

**(1957) 11 P&H CK 0018**  
**In the Punjab And Haryana At Chandigarh**

British India Corporation Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

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**Date of Decision :** 04-11-1957

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 17A

**Citation :** (1959) 1 LLJ 68

**Hon'ble Judges :** G.D. Khosla, J

**Bench :** Single Bench

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## Judgement

G.D. Khosla, J.—This is a petition under Article 226 of the Constitution in which the petitioners, the British India Corporation, Ltd., pray for a writ in the nature of prohibition preventing the Punjab Industrial Tribunal, Jullundur, from proceeding with the reference of industrial disputes made to it by the Punjab Government on 2 August 1954.

2. The ground upon which the petition is based is that some of the matters which have been referred as industrial disputes by the Punjab Government were adjudicated upon by the industrial tribunal in an earlier reference and the award made upon that decision was published in the Government Gazette and was in force when the reference under dispute was made.

3. The relevant facts briefly are that on 30 October 1953 eleven items of dispute between the petitioner-firm and some of its employees were referred to respondent 1, namely, the Punjab Industrial Tribunal. While this enquiry was pending, a second reference was made on 12 December 1953, in which three further items of dispute were referred to the tribunal. On 9 July 1954, the tribunal gave its award on both these references and this award was published in the Punjab Gazette u/s 17A of the Industrial Disputes Act on 13 August 1954. Before its publication, however, a third reference, which is the reference in dispute, was made on 2 August 1954. This included five items and it was alleged

that two of these items, namely, 3 and 4, were the subject-matter of the second reference. These disputes had been settled and the award in respect of them was in force as it was extended till April 1957, by an order of the Punjab Government. It is said that the third reference was made as the result of pressure by political workers. A petition for a writ was presented in this Court soon after the third reference was made and this came up for hearing before a Division Bench of this Court consisting of my lord the Chief Justice and Bishan Narain, J. The petition was dismissed in limine. The petitioners filed an application for leave to appeal to the Supreme Court, but the Court declined to certify it a fit case for appeal. The matter was, however, taken to the Supreme Court by means of special leave and this appeal was allowed. The order of the Supreme Court is reported as *British India Corporation Ltd. and Others Vs. The Industrial Tribunal, Punjab and Another*, The Supreme Court remanded the case for decision and indicated the lines upon which this Court should consider the matter. Paragraph 15 of the printed report sets out three points for consideration:

- (1) Whether it was open to the petitioners to ask for a writ in respect of items 3 and 4 of the third reference only.
- (2) Whether items 3 and 4 were covered by previous reference and, therefore, in respect of these items there was no industrial dispute at all which could be referred to the tribunal.
- (3) Whether the objection with regard to items 3 and 4 affects substantially the question of jurisdiction of the tribunal, or to use the words employed by Bhagwati, J., this objection "goes to the very root of the jurisdiction of respondent 1 to entertain the third reference in regard to those items or is one which tantamount merely to a traverse of the allegations on merits.

Item 3 of the third reference is in the following terms:

Whether or not at all the employees whose mode of service has been changed or who have been transferred from one type of work to another are being paid their original wages. If not, the deductions made in their original dues may be restored to them.

It is argued that this corresponds to item (ii) of the second reference which is in the following terms:

Workers working on contract basis when put on another job should be paid at the rate of their average earnings calculated on the basis of their previous three months' earnings.

The argument of the learned Counsel for the petitioners may be summarized as follows: There are two kinds of workmen, those engaged on contract basis and those who are paid a daily wage. As far as the workers on daily wage are concerned, their remuneration is not affected by their transfer to another job; they continue to be paid at the same rate. Therefore, whenever any worker on daily wage is put upon another job, he is paid at the rate of his average earnings

calculated on the basis of his previous three months' earnings. A workman employed on contract basis, however, was subject to fluctuation of wages and his case was referred to the industrial tribunal by means of the second reference. The industrial tribunal gave its award on the matter and so the award now covers all employees, those who are employed on daily wage, because with regard to them there was never any dispute, and also those employed on contract basis whose case was specifically referred to the tribunal.

4. There is no doubt that there is force in this argument, and once it is conceded that the only dispute which can arise regarding the fluctuation of a workman's wages on the change of his job can arise in the case of a workman on contract basis, it must follow that no dispute can arise on this ground after the giving of the award on the second reference. The third item in the third reference is only an attempt to revive the dispute by wording the matter differently.

5. Item 4 of the third reference is in the following terms:

Whether or not the piece-rate (contract basis) workers are getting wages according to the high cost of living; if not, their wages may or may not be increased suitably.

It is said that this corresponds to item (1) of the second reference which is in the following terms:

Dearness allowance should be given to workers at Rs. 40 per mensem.

A reference to the order of the Appellate Tribunal which dealt with the award on the second reference shows that the whole question of dearness allowance to all worker in the factory was considered. The workers who were employed on piece-rate or contract basis were not excluded. Therefore, their case was also dealt with by the previous award. It cannot be said, therefore, that there was any Industrial dispute on this account which could be referred to the tribunal. In this case too the change of phraseology does not create a new dispute. As long as the previous award is in force, and it was in force when the third reference was made and when the present petition was filed, the matter contained in item 4 cannot be referred afresh to the tribunal.

6. The Supreme Court has laid down in *Burn and Co., Calcutta Vs. Their Employees*, that when a dispute is once settled by an industrial tribunal, it cannot be raised again and referred to the tribunal during the pendency of the previous award. Their lordships invoked the rule of *res judicata* enacted in Section 11 of the Civil Procedure Code and pointed out that although that section in terms does not apply to industrial disputes, the principle underlying it is founded on sound public policy and is of universal application. I must, therefore, hold that the industrial tribunal had no jurisdiction to entertain the disputes set out in items 3 and 4 of the third reference, because these disputes are nothing more than a reiteration of the previous disputes properly referred to the tribunal, adjudicated upon and made the subject of an award which is

published and was Binding upon the parties.

7. The question now arises whether the whole of the reference becomes ultra vires by reason of the fact that two of the items could not be included in it. The learned Counsel for the petitioners was not able to point to any decision or authority for the view that a reference is an indivisible entity which must be acted upon or rejected as a whole. The reference contains a number of Items which were to be considered by the tribunal and adjudicated upon separately. Two of these items have been found to have been decided previously : they should not therefore have been included in the reference. There can be no objection to the tribunal considering the remaining items. I am informed that a compromise has been arrived at with regard to item, 5 and that this will not now be considered by the tribunal. This, however, is a matter regarding which I need say nothing. For my purpose it is sufficient to say that items 3 and 4 will not be Included In the reference. I, therefore, grant a writ in the nature of prohibition directing the industrial tribunal not to consider Items 3 and 4 In the reference under dispute. The petition has been allowed in part and I, therefore, leave the parties to bear their own costs.