order dated May 23, 2001, Court specifically asked the petitioner to file additional affidavit: explaining that what was the nature of the work assigned to them and whether it came to an end on expiry of the tenure of the appointment of workmen. The reply had been filed in a very vague term stating that the work was not of a perennial nature and the workmen have been given the tenure appointment to meet the exigency without disclosing as to (sic) what was the nature of their duty, what was the exigency which came to an end so soon and a bald assertion that as they had been appointed on the tenure posts to meet a particular exigency, did not meet the requirement of the aforesaid order passed by this Court.

21. Having given our thoughtful consideration, we are in agreement with the learned single Judge in his conclusion.

22. At the outset we may notice the well settled principle that a dispute comes into "existence" as soon as it is raised by one party with the other and is rejected by the other, the power to make an order of reference u/s 10(1) arises as soon as the necessary opinion required thereunder is formed by the "Appropriate Government" with respect to the existence or apprehension of an industrial dispute.

23. We have noticed above that in either case the workmen have raised dispute soon after their services came to an end. Therefore, it cannot be said that dispute was raised about a stale claim which ceased to exist. A clear contention was raised in their claim that they have been appointed on daily rated basis against the work, which is of permanent in nature. They have also alleged that after their appointment, more persons have been appointed on the same post discharging the same duties and while they have been retained, they have been asked to go home. The only contention appears to be raised in response to this by filing reply was to sustain the action of the appellant on the anvil of Section 2(oo)(bb) of the Act of 1947 only.

24. In these circumstances, the first order passed by the Appropriate Government refusing to make a reference on its own term amounts to adjudication of dispute raised by the workmen, which undoubtedly and undisputedly has no jurisdiction to do so. It cannot be said that in the present case when refusal was made in the first instance, a claim was raised belatedly so

as to fall within the purview of a stale claim nor that has been ground that prevailed with the State Government to refuse to make a reference.

25. Moreover the question about a dispute to be stale or dead has to be considered from the point, the date when alleged grievance arose and the date when complaint about such grievance is raised. It cannot be looked from the point time taken by the appropriate authority in taking action for making a reference, as over such process the workmen having no control.

26. In this connection decision of Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, may be usefully referred to. In this case the Apex Court opined that the power of the State to make a reference is to be determined with reference not to the date on which it is made, but with reference to the date on which the right, which is the subject matter of the dispute, arises and the machinery provided under the Act would be available for working out the right, which accrued prior to dissolution of the business.

27. Nor the State Government has opined that the dispute raised by the workmen is. frivolous or vexatious. What has been stated in the order that the services have come to an end automatically on expiry of period and there has been violation of Sections 25G and 25H, as the case may be. That clearly amounted to, adjudication of dispute ignoring the grievance clearly raised about unfair labour practice. About the satisfaction of a dispute to be vexatious or frivolous the opinion of contesting party cannot be substituted for the satisfaction of Appropriate Government.

28. We may also notice here that so far as the question of termination is concerned, the dispute does not flow merely on the ground of collective bargaining. Prior to insertion of Section 2A of the Act of 1947 w. e.f. December 1, 1965, it was settled that an individual dispute of termination of services, unless espoused by a trade union, would not fall within the ambit of an industrial dispute under the Act of 1947. It was to protect individual workman from arbitrary terminations at the hands of the employer that Section 2A was inserted w. e.f. December 1, 1965 for giving workmen individual right to challenge the terminations whether by way of discharge, dismissal, retrenchment or otherwise by demanding a reference to the Labour Court or the Industrial Tribunal as the case may be. Clearly the present appeals concern about dispute relating to termination of service of four workmen and the dispute or difference between the employer (appellant) in the present cases and its workmen exist which is connected with and arise out of such termination. Obviously, it cannot be said, in view of Section 2A that it is not an industrial dispute or that it did not exist.

29. It is in the aforesaid circumstances as the order under challenge shows that on review the order has been passed by the Appropriate Government making a reference of the dispute about the termination of the workman's services with effect from respective dates that is to say March 17, 1994 in S.B. Civil Writ Petition No. 1871/2001 and w.e.f March 1, 1994 in S.B. Civil Writ Petition No.

