
(2003) 01 GAU CK 0024
In the Gauhati High Court
Case No : C.R. No. 2990 of 1997

Binda Prasad Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2A

Citation : (2005) GLT 564 Supp : (2003) 3 LLJ 544

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : R.P. Sharma, B. Chakravorty, for the Appellant; S.N. Sharma, G. Sharma and Y. Mannan, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—By making this application under Article 226 of the Constitution of India, the petitioner, as a workman, has approached this Court with prayer, inter alia, to issue writ/writs setting aside and quashing the award, dated April 21, 1997, passed by the learned Labour Court of Assam, at Dibrugarh, in Reference Case No. 13/94 (Management of Jalannagar (South) Tea Estate, Dibrugarh v. Their Workman Shri Binda Prasad Singh) and commanding the respondent No. 2, namely, the Management of Jalannagar (South) Tea Estate to make available all such service benefits to the petitioner, which he would have enjoyed being in service till January 25, 1995, if he would have been allowed to continue to remain in service till attaining the age of 60 years.

2. The essential facts leading to the filing of this writ petition are not in dispute and the same may in a nutshell be put as under:

In the service record of the Management petitioner's name stood recorded as Shri Binda Singh and not as Binda Prasad Singh. By order, dated September 17, 1955 (Annexure-A to the writ petition) the petitioner was confirmed as clerk, at Baughpara Division of Jalannagar (South) Tea Estate, Dibrugarh. An agreement,

dated November 18, 1970 (Annexure F to the writ petition) was reached between the Assam Tea planters Association and Bharatiya Chah Parishad (Assam Branch), who represented the management of the Tea Estates, on the one hand, and the Chah Karmachari Sangha, who represented the workman, on the other hand. This agreement is known as "Staff Retirement (Minimum Benefit) Scheme". According to Clause 3 of this Agreement, the member of the Clerical staff shall, normally, retire on attaining the age of 58 years unless his/her service is extended by the management, provided, however, that the extension over 60 years of age shall not, normally, be granted. This agreement came into force on November 1, 1970. Acting upon this agreement, respondent No. 2 i.e. the Management of the said Tea Estate sent a letter, dated November 15, 1991 (Annexure-B to the writ petition) informing the workman that he would attain the age of 58 years during January, 1992 and that he would be retired from service with effect from February 01, 1991. The petitioner wrote back to the respondent No. 2 a letter, dated November 16, 1991 (Annexure- C to the writ petition) informing the Management i.e. the respondent No. 2 that as per Admit Card of the High School Examination Board, he had appeared in the High School Leaving Certificate Examination of Bihar Schools Examination Board in April, 1954 and his date of birth, as recorded in the Admit Card, was January 25, 1935 and that he would accordingly reach the age of 58 years on January 25, 1993 and not in January, 1992. The petitioner also added in this letter that the date of birth, which had disclosed earlier to the Management was probably without consulting the original High School Leaving Examination Admit Card, which was lying at his home at Muzaffarpur in Bihar. However, as per Clause 11(1) of the said agreement (Annexure-F to the writ petition), the age of the workman entered into his service record or P.F. record shall be deemed to be his correct age. Acting upon this agreement, the Management i.e. respondent No. 2 afore-mentioned had written, a letter as far back as on November 27, 1972 (Annexure-D to the writ petition) informing the workman that in order to fully compile his service records and to make the same up to date, he was required to furnish necessary information sought for in the proforma given below in the said letter itself. The petitioner, as a workman, had filled up this proforma and submitted the same to the management. According to the information furnished in this proforma, the petitioner was born in January, 1934, and not on January 25, 1935 (as later on, contended by him) and that he had appeared for matriculation examination in 1951 and not in 1954 (as later on, contended by him) from Dwarka Nath H.E. School, Muzaffarpur Town. Be that as it may, according to the Admit Card (Annexure-E to the writ petition), the name of the candidate was Binda Prasad Sinha whereas in the service record of the petitioner, he was always known as Binda Singh, Moreover, according to the Admit Card petitioners Roll No. in H.S.L.C. Examination was Muz. No. 1893, he was to appear in the examination, which was to be held on April 5, 1954. and his date of birth was January 25, 1935. On receiving petitioner's letter, dated November 16, 1991 (Annexure-C) aforementioned, the Management made an enquiry from Vigilance Department of Bihar School Examination Board, Patna, and received from Vigilance Department

