
(1997) 04 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5095 of 1982

Avon Services (Production and Agency) Private Limited

APPELLANT

Vs

Nazar Mohammad and Others

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Industrial Disputes Act, 1947 — Section 33A

Citation : (1997) 117 PLR 99

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Gopi Chand, for the Appellant; Surya Kant, for the Respondent Nos. 1 to 3 and Vimal Kumar, for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—Seeking issuance of a writ of Certiorari to quash the orders of the Labour Court dated 26.8.1982 and 31.8.1982 the petitioner filed this writ petition.

2. Respondents No.1 to 3 are workmen of the petitioner which is a private limited company. On the ground that their services were terminated they raised an industrial dispute which was referred to the Labour Court for adjudication u/s 10 of the Industrial Disputes Act, 1947 (hereinafter called as Act). The petitioner management raised an objection before the Labour Court that the reference is barred by the principles of res-judicata as the application filed by the respondents and other employees of the petitioner u/s 33 of the Act was dismissed. It is also the contention of the management that the reference was highly belated and the demand notice was served on 24.7.1980 while the respondents No.1 to 3 were retrenched on 1.12.1972. The tribunal vide impugned order dated 26.8.1982 went into the question whether reference was barred by the principles of res-judicata and held that the earlier order of the tribunal on the application filed by the respondents 1 to 3 and others u/s 33-A of

the Act will not operate as res-judicata and, therefore, the reference is valid. Accordingly by its order dated 31.8.1982 directed the parties to produce their evidence on 9.9.1982. To quash these orders dated 26.8.1982 and consequential order dated 31.8.1982 the petitioner filed this writ petition seeking issuance of a writ of Certiorari.

3. There is no dispute of the fact that the respondents 1 to 3 and some other employees of the petitioner filed an application bearing no. 18 of 1972 u/s 33-A of the Industrial Disputes Act, 1947 on 28th September, 1972 claiming reinstatement and payment of their wages on the ground that the action of the management regarding lay off contravened the provisions of Section 33-A of the Act. That application was decided by the Labour Court by its order dated 17.6.1974. While disposing of the said application, the Labour Court observed as follows:-

"As already stated this complaint has arisen out of the lay off the workmen concerned brought about by the management admittedly during the pendency of a dispute vide reference No.16 of 1972 in which the present claimant were workmen concerned. The main question that arises for determination in the case is whether by the said action the management has contravened the provision of Section 33 of the Industrial Disputes Act by altering the conditions of service of the workmen concerned. The case for the management is that as a matter of fact on account of the non receipt of orders for the supply of the goods manufactured, production had to be stopped which made it necessary to lay off the workmen concerned. The learned representative of the management has argued that this was not sufficient and good ground to justify the lay off in question. I am afraid the contention is devoid of force. Under the law as it now stand there may exist circumstances on account of which the employer may be unable to give work to the workmen and the definition of lay off as given in Section 2(kkk) is clear on this point. The inability on the part of the employer to give work to the workmen may be due to (i) shortage of coal, power or raw material or accumulation of stock or break down of machinery, (ii) any other reasons."

"So taking into consideration all the facts and the circumstances of the case discussed above which stands established by oral as well as documentary evidence. I am satisfied that the management had not brought about any change or alteration in the condition of service of the workmen concerned nor had any provisions of Section 33 of the Industrial Disputes Act had been contravened so as to validate the present complaint u/s 33-A of the Act. The lay off of the workmen had to be resorted to under circumstances beyond the control of the management on account of the accumulation of stock for want of orders for the supply of the same and when the position did not improve after waiting for some times the workmen had even to be brought under retrenchment. They had challenged the action of the management by raising a regular dispute but the State Government has not considered it fit to make a reference u/s 10 of the Act

and their demands in this behalf had been rejected."

Thus, the application filed by the workmen was rejected u/s 33-A of the Act.

4. The only question to be decided in this writ petition is whether the order passed under Section 33-A of the Act bars the workmen from raising a dispute u/s 10 of the Act. It has been held in *Kamarhatty Co. Ltd. Vs. Shri Ushnath Pakrashi*, as follows:-

"That Section 33 lays down that wherein an employer contravenes the provisions of Section 33 during the pendency of proceedings before a tribunal, any employee aggrieved by such contravention may make a complaint in writing to the tribunal and on receipt of such complaint the tribunal shall adjudicate upon the complaint as if it was a dispute referred to or pending before it, in accordance with the provisions of the Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly. It is, thus, clear that a complaint u/s 33-A of the Act is as good as a reference u/s 10 of the Act and the tribunal has all the powers to deal with it as it would have in dealing with a reference u/s 10. It follows, therefore, that the tribunal has the power to make such order as to relief as may be appropriate in the case and as it can make if a dispute is referred to it relating to the dismissal or discharge of a workman. In such a dispute it is open to the tribunal in proper cases to order reinstatement. Therefore, a complaint u/s 33-A being in the nature of a dispute referred to a tribunal u/s 10 of the Act, it is certainly within its power to order reinstatement on such complaint, the complaint is that the employee has been dismissed or discharged in the breach of Section 33."

Thus, it is clear that the proceedings u/s 33-A are really in the nature of the proceedings u/s 10 of the Act and in a proceeding u/s 33-A the dispute as to whether the retrenchment is legal or not can be gone into and if it is found that it is illegal the Labour Court can order reinstatement.

5. Therefore, the question is whether a second reference on the same set of facts can be subject matter of a subsequent reference u/s 10 of the Act. There cannot be any dispute that the principle of *res-judicata* will apply to that proceedings before the Labour Court.

In *Burn and Co., Calcutta Vs. Their Employees*, the Supreme Court observed as follows :-

"Are we to hold that an award given on a matter in controversy between the parties after full hearing ceases to have any force if either of them repudiates it u/s 19(6), and that the Tribunal has no option, when the matter is again referred to it for adjudication, but to proceed to try it *de novo*, traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well recognised principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It is on this principle that the rule of *res-judicata* enacted in

Section 11 of the CPC is based. That section is, no doubt, in terms in-applicable to the present matter, but the principle underlying it, expressed in the maxim "interest rei-publicae ut sit finis litium" is founded on sound public policy and is of universal application. (Vide Broom's Legal Maxims, 10th edn, page 218.) "The rule of res judicata is dictated" observed Sir Lawrence Jenkins, C.J. in Sheoparsan Singh V. Ramnandan Prasad Narayan Singh" by a wisdom which is for all time".

Similar view has been expressed by the Supreme Court in Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., as under :-

"It is now well established that, although the entire CPC is not applicable to industrial adjudication, the principles of res-judicata laid down u/s 11 of the Code of Civil Procedure, however, are applicable, wherever possible, for very good reasons. This is so since multiplicity of litigation and agitation and re-agitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which is the principal object of all labour legislation bearing on industrial adjudication. But whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be of pertinent consideration and will have to be determined before holding in a particular case that the principles of res judicata are attracted."

6. In the instant case the workmen were retrenched in the year 1972 and their applications u/s 33-A was dismissed by the Labour Court on 17.6.1974. Thereafter the respondents 1 to 3 served the demand notice on 24.7.1980 i.e. nearly 8 years after the date of retrenchment and 6 years after the order passed under Section 33-A of the Act. In these circumstances, I am of the opinion that the principles of resjudicata are applicable to the present case and the order of the Labour Court is, therefore, liable to be set aside.

7. In view of my foregoing discussion the writ petition is allowed and the impugned orders dated 26.8.1982 and 31.8.1982 are hereby quashed. There will be no order as to costs.