
(1967) 02 P&H CK 0007
In the Punjab And Haryana At Chandigarh

Amritsar Rayon and Silk Mills (Private) Ltd.	APPELLANT
Vs	
Amritsar Textile Clerks' Association and Another	RESPONDENT

Date of Decision : 01-02-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 12, 19, 23, 29

Citation : (1969) 1 LLJ 163

Hon'ble Judges : R.S. Narula, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

D.K. Mahajan, J.—This order will dispose of Letters Patent Appeals Nos. 372 and 440 of 1966.

2. Both these appeals under Clause 10 of the Letters Patent are directed against the order of the learned single Judge allowing the petition of respondent 1, under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus be issued to the State of Punjab to refer an industrial dispute to the industrial tribunal for adjudication.

3. The controversy in the present appeals has arisen in the following circumstances. An industrial dispute between the workmen and management of the Amritsar Rayon and Silk Mills (Private), Ltd., Amritsar, was referred to the industrial tribunal, Punjab, Jullunder. Eight matters were referred and one of those matters related to the clerks of the mills. When the matter was pending before the industrial tribunal, the clerks of the management entered into an arbitration agreement for the settlement of the dispute between the clerical staff and the management. One panna Lal was appointed as the sole arbitrator. The arbitrator gave his award on 8 November 1958. The award was filed before the industrial tribunal and the tribunal adopted the award; and with regard to the clerical staff, the following observations were made by the tribunal in its order dated 10 March 1959:

In the case of clerical staff, one arbitration award has been filed which has been

accepted by both the parties, where grades and scales for the clerical staff have been fixed. This is an additional reason to fix grades and scales for other categories of workmen. I, therefore, fix the following scales for the clerical staff, the same as has been given by the arbitrator and which shall be read as part of this award, annexure A.

The awards of the arbitrator as well as the industrial tribunal were published in the Punjab Government Gazette dated 17 April 1959. The award remained unquestioned, up to 20 March 1963, on which date the Amritsar Textile Clerks' Association served a notice on the management, that is, the mills, of their intention to terminate the arbitration award in conformity with the provisions of Section 19(6) of the Industrial Disputes Act, 1947. This termination was to take effect from 20 May 1963.

4. One Waryam Singh, an employee in the clerical staff, was given a notice by the management (vide letter of the Director dated 11 June 1963) that on the completion of his 27 years of service, he was to retire. The period of 27 years was to expire on 26 June 1963; and in terms of Clause VIII of the arbitration award, he could be so retired. He was asked to receive his dues on that date. This notice led the Amritsar Textile Clerks' Association to serve the management with a demand notice on 26 June 1963. This demand notice was not filed with the petition. We have got the original demand notice from the counsel for the management and find that in this notice it was clearly stated that the services of Waryam Singh could not be terminated because there was no award in existence under which the management was purporting to act, the award having been terminated u/s 19(6). It was not disputed in the notice that Waryam Singh would have completed his 27 years' service on 26 June 1963. The matter seems to have then gone to the conciliation office" u/s 12 of the Industrial Disputes Act. No settlement could be arrived at between the management and the clerks' association. The conciliation officer submitted his report to the Punjab Government, as required by Section 12(4) of the Industrial Disputes Act. He reported that the conciliation proceedings have resulted in a failure. The Government, in its turn, issued the following communication to the general secretary, Amritsar Textile Clerks' Association (registered), Amritsar on 25 September 1963 (annexure B):

... With reference to your demand notice dated 26 June 1963, served on the management of the concern cited as subject, I am directed by Government to inform you that enquiries have revealed that the services of Waryam Singh were terminated by the management after completion of his 27 years of service in pursuance of the award published in the Punjab Government Gazette dated 17 April 1959, which still holds good. Your contention, that the clause of the said award pertaining to clerical staff was validly terminated pales into insignificance in face of the award of the industrial tribunal, Patiala, in Reference No. 9 of 1962 in the case of Technological Institute of Textile, Bhiwani, wherein it was held that an award could not be terminated in part. This being the position the case has

been filed....

The association was not satisfied with this communication and made a written representation on 22 October 1968, to the Labour Commissioner, Punjab, and wanted the entire matter to be reconsidered. This representation was rejected by the Government on 3 August 1964 (annexure D). The relevant part of annexure D is as follows:

... With reference to your representation dated 22 October 1963 and 3 June 1964, addressed to the Labour Commissioner, Punjab, on the subject noted above, I am directed to inform you that the representations have been considered and it has been observed that the points raised therein were taken into consideration in the preliminary stage and no new points have been brought forward justifying the reconsideration of the previous decision. Hence the representation in question is rejected....