a letter dated March 12, 1992 (Annexure-E to the writ petition) whereby the Vigilance Officer informed the Management that though Binda Prasad Singh had claimed to have appeared in High School Leaving Examination of 1954 under Roll No. 1893, yet, in the year 1954, at Muzaffarpur Centre Examinee, the Roll Nos. were from 1 to 1351 only meaning thereby that no one bearing Roll. No. 1893, contrary to what the petitioner claimed, had appeared in the HSLC Examination in 1954 from Muzaffarpur Centre and consequently, the claim regarding date of birth subsequently made by the petitioner vide Annexure-C was false and the Admit Card (Annexure-E to the writ petition) submitted by the writ petitioner was fabricated. The Management informed the petitioner about the letter of the said Vigilance Officer and insisted on retiring him on February 01, 1992 whereas as petitioner demanded that he should retire from service on attaining the age of 58 years on January 25, 1993.

3. The dispute, so raised, was, eventually, referred by the Government, vide Notification dated October 06, 1994 (Annexure-G to the writ petition) to the Labour Court of Assam, Dibrugarh. During the course of hearing before the learned Labour Court, the petitioner raised the question was that the agreement, dated November 18, 1970 (Annexure-F aforementioned), namely, "Staff Retirement (Minimum Benefit) Scheme" was not binding on the petitioner inasmuch as he was not a member of the Assam Chah Karmachari Sangha. It was also contended by the petitioner that as per the Standing Order in force in the said Tea Estate, the retirement age of the Staff is 60 years and in this view of the matter, he should retire from service on January 25, 1995 and not on January 25, 1993 as he had himself earlier demanded. The learned Labour Court negatived both these contentions. While rejecting the first contention that the "Staff Retirement (Minimum Benefit) Scheme" was not binding between the parties, the learned Labour Court observed that the petitioner had derived benefits during his service career out of the agreements reached between the Management and the Assam Chah Karmachari Sangha and, hence, the petitioner having derived, in the past, benefits of the agreements, which the said Trade Union had entered into with the Management from time to time, the petitioner cannot, now, turn his back towards the agreement and say that the same was not binding on him. As regards the Standing Order, the learned Court below observed to the effect that this matter had been raised at the fag end of the trial and that the Standing Order (Annexure-I) Stood modified by the agreement reached between the parties and known as "Staff Retirement (Minimum Benefit) Scheme, 1971". With the reasons so assigned, learned Labour Court declined to give the reliefs, petitioner had sought for.

4. I have heard Mr. R.P. Sharma, learned counsel for the petitioner, and Mr. S.N. Sharma, learned senior counsel appearing on behalf of respondent No. 2, namely, the Management of Jalannagar (South) Tea Estate, Dibrugarh. I have also perused the materials on record.

5. Confronted with the voluminous materials on record showing that the

petitioner's claim that he had appeared in HSLC Examination at Muzaffarpur Secondary School Examination Centre under Roll No. 1893 stands falsified by the fact that the candidates appearing at the said Examination Centre had Roll Nos. between 1 and 1351, Mr. R.P. Sharma has not agitated before me that as per the record available with the Management, the date of birth of the petitioner was not correctly recorded as January, 1934. It is also not disputed by Mr. R.P. Sharma that treating the date of birth as January, 1934, the petitioner would have retired from service on February 01, 1992 if he was to serve up to the age of 58 years. Mr. R.P. Sharma has, however contended that as per the Standing Order (Annexure-1), the petitioner ought to have been allowed to continue in service till the age of 60 years and he should have, therefore, been allowed to work till the end of January, 1995.

