
(2001) 05 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 880 of 2000

Central State Farm, Hissar

APPELLANT

Vs

Balbir Singh

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Industrial Disputes Act, 1947 — Section 10, 11, 2

Citation : (2001) 05 P&H CK 0021

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Mr. V.K. Sharma, for the Appellant; Mr. Amrit Paul, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—This order will dispose of four writ petitions No. 880, 3820, 16052 and 16180 of 2000. Civil writ petitions No. 3820 of 16052 of 2000 arise out of the same award. Similarly, the other two writ petitions arise from the same award.

2. Writ petitions 880 and 3820 of 2000 have been filed by the employer, while the other two writ petitions have been filed by the workman. The employer has challenged the awards of the Labour Court on the ground that the reference made by the State Government were not proper because they were not the reference by the appropriate Government. According to the employer, the appropriate Government was the Central Government and not the State Government. When the writ petitions filed by the employer came up for motion hearing, notice of motion was issued only qua this point. The arguments are also advanced on this point only.

In the other two writ petitions, the workmen have challenged the awards qua denial of back wages. In the reference under challenge in civil writ petitions only 50% back wages were awarded. First, I will take up the question of validity of

the reference made by the State Government. The petitioner is "Central State Farm, Hissar". As mentioned above, the only question to be decided in the writ petitions filed by the employer is, whether the reference made by the State Government was a valid reference or not. The Labour Court has, by the impugned awards, set aside the termination of service of the workmen. Even if, for the sake of arguments, it is accepted that the reference was not by the appropriate Government the quashing of the awards on that point would lead to the revival of the illegal orders of termination and, therefore, the writ petitions should not be entertained in view of the principles laid down by the Supreme Court in the case of *Gadde Venkateswara Rao v. Government of Andhra Pradesh and others* AIR 1966 S C 825, as followed in the case of *Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another*,

3. Leaving aside this technical aspect, I shall go to consider whether the reference were not by the appropriate Government. The Labour Court has relied on Annexure P9 produced in civil writ petition 3820 of 2000. It is a resolution of the Government of India dated 15.7.1969, regarding the transfer of full administrative control of the Central State Farms to the State Farms Corporation Ltd. with effect from 1.8.1969.

The text of the resolution is as under:

"The Government of India have set up a number of Central State Farms for the primary purpose of production of improved varieties of seeds in different parts of the country. These Farms have so far been running as departmental organisations but this argument has not been found entirely satisfactory. The Farms are essentially commercial organisations and should run as such unhampered by the procedures which govern the working of Government Departments. It has, therefore, been decided that a company under the company law should be set up to take over and run the existing Farms as well as any Central State Farms to be set up in future. The State Farms Corporation of India Ltd., has accordingly been set up by the Government of India for this purpose and the Government of India have not (now ?) decided to transfer the full administrative control of the following Central State Farms to the State Farms Corporation Ltd. with effect from 1.8.69.

1. Central State Farm, Suratgarh (Rajasthan)
2. Central State Farm, Jetsar (-do-)
3. Central State Farm, Hiraikud P.O. Jharsuguda
4. Central State Farm, Jullundur City (Punjab)
5. Central State Farm, Hissar (Haryana)
6. Central State Farm, Raichur (Mysore)

The Government have decided to transfer to the State Farms Corporation of India (Pvt.) Ltd. the movable and immovable property assets including claims and

actionable claims and debts and liabilities of the Central State Farms by a formal deed or deeds of transfer to be executed later. The nature and form of deeds would be determined later."

4. Relying on this resolution the Labour Court held that full administrative control of the State Farms including that of the petitioner-employer the State of Haryana and transferring all the assets and liabilities to State Farms Corporation leaves no administrative authority of the petitioner-employer.

5. It is clear from the above quoted text of Annexure P9 that the administrative control of the petitioner-employer has been handed over to the State Farms Corporation of India (Pvt.) Ltd. Learned counsel for the petitioner-employer has relied on notification of Ministry of Labour, New Delhi dated 3.7.1998. It is produced by him as Annexure P11. Vide the said notification certain powers qua the State Farms Corporation of India (Pvt.) Ltd., New Delhi and others have been given to the State Government. The text of the notification exclusively scheduled is as under :

"S.O.556(E) : In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby directs that all the powers exercisable by it under that Act and the rules made thereunder shall, in relation to all the Central Public Sector Undertakings and their subsidiaries, Corporation and autonomous bodies specified in scheduled annexed to this Notification be exercisable also by the State Governments subject to the condition that the Central Government shall exercise all the powers under the said Act and Rules made thereunder as and when it considers necessary to do so."