It is in these circumstances that the present petition under Articles 226 and 227 of the Constitution of India was moved in this Court. As already stated, this petition was allowed by the learned single Judge principally in view of the decision of this Court in *Workmen of Oswal Weaving Factory, Amritsar v. State of Punjab* 1967 L.L.J. 557, According" to the learned single Judge, the decision in *Workmen of Oswal Weaving Factory* case 1967 L.L.J. 557 (vide supra) fully covered the present case. Two reasons prevailed with the learned single Judge for granting relief to the association-

(1) that the Government finally decided the dispute which was raised before it, and that the Government could not in law do so; and

(2) that the orders refusing to refer the dispute do not show in terms that the Government refused to refer the dispute for adjudication because it was considered inexpedient to do so.

5. In the present appeals and particularly in the management's appeal, Sri Bhagirath Dass, learned counsel for the management, has argued that he does not dispute the correctness of the decision in *Workmen of Oswal Weaving Factory* case 1967 L.L.J. 557 His sole contention is that that the decision has been wrongly applied to the facts of the present case. According to the learned counsel, the Government has given reasons u/s 12(5) for not making the reference and those reasons cannot be said to be either extraneous or not germane to the order refusing the reference. According to the learned counsel's submission, the award still holds the field because it has not been superseded by a fresh award. The dispute, that was raised in the demand notice, was merely this that the services of Waryam Singh had been terminated in terms of Clause VIII of the award when, in fact, the award did not exist, the same having been terminated by the demand notice of 20 March 1963.

6. Sri Jatinder Vir Gupta, learned counsel for respondent 1, on the other hand, contends that the decision of the learned single Judge is correct and that

extraneous reasons have been taken into consideration by the Government in refusing to refer the dispute, that admittedly, existed between the management and the clerks' association.

7. After giving our careful consideration to the contentions advanced by the learned counsel for the parties, we are of the view that the contentions of the appellant's counsel must prevail. It is clear from the demand notice that there was no dispute on the question of fact as to whether Waryam Singh had completed his 27 years' service on 26 June 1963. The only basis for the raising of the dispute was that there was no award binding on the parties. In this connexion, two matters arise for determination-

(1) Whether the award had been terminated validly or, in other words, whether there could be part-termination of the award ?

(2) Even if there was termination of the award or even a valid part-termination of the award, whether the award still held the field till it was replaced by a new award ?

It is not necessary for our purposes to determine the first matter. Suffice it to say that an award, as held by their lordships of the Supreme Court, holds the field so long as it is not replaced by a fresh award. This does not mean that the workmen are prevented from raising a fresh dispute. But then there has to be a dispute which would require adjudication either u/s 10 or u/s 12(5) of the Industrial Disputes Act. In the present case, we find that there is no such dispute. The basis, on which the demand notice was made, was that there was no valid award, a fact which cannot be accepted, as already stated, in view of the decision of the Supreme Court. Therefore, it would be proper at this stage to make a reference to that decision. This decision is in *South Indian Bank, Ltd. v. A.R. Chacko* 1964 L.L.J. 19. At p. 22 of the report, their lordships made the following observations:

Quite apart from this, however, it appears to us that even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of Section 19(6), it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract. So long as the award remains in operation u/s 19(3), Section 23(c) stands in the way of any strike by the workmen and lockout by the employer in respect of any matter covered by the award. Again, so long as the award is binding on a party, breach of any of its terms will make the party liable to penalty u/s 29 of the Act, to imprisonment which may extend to six months or with fine or with both. After the period of its operation and also the period for which the award is binding have elapsed, Sections 23 and 29 can have no operation. We can, however, see nothing in the scheme of the Industrial Disputes Act to justify a conclusion that merely because these special provisions as regards prohibition of strikes and lockouts and of penalties for breach of award cease - to be effective, the new contract as embodied in the award should also

cease to be effective. On the contrary, the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties may elapse-in respect of both of which special provisions have been made under Sections 23 and 29, respectively-may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract. The objection that no such benefit as claimed could accrue to the respondent after 31 March 1959, must, therefore, be rejected.

These observations clearly support the contention of Sri Bhagirath Dass. As the basis, on which the dispute is sought to be raised, is not in existence, the conclusion is inescapable that there is no dispute and the Government was justified in not referring it. The reason advanced by the Government in not referring the dispute is in consonance with the decision of the Supreme Court and it cannot be said that the refusal to refer the alleged dispute by the Government is based on extraneous considerations or inexpediency. In our opinion, the grounds given by the Government for not referring the dispute are not only germane to the decision taken by it but are also justified by all standards of expediency.

8. For the reasons recorded above, we allow both the appeals and set aside the order of the learned single Judge with the result that the petition of respondent 1 will stand dismissed. In the circumstances of the case, however, we make no order as to costs in either of the appeals.

R.S. Narula, J.

9. I agree.