6. It is also submitted by Mr. R.P. Sharma that though the reference made by the Government was whether the workman was justified in claiming extension of his service up to January 25, 1993, the Labour Court was also competent to enter into the question as to whether the workman was justified in claiming, even at the fag end of the proceeding, that the Standing Order, in question, be applied and he be allowed to continue to remain in service till the end of January, 1995. The question regarding application of the Standing Order, which has been so raised, is, according to Mr. R.P. Sharma an ancillary question for determination of the real issue in dispute between the parties. Hence, the learned Labour Court was, according to Mr. R.P. Sharma, competent to go into this vital aspect of the matter, but the learned Labour Court shirked its responsibility by declining to look into this aspect of the matter. Viewed at from this angle, the impugned award, submits Mr. R.P. Sharma, is bad in law.

7. Controverting the above submissions made on behalf of the petitioner, Mr. S. N. Sharma has pointed out that u/s 2-A of the Industrial Disputes Act, an individual workman can raise the dispute only when the matter relates to his discharge, dismissal or retrenchment from service or termination from service. In the case at hand, further points out Mr. S. N. Sharma, the service of the workman was not terminated; rather, he was retired on superannuation and since "retirement" does not fall within the ambit of Section 2-A, the reference made by the Government was, contends Mr. S.N. Sharma, without jurisdiction.

8. It is submitted by Mr. S.N. Sharma that though above aspect of the matter relating to Section 2-A was raised before the learned Labour Court, the same was not gone into by the learned Court. That apart, this aspect of the matter can be raised, according to Mr. S.N. Sharma even, for the first time, before the Writ Court as this aspect of the matter relates to the very jurisdiction of the learned Labour Court. It is also submitted by Mr. S.N. Sharma, Labour Court that in the face of the fact that there is overwhelming material on record to show that the date of birth of petitioner maintained by the Management in their record of service was the correct date of birth, the learned Labour Court was wholly justified in declining to extend the date of retirement of the petitioner beyond the

age of 58 years, which was according to Mr. S.N. Sharma, normal age of retirement of a workman in the said Tea Estate as per the agreement existing between the parties. It is further submitted by Mr. S.N. Sharma that the Standing Order was not binding on the parties inasmuch as the respondent No. 2 is not a member of Bhartia Chah Parishad. This apart, this Standing Order, submits Mr. S.N. Sharma, stood modified by the subsequent conduct of the parties inasmuch as the Staff Retirement (Minimum Benefit) Scheme aforementioned, which came into force on (sic) November 1, 1970, prevailed in the Tea Estate concerned.

9. Reacting to the above submission made on behalf of the respondents, Mr. R.P. Sharma has contended that the question whether the reference was validly made cannot be raised for the first time before the Writ Court.

10. With regard to the Standing Order Mr. R.P. Sharma has asserted that the respondent No. 2 is a member of the Bhartia Chah Parishad.

11. However, to a pointed query made by this Court if there is any definite material on record or available with the petitioner to indicate that the respondent No. 2 is a member of the said Parishad, Mr. R.P. Sharma sought time for production of such materials, but failed to do so despite having received opportunity to produce the same. Moreover, there is no dispute before me that a Standing Order can be modified by subsequent conduct of the parties and that in the instant case, the Standing Order was signed by the Registrar as far back as on February 7, 1968 whereas the Scheme afore-mentioned came into force on November 01, 1970. This shows that the Standing Order, if any, as stood modified by conduct of the parties.

12. Having heard both sides and upon perusal of the materials on record, what attracts my eyes, most prominently, is that the dispute in the instant case is an individual dispute inasmuch as the petitioner's dispute was not sponsored by any trade union and even Bharatia Mazdoor Sangha appeared, in support of the petitioner's case at the fag end of the proceeding, when the recording of evidence was already over. This apart, even the reference made by the Government does not state that the workman is represented by any trade union. There can, therefore, be no escape from the conclusion that the industrial dispute raised in the instant case is an individual dispute. In fact, this position is not disputed before me even by Mr. R.P. Sharma.

