
(2014) 01 P&H CK 0266
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 111 of 2014

Bharat Electronics Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Industrial Disputes Act, 1947 — Section 10 10(1) 10(1)(d) 10(4) 12

Citation : (2014) 1 LLJ 408 : (2014) LLR 490

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Chetan Mittal and Mr. Puneet Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the reference dated 22.10.2013 (Annexure P-11) made by the Central Government u/s 10(1) (d) of the Industrial Disputes Act, 1947 (in short "the Act") wherein, the dispute has been referred for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh. The reference reads thus:- Whether the action of management of Bharat Electronics Ltd., Panchkula in transferring 15 workmen as annexed from Panchkula Unit to other units without any transfer policy is just, fair and legal? If not, what relief the concerned workmen are entitled to

Challenge is also made to the notice dated 28.06.2013 (Annexure P-8) wherein, the Regional Labour Commissioner (Central), Chandigarh-respondent No. 2 had called the petitioner to hold discussions/conciliation proceedings u/s 12 of the Act.

2. Perusal of the writ petition would go on to show that the petitioner-company proposed transfer of 15 non-executives from Panchkula to various stations in India on 17.06.2013. Thereafter, on 26.06.2013, the said Employees were transferred in their existing designation and pay scale with immediate effect (Annexure P-5). There is no dispute that the employees have been posted at

Panchkula from the period ranging from 1985 onwards to 1991. Due to the agitation of the employees, notice dated 28.06.2013 (Annexure P-8) was issued to the petitioner-company to hold discussions and conciliation proceedings u/s 12 of the Act on 01.07.2013. The said conciliation proceedings were held on 01.07.2013, 05.07.2013, 17.07.2013 and 29.07.2013. Thereafter, failure report was sent by the Regional Labour Commissioner, Chandigarh to respondent No. 1, which eventually led to the reference order dated 22.10.2013 vide which, the dispute was referred to the Labour Court. Resultantly, the present writ petition has been filed.

3. Senior counsel for the petitioner has vehemently submitted that u/s 10 Sub-clause 1(d) of the Act, only that dispute or matter appearing to be connected or relevant to the dispute whether it relates to any matter specified in Second Schedule or Third Schedule can be referred to the Tribunal for adjudication. He, thus, submitted that the establishment was free to transfer its employees to the other units which are spread all over the country. It is contention of the senior counsel that the reference does not fall within the Second Schedule or the Third Schedule and, therefore, is liable to be quashed.

4. In the opinion of this Court, the above facts would go on to show that the said employees have been working at Panchkula from the year 1985 onwards, which would be clear from their appointment orders, which have been placed on record as Annexure P-6 (colly). On their transfer orders dated 26.06.2013, the industrial dispute was raised by the union which has led to the conciliation proceedings under the Act, as has been referred above. However, the said matter could not be resolved and eventually the Central Government has referred the matter for reference to the Industrial Tribunal-cum-Labour Court for adjudication on merits. In the opinion of this Court, such an action, though can be scrutinized by this Court under Articles 226 and 227 of the Constitution of India but, it merely being an administrative act, is not normally to be interfered with at the initial stage. The Tribunal is to examine the validity of the dispute inter se the parties and the Central Government was not to go into the merits of the dispute and take it on for determination of the lis.

5. A perusal of the Second Schedule of the Act goes on to show that the propriety or legality of an order passed by an employer under the standing orders falls within the jurisdiction of the Labour Court and Section 10(4) provides that the Labour Court is to adjudicate on the points referred and matters incidental thereto. The transfer of the employees is a matter incidental to the dispute between the employer and the employee in the terms of the employment and thus, the Labour Court would have jurisdiction to look into the issue.

6. The Hon'ble Apex Court, in *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, held that reference of the industrial dispute is purely an administrative function of the appropriate Government. The relevant portion reads as under:--

13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. See *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, and *Shambu Nath Goyal Vs. Bank of Baroda*,

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the person raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function u/s 10(1) of the Act. As has been held in *MP. Irrigation Karamchari Sangh's case (supra)*, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render section 10 and section 12(5) of the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained.

7. Counsel for the petitioner has relied upon *ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others*, to contend that no dispute was made out and the reference was liable to be quashed.

8. As noticed above, there is no quarrel with the proposition that the writ Court can examine the fact that whether there is a dispute or not and the validity of the reference can be also examined. In the said case, a categorical finding was recorded that there was no industrial dispute in existence nor there was any apprehended dispute between the appellant-Bank and the Federation and as such there was no occasion for making any reference for adjudication by the Industrial Tribunal and accordingly, the reference was quashed.

9. The facts and circumstances of the present case are totally different, as noticed above. The dispute has arisen due to the fact that the company has sought to transfer the employees after a long time, who have been working at Panchkula since 1985-1991. Accordingly, the matter has been agitated and

raised and rightly referred by the appropriate Government to the Labour Court. The management by filing the present writ wants to preclude the Labour Court from adjudicating on the issue, which it cannot be permitted to do.

10. It is, however, made clear that any observations made herein are only for the purposes of deciding the present writ petition and nothing said herein will weigh with the Labour Court while deciding the issue on merits. Accordingly, in the opinion of this Court, no interference is called for under Articles 226 and 227 of the Constitution of India and the present petition is dismissed, in limine.