1876/ 2001. Termination of service of workmen does give rise to an industrial dispute in the light of provision of Section 2(k) read with Section 2A of the Act of 1947.

30. It also cannot be doubted that a termination of service ostensible within the province of law can be challenged on the ground that exercise of such authority in the facts and circumstances amounts to practice of unfair labour practice which may necessitate to go behind the ostensible appearance to find real nature of transaction including the real nature of appointment behind the veil of a fixed term appointment to provide periodical appointment to discharge work of permanent or perennial nature, which statutorily comes within purview of unfair labour practice (sic) and Industrial Disputes Act has one of its objective to curb unfair labour practice.

31. At this distance of time since the commencement of the Constitution, it is well settled that a substitution of one temporary hand by another temporary hand violates fundamental right to equality before law guaranteed under Article 14 of the Constitution of India, if it relates to public employment. In case of private employment it may amount to unfair labour practice. Consequently, offering fixed term appointment to workmen who are engaged to discharge the work of permanent nature and on expiry of term employment they are replaced by new hands to discharge the same duties, may amount to practicing unfair labour practice by adopting such device as subterfuge to defeat the reach of benefits of labour welfare legislation. Adoption of such practice does not provide nivaran (sic) to unscrupulous employers from rigors of law and escape the adjudication of such dispute.

32. Therefore, it cannot be said that whenever workmen raised dispute about real nature of employment and real nature of termination, it can be frustrated solely by showing termination order embedded in order of appointment. The appointment ostensibly satisfying the provisions of Section 2(oo)(bb) in such cases becomes a matter of industrial adjudication. Whether the appointment in the first instance itself was bona fide for a fixed term or was a mere camouflage to release the employer from obligations arising under the Industrial Disputes Act. Such a dispute raised can only be solved by adjudication on the basis of material that may come before the Adjudicating Authority during the course of such proceedings. Such dispute obviously, cannot be scuttled by the Appropriate Government by refusing to make a reference by holding that the termination is valid and in the realm of Section 2(oo)(bb) and the violation of Sections 25G and 25H alleged by the workmen is not made out. It is not the jurisdiction of Appropriate Government to adjudicate upon such dispute. That is the view which learned single Judge has taken on the complaint and its reply filed before Conciliation Officer.

33. We may also notice that reference was not declined on earlier occasion on the ground that no dispute exists or dispute raised by the workmen is stale or frivolous or vexatious. The three grounds, which prima facie Appropriate

Government can take into consideration while considering the question of making a reference of industrial dispute as to existence of dispute on the facts of this case cannot be doubted and it cannot be said that the contentions raised by the workmen were frivolous or vexatious nor it can be said that the claims made by the workmen soon after their termination were stale. None of the grounds on which the Appropriate Government could have declined to make a reference in the first instance of its own showing did not exist. It cannot be also doubted that had the order refusing to make a reference in the first instance been challenged it could not have been sustained on its own term as it clearly amounted to adjudication of dispute rather than to hold that dispute exists or the claim is vexatious or frivolous or stale. The adjudication of dispute being not within the domain of Appropriate Government earlier order of refusal was *ex facie* invalid.

34. In these circumstances, when the Appropriate Government has reviewed its earlier order without there being requiring the workmen to challenge the earlier order when it has the jurisdiction to make such reference notwithstanding earlier denial, none of the contentions raised by the learned counsel for the appellant succeeds on the touch stone of facts of the present case.

35. Moreover, it can well be visioned that a dispute about termination of service of respondents-workmen in case is an Industrial Dispute within the meaning of Section 2A read with Section 2(k). It did come into existence when workmen were alleged denied the work when reported on duty; and the affected workmen raised the grievance by launching complaint before the Joint Labour Commissioner in about two months time from the alleged date of termination. The Appropriate Government in first instance, by adjudicating the merit of dispute declined to make a reference. The dispute raised by workmen about validity of retrenchment and unfair labour practice was clearly a dispute exclusively triable by Labour Court/Industrial Tribunal under Industrial Disputes Act. In respect of dispute about termination workmen have been conferred individual right to raise the dispute and get it adjudicated u/s 10 of the Act. In view of decision of Supreme Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, the remedy under the Industrial Disputes Act is *uno flatu* and remedy by way of the suit is barred. There being no lack of jurisdiction to consider the making of reference, even if on earlier occasion it was declined to be referred, the countenancing the contention of appellant will render the workmen remediless and deprive them of their basic right to get dispute about their dismissal to be appropriately adjudicated. Such a situation shall not ordinarily be brought about by exercise of extraordinary jurisdiction.