13. Apart from the fact that the learned Labour Court has not looked into the question as to whether the reference was bad in law in the face of the provisions of Section 2-A of the Industrial Disputes Act (hereinafter referred to as "the said Act"), Mr. R.P. Sharma has not, I may point out, contended that retirement on superannuation is covered by Section 2-A. What Mr. R.P. Sharma has contended is that this aspect of the matter cannot be raised for the first time before the Writ Court.

14. Coupled with the above, it is of utmost importance to note that if the dispute

is an individual dispute and it is outside the purview of Section 2-A, then, the reference made by the Government in respect of such a dispute will be bad in law. Since this aspect of the matter, undoubtedly, relates to the jurisdiction of the learned Labour Court, the matter can be raised in the Writ Court for the first time even if this matter was not raised before the learned Court below.

15. The question, however, remains whether superannuation of the petitioner, in the face of the facts and circumstances of the case at hand, can be treated to be a simple case of retirement of a case of termination of service.

16. My quest for an answer to the above question brings me to the language of Section 2-A, which runs as follows:

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. - Where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

17. A bare reading of Section 2-A clearly shows that retirement on superannuation is per se not covered by Section 2-A. That is to say, an industrial dispute relating per se to retirement cannot be raised by the individual workman, who stands retired or is sought, to be so retired. What is, however, of utmost importance to note is that a dispute u/s 2-A arises between an individual workman and his employer. Though retirement on superannuation is not same as termination of service, the fact remains as in a case of present nature, that when the workman disputes the age of his superannuation as fixed by the employer, what basically the dispute, which so arises, relates to forcible termination of service by the employer before the date of superannuation. Viewed from this angle, the dispute in the instant case is a dispute of termination of service and it, therefore, squarely falls within the purview of Section 2-A and, hence, the reference is not bad in law.

18. In other words, whether retirement on superannuation amounts to termination of service in a given case depends on the facts of the case and it cannot be laid down as an invariable rule that retirement from service will never amount to termination of service. If the date of superannuation falls in dispute, then, the retirement of a workman by his management will amount to termination of service before the date for superannuation arrives.

19. In the case at hand, since the workman claims that he has been retired before the date of his superannuation his case is, as already indicated above, a case of premature retirement, which, in turn, means that his case is a case of forcible retirement before the due date of superannuation arrived. Looked at from this angle, the reference made by the Government is as already held above, not misconceived and/or without jurisdiction inasmuch as the present is a

dispute, true or false, of alleged forcible termination of service before the age of superannuation arrived.

20. Turning to the Standing Order, it is of immense importance to note that Bharatiya Chah Mazdoor Sangha did not sponsor the dispute on behalf of the workman and they appeared for the workman at the fag end of the proceeding before the learned Labour Court and it was this union, which for the first time, cited the Standing Order (Annexure I to the writ petition) and contended that the petitioner ought to have been allowed to continue in service till attaining the age of 60 (sixty) years. This aspect of the matter becomes clear from the observations of the learned Tribunal, which stand quoted below:

"It has also been candidly submitted at the Bar by the Secretary of Bhartia Mazdoor Sangha to intervene in this case at the fag end, that the workman concerned did not agitate the issue of his alleged entitlement to continue in service up to 60 years of age as provided for in the Standing Orders coming into force in 1968, as these Standing Orders were not known to him, in course of the conciliation proceedings, and that he could come to know of the provision in the Standing Orders relating to the age of retirement upon coming into contact with the Bharatiya Mazdoor Sangha."

21. In other words, in the face of the above observation of the learned Labour Court, it is more than abundantly clear that the Standing Order was cited for the first time before the learned Tribunal by the Bharatia Chah Mazdoor Sangha and this standing order was meant for the members of the Bharatiya Chah Parishad. Though it has been contended by Mr. R.P. Sharma that the respondent No. 2 is a member of Bharatiya Chah Parishad, Mr. S.N. Sharma has vehemently disputed this assertion of Mr. R.P. Sharma could not as already indicated above, produce any material on record to justify his contention that the management in the instant case is a member of the Bharatia Chah Parishad.

22. It has, however, been pointed out by Mr. R.P. Sharma that the retirement benefit scheme aforementioned (Annexure-F) was an agreement, which had been entered into between the Assam Tea Planters Association and Bharatia Chah Parishad, Assam Branch, which represented the Management of the Tea Estate, on the one hand, and Assam Chah Karmachari Sangha, which is a union of the workmen, on the other hand. This shows, according to Mr. Sharma, that the Management in the instant case is a member of Bharatia Chah Parishad. I do not find any merit in this contention inasmuch as the settlement, in the form of the scheme aforementioned, was reached not only by Bharatia Chah Parishad but also by Assam Tea Planters Association. Hence, owners of various tea estates, which were not members of Bharatia Chah Parishad could have been members of Assam Tea Planters Association and vice versa. There cannot, therefore, be any definite conclusion that the Management of the present Tea Estate is a member of Bharatia Chah Parishad. Viewed from this angle, there is, if I may reiterate, nothing on record to show that the Standing Order (Annexure-I) was ever in force in Jalannagar (South) Tea Estate.

23. However, even if it is assumed that the Management was a member of Bharatia Chah Parishad, the fact remains that this Standing Order was signed by the Registrar as far back, as on February 07, 1968, but the scheme aforementioned came into force on November 01, 1970 i.e. more than two years after the Standing Order stood executed. The Standing Order, thus, stood modified by the agreement reached between the parties.

24. The question, which, now arises is whether the Scheme aforementioned was binding on the present workman. In this regard, learned Court below has correctly observed that the workman has, undoubtedly, derived benefits of various agreements, which the Management has entered into with the Assam Chah Karmachari Sangha from time to time having enjoyed the benefits of such agreements, the petitioner cannot, now be heard to say that the agreement, in question, which the Assam Chah Karmachari Sangha has entered into with the Management, will not be binding on the petitioner.

25. Normally, when a recognized union negotiates with an employer the workers individually, do not come into the picture and it is not necessary for each and every worker to know the implications of the settlement, because a recognized union is expected to protect the legitimate interest of labour, where it enters into a settlement in the best interest of labour. This is the law, which the Apex Court has laid down in *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, 26. Coupled with the above, it is of immense importance to note that in the case of *Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh*, wherein the Apex Court has, I notice, clearly laid down that Even if a workman acquiesces to an agreement/ settlement reached between the union and Management and has derived benefits thereunder, such a workman is precluded from raising the dispute with respect to matters in the agreement. Since the petitioner has, admittedly, derived benefits under the Scheme aforementioned, he cannot, now if I may reiterate, be allowed to say that his agreement is not binding on him.

27. The fact that agreement (sic) reached between the employer and the workmen represented by a recognized union is binding on all the workmen of the establishment including those, who belong to minority union has also been reiterated by the Apex Court in *Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd.*,

28. It is admitted position in the present case, as indicated hereinabove, that the Scheme aforementioned has been in force in the said Tea Estate and under this settlement, petitioner has been deriving benefits from time to time. Even while raising the present dispute that he should be given extension of service till January 25, 1993, the petitioner never raised the question that the said Scheme was not applicable to him. Far from this, the petitioner had, in fact, sought extension of service till January 25, 1993 under the said scheme, because he himself had contended to the effect that he would retire on superannuation on reaching the age of 58 years and the only dispute, which he had raised was as to

what his date of birth was. It was, in fact, as already indicated above, Bharatiya Mazdoor Sangha, who appeared before the learned Court below, at the stage of argument, on behalf of the petitioner, and placed, for the first time, reliance on the Standing Order, which as I have already indicated above, cannot be held to be binding, on the Management of the said Tea Estate.