36. We may consider the various decisions relied on by the learned counsel for the appellant in the context of facts of the present case.

37. In *Bombay Union of Journalists and Ors. v. State of Bombay and Anr.* (supra) on which the learned counsel for the appellant relied on, the Court said:

"It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal."

38. Apparently, as on facts the learned single Judge has come to the conclusion with which we have agreed that a bona fide dispute about the nature of employment existed, between the employer and the employee and the grievance about unfair labour practice in offering fixed term employment was clearly advanced by the workmen in view of the aforesaid ratio in Bombay Union of Journalists case (supra). Thus, in view of the ratio in the aforesaid case, the Appropriate Government could not have declined to make a reference while answering those disputes itself.

39. The scope of prima facie case consisting the merits of the dispute while considering making or not to make a reference, the Court stated:

"If the claim made is patently frivolous, or is clearly belated, the Appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not."

40. The Supreme Court has not left it free for the Appropriate Government to consider the merit and reach to a final conclusion about the claim of the workman and then reject the same by holding that the action of the employer is valid in law but the decision of Bombay Union of Journalists case (supra) also reveals that the earlier order declining the reference was not justified and if the State Government on a review application has corrected its earlier stand, it cannot be said that the decision is liable to be judicially reviewed on the basis of its earlier decision having remained unchallenged, nor it can be expected that any such general proposition emerge from Bombay Union of Journalists case (supra), that the Appropriate Government on raising of a dispute will decide on merit and finding in its opinion no merit in dispute would refuse to make a reference. The Supreme Court has only laid as a guideline that the prima facie facts of the present case are to be looked into by the appropriate Government to see whether the claim is frivolous or vexatious or needs adjudication or the claim is belated so that it could have stated that dispute ceased to exist. The consideration for a claim to be frivolous or vexatious cannot be equated with holding that on merits, the workman has no case.

41. Therefore, the said judgment in our opinion, does not assist the contention raised by the appellants.

42. In Workmen v. I. I. T. I. Cycles of India and Ors. (supra) there were terms of settlement as arrived between the employer and the recognised employee union in 1978 which was challenged by two minority unions and dispute was referred to Industrial Tribunal and it held that the terms of the settlement were fair and just.

43. Apparently the judgment also does not support the petitioners to contend that while considering the making of reference, the appropriate Government could opine on the merits of the dispute. The Court reiterated:

"It is well settled principle that it is not obligatory on the part of the Government to make a reference of the dispute in each and every case where the union seeks such reference. The Government has to weigh the facts keeping in mind the industrial peace and smooth industrial relations between the parties, if taking into consideration all the facts, the Government finds that in the interest of industrial peace, it is not necessary to make the reference, it may not do so."

44. This ratio, in our opinion, is unexceptionable. However, in the present case, the question is about the termination of four individual workmen in respect of which they have personal right to raise the dispute about the validity of their termination and to get it adjudicated without the aid of the Union. The dispute about the termination of an employee specifically has been stated as an industrial dispute u/s 2A and a personal right has been conferred on the workman to seek its adjudication. Thus, in these circumstances, where the State Government has thought it fit to refer the dispute which has been raised soon after the alleged termination of services to Labour Court for adjudication, it cannot be said that it has travelled beyond the aforesaid principles. In all cases it is a satisfaction of the State Government which is relevant to be noticed and what is required to be considered by a judicial review is whether the State Government has acted taking relevant consideration and within the domain of its authority before reaching its satisfaction. If on available material, however meagre, if the satisfaction could be reached, it is not open to review such satisfaction by this Court because" on critical examination of entire material, it may reach to a different conclusion on merit.

45. As discussed above, in the present case, the State Government's satisfaction about making a reference cannot be said to be arbitrary or irrelevant.

46. In *Birla VXL Ltd. v. State of Punjab and Ors.* (supra) the Supreme Court was considering the answer given by the Labour Court on an industrial dispute referred to it about the termination of the services of workman and the appointment was for a fixed period which was to expire with efflux of time, therefore, it was not a case which deals with the question whether on the rival contentions, the State Government could refuse referring the dispute which exists between the employer and the employee about the termination of services.

47. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.* (supra) a dispute against dismissal order was raised 7 long years after the workman has been dismissed after properly conducted disciplinary proceedings which was upheld in appeal and the benefits due to the workman were paid to him. In those circumstances, when reference was made by the Appropriate Government, the same was quashed by the High Court. On noticing the facts of the case the Supreme Court observed:

"though law does not prescribe any time limit for appropriate Government to exercise its power u/s 10 of the Act, this power cannot be exercised at any point of time and to revive matters which had already been settled. Power is to be exercised reasonably and in a rational manner. There is no rational basis on which the Central Government has exercised powers in the instant case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case."

48. On facts, it was further found by the Supreme Court that when the matter has become final, it is rather incongruous that the reference be made u/s 10 of the Act. In the circumstances there was no dispute pending previously before it.

49. Apparently, the facts of the present case cannot be held at par with the facts in Nedungadi Bank's case (supra). In the present case, a dispute about the termination of the workmen has been raised within two months of their termination and it never became final. After the State Government has declined to make the reference, instead of filing a writ petition challenging that order, the workman chooses to again approach the appropriate Government by way of a review petition and the State Government realised that a referable dispute does exist and it made the reference. It cannot be said from any angle that the dispute when raised by the workmen was a stale dispute. It may be noticed that in Nedungadi Bank's case (supra), the dispute was raised seven years after the order had become final after the workman has availed his remedy of appeal against the dismissal order and that was dismissed.

50. Therefore, the ratio in the case of Nedungadi Bank (supra) does not support the appellants, it rather goes in favour of the respondent-workmen that in the facts and! circumstances of the present case raising of industrial dispute by the workmen was not a stale claim.

51. Harmohinder Singh v, Kharga, Canteen (supra) is also a case which arose out of adjudication made by Labour Court on a reference made to it of an industrial dispute arising out of fixed term employment, when dispute about termination in violation of Industrial Disputes Act, 1947 was raised. The decision does not deal with the question about validity of making of reference but concerns about judicial review of adjudication of dispute made on a reference. The opinion of Supreme Court that a fixed term employment does not attract the provisions of Sections 25F and 25G, rested on adjudication that appointment of workman was for a fixed term appointment and alteration of standing order about consideration of premature retirement was not violative of Section 9A of the Industrial Disputes Act. The decision is not an authority for the proposition that no dispute can come into existence about validity of termination of service, when appointment is for a fixed term, even if such fixed term appointment itself is a subject matter of dispute on the ground of unfair labour practice or for some other reason.

52. In view of the aforesaid decisions referred to by the learned counsel for the appellant, which have been rendered in their own facts and circumstances cannot govern the decision of this case, there being no dispute about the principles governing exercise of authority by the Appropriate Government in considering the question of making a reference of any industrial dispute to a Labour Court or an Industrial Tribunal, as the case may be.

53. The decisions relied on by the learned counsel about pleadings before the Labour Court also does not assist the appellant. In *Management of Hindustan Steel Ltd. v. Workmen and Ors.* (supra) on a reference made the claim was founded on the plea of falsity of statement made in notice of retrenchment but relief was granted and award was sought to be supported on the ground of defect in notice and not on the falsity of statement in notice. It is in these circumstances, finding a variance between the ground pleaded and ground on which relief was granted, the Apex Court held the relief cannot be granted on plea not taken in claim.

54. Likewise, in *Municipal Committee Tauru v. Harpal Singh and Anr.* (supra) the same principle was reiterated that in labour matters also relief must be granted on the basis of claim put forth by a party. Inconsistency in claim and proof cannot be ignored. In the said case also matter arose out of pleadings made before the Tribunal on a reference.

55. In the present case, stage of adjudication on grounds not raised in claim petition has not reached. So far as the grievance before Conciliation Officer is concerned, a clear ground of unfair labour practice of short term appointment against permanent work has been raised which in legal framework gives rise to plea of unfair labour practice.

56. This reason also is, therefore, not sustained.

57. Accordingly, the appeals fail and are hereby dismissed.