29. In other words, applying the above principles of law to the factual matrix of the present case, one can safely conclude that since the petitioner had been deriving various benefits under the settlement which the Workers' Union in the Tea Estate had been entering into with the Management from time to time and when the reference did not include determination of the question as to whether the Scheme, in question, was applicable to the petitioner or not and when even the petitioner had raised the dispute under the said scheme, the dispute being that he was entitled to remain in service till attaining the age of 58 years and the only dispute that he had raised, thus, was that his 58 years, would expire on January 25, 1993 and not with the end of the month of January, 1992, the petitioner cannot, now approach this Court, to take help of the said Standing Order, when the question of applicability of the said Standing Order did not fall within the purview of the reference made by the State Government in the instant case.

30. In the light of what has been discussed above, it is clear under Clause 11 of the scheme aforementioned, which, as I have already Indicated above, has binding effect on both the parties, the age of workman entered into his service record or P.F. record shall be deemed to be his correct age. Apart from the fact that there is no credible material on record to show that petitioner's date of birth was January 25, 1935, it is admitted position that the age, which the Management had maintained in the service record of the petitioner, was on the basis of the information received by the petitioner himself and hence, the same was binding on both the parties. Viewed from this angle, the petitioner's date of birth ought to have been treated and was correctly treated as January, 1934 and not January 25, 1935, as, later on, demanded by the petitioner.

31. From the facts narrated above, it is more than abundantly clear that it was the petitioner himself, who, in view of the contents of Annexure-D, disclosed his date of birth as January, 1934 and though subsequently, on the basis of the admit card (Annexure-E) he contended that his date of birth was January 25, 1935, his Roll No. being 1893 from Marowari Muzaffarpur Examination Centre, the letter (Annexure-E) of the vigilance officer clearly revealed that Roll No. of the candidate, who had appeared at the said examination center, ran between 1 and 1351 and, hence, the conclusion, which is irresistible to draw is that the petitioner falsely projected his date of birth as January 25, 1935, and his Roll No. in HSLC Examination as 1893. 32. It logically follows that the date of birth, which the petitioner disclosed to the Management, vide Annexure-D, is the correct date of birth.

33. It is also of great significance to note that, the usual date of retirement of

the petitioner under Clause 3 (three) of the said Scheme is 58 years; hence, in view of the fact that the date of birth of the petitioner, as per the information furnished by the petitioner himself, was in January 1934, the petitioner was rightly retired, on February 1, 1992 on superannuation on reaching the age of 58 years.

34. It may be pointed out that it has also been contended by Mr. R.P. Sharma that the question as to whether the petitioner should have been allowed by the management to continue to remain in service till attaining age of 60 years is an ancillary question and the reference in the instant case shall be liberally construed to include this question.

35. In support of his above contention, Mr. R.P. Sharma has referred to Agra Electronic Supply Company Ltd., Union of India v. Prafulla Kumar, (1983) 1 LLJ 304

36. Before proceeding any further, it is pertinent to note that the reference, which the Government made was worded as follows:

"1. Whether the workman is justified by claiming extension of his service upto January 25, 1993?

2. If so, is the workman entitled to reinstatement with all his back wages or to any other relief in lieu thereof ?"

37. In the face of the above reference, it cannot be said that the question whether the Standing Order aforementioned was binding on the parties and/or that the age of retirement of the petitioner was 60 years and not 58 years and/or that the petitioner ought to have been allowed to continue to remain in service till January 25, 1995 and not till January 25, 1993, which the petitioner himself had claimed to be the date of his superannuation, were ancillary or incidental questions.

38. In the case of Agra Electronic Supply Company Ltd (supra), the Apex Court has, no doubt, laid down that the reference should be construed liberally and not pedantically. The fact, however, remains that in the instant case, the reference clearly is as to whether the workman is justified in claiming extension of his service up to January 25, 1993. Howsoever liberally this reference is interpreted, it cannot be stretched to mean that the workman had claimed extension of services up to the age of 60 years i.e. up to January 25, 1995 and not January 25, 1993 (as had been claimed by the workman himself). Viewed from this angle, the learned Tribunal, in fact, ought not to have entered into the discussion of the question as to whether the petitioner was entitled to claim extension of service up to January 25, 1995. The reference made by Mr. R.P. Sharma to Agra Electronic Supply Company Ltd. (supra) is therefore, completely misconceived.

39. Mr. S.N. Sharma has referred to Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, In this case, the Apex Court has held that in cases of industrial dispute, while exercising powers of judicial review,

Court should make attempt to sustain as far as possible the awards made by any Industrial Tribunal instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the Tribunals by striking down awards on hyper- technical grounds. Taking support from the guideline, so laid down by the Supreme Court, it can safely held that while exercising power of judicial review, High Court should make attempt to sustain awards of Industrial Tribunal or Labour Court as far as possible instead of interfering with the same on hyper- technical ground. In the case at hand, Mr. R.P. Sharma has not been able to show any cogent material warranting interference by this Court in exercise of its power of judicial review.

40. That even while interpreting the reference, Court should keep itself confined to the reference and not to what transpires before the Tribunal, Mr. Sharma has placed reliance on Calcutta Electric Supply Workers Union AIR 1959 SC 1991.

41. Though Mr. R.P. Sharma placed reliance on the Apex Court's decision in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, to show that the Standing Order can be taken into consideration by the Labour Court, it needs to be made clear that there can be no dispute as a principle that the Labour Court or Industrial Tribunal is competent to determine applicability of Standing Orders or interpretation thereof. This is, however, subject to a rider that the question of such application or interpretation can be considered insofar as the same is necessary for an appropriate adjudication of the question or dispute referred.

42. In the case at hand, the question is not whether the learned Labour Court was competent to consider the application/ interpretation of the Standing Order. The question is whether the Labour Court could have entered into the question of applicability and/or interpretation the Standing Order for deciding the question referred to it by the Government. In this regard, I have already made it clear that without slightest hint of the Standing Order, the reference could have been disposed of by the learned Court below. In this view of the matter the learned Labour Court ought not to have gone into the question of application and/or interpretation of the said Standing Order nor can this Court can, now consider the question of application and or interpretation thereof.

43. In support of his contention that the learned Labour Court could have gone into the question of application of the Standing Order, while deciding the reference, Mr. Sharma has referred to J.K. Synthetics Vs. Rajasthan Trade Union Kendra and Others, Suffice it to mention here in this regard that to the facts of the case at hand, this decision is absolutely not applicable inasmuch as Apex Court has nowhere laid down that while interpreting the reference, the Labour Court, or Industrial Tribunal can go beyond the reference.

44. It is of immense importance to note that though a reference should be construed, in exercise of powers of judicial review, liberally, it is also trite that while construing terms of reference and in determining the scope and nature of

the points referred to the Tribunal, the Court must look at the order of reference itself and that it is only the subject-matter of reference, which the Tribunal shall be concerned with. Reference in this regard made by Mr. S.N. Sharma to the case of Calcutta Electric Supply Corporation Ltd. (supra) is not misplaced.

45. In the case at hand, if the nature and ambit of the points referred to the Labour Court are construed on the basis of the reference itself, there remains no scope for this Court to venture to decide the question as to whether the learned Labour Court could have entered into the question of consideration of petitioner's extension of service up to the age of 60 years under the Standing Order. In fact, the reference being what it is, the learned Court below ought not to have, as already indicated above, entertain the question as to whether the Standing Order is applicable to the said Tea Estate and/or whether the petitioner was entitled to receive extension of services by another two years after January 25, 1993 because January 25, 1993 was, according to the dispute raised by the petitioner himself, the outer limit of his tenure of service. Viewed from this angle, this Court cannot, now on the basis of what transpires at the stage of argument in the learned Court below stretch the reference to mean that it will include consideration of extension of petitioner's services by two years beyond January 25, 1993.

46. Because of what have been discussed above, it is clear that the decision of the learned Labour Court on the reference made to it by the State Government is correct in the face of the materials on record and the law relevant thereto.

47. In the above view of the matter, I do not find any merit in this writ application and the same deserves to be dismissed.

48. The writ petition is accordingly dismissed. No order as to costs.