6. He has relied on the agreement dated 5.12.1970. The text of the agreement can be reproduced as below:

"1. Whereas the Corporation has as its main objective the getting up and running of agricultural farms and production of seeds of food grains, fibre crops, plantation crops, oil seeds, vegetables and fruits as well as the study of these crops in the various parts of the country, and

2. Whereas the Government of India have transferred to the Corporation from 1st August, 1969, the Administration of the Central State Farms at Surat-garh (Rajasthan), Jetsar (Rajasthan), Jharsuguda (Orissa) and Hissar (Haryana), and

3. Whereas the lands at these farms have been taken on lease from the State Government of Rajasthan, Orissa and Haryana.

Now this agreement witness that the Corporation would function in the capacity of an agent to the Government of India for running these farms and would be responsible for fulfilling the terms on which the lands were taken on lease from the Government concerned.

In particular, it is agreed that the Corporation will pay the land revenue, rent,

cesses and other charges which were hitherto being paid by the Government or those charges which are to be paid by the Government hereafter under the terms of lease.

In case the Corporation fails to pay land revenue, rent, cesses and other charges as indicated above, the Government of India may pay the same and in that event they will be entitled to recover the said amounts from the Corporation.

And it is hereby agreed and declared that the Government has agreed to pay and bear the stamp duty on these presents."

7. Relying on this argument the learned counsel for the petitioner argued that the Corporation will be functioning in the capacity of an agent and hence, also the Central Government will be the appropriate Government.

8. A reading of Annexures A9, P11 and the agreement does not show anything to accept the argument advanced by the learned counsel for the petitioner-employer. Vide clause 2 of the agreement the administration of the petitioner-employer has been handed over to the State Government. The Corporation is to be treated as agent for the purpose of fulfilling the responsibilities regarding terms of the lease from the concerned State Government. Therefore, the petitioner-employer will not be an agent of the Central Government so far as internal administration is concerned. Appointment of workmen, fixing their conditions of service etc. will be the function of the petitioner-employer and not the Central Government. Moreover, even as per notification, Annexure P11, the powers u/s 39 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") have been handed over to the State Government, though the Central Government has reserved the right of exercising the powers as and when it considers necessary. The termination of the workmen was not done by the petitioner-employer under the powers of the Central Government because there is nothing on record to show the same.

9. In the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, it has been held that when an industry is carried on by a Corporation incorporated under the Companies Act and not directly by the Central Government or any of its departments, the industry is not the one by the Central Government, though all the shares are owned by President of India and some officials. Of course, it was considered before the High Court that the company was not an industry carried on by the Central Government but the contention was that considering the fact that the entire share capital was contributed by the Central Government and extensive powers were conferred on it, the company must be re-graded an industry carried on under the authority of the Central Government and, therefore, the Central Government was not the appropriate Government, which could make the reference. It was held that it was rightly conceded by the High Court as also before the Supreme Court that the industry was not carried on by the Central Government. The Supreme Court, therefore, went to consider the question whether it was an undertaking carried on under

the authority of the Central Government and observed as under :

"The words "under the authority of mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Can the respondent-company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government ? That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association. An incorporated company, as is well known, has a separate existence and the law recognises it as a juristic person separate and "distinct from its members. This new personality emerges from the amount of its incorporation and from that date the persons subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate of a corporation aggregate and the new person begins to function as an entity-."

10. It is also observed by the Supreme Court in the said judgment as under :

"The definition of employer in Section 2(g) of the Industrial Disputes Act also, on the contrary, suggests that an industry carried on by or under the authority of the Government means either the industry carried on directly by a department of the Government, such as the posts and telegraphs or the railways, or one earned on by such department through the instrumentality of an agent."

11. The reference was not challenged by a separate writ petition by the petitioner-employer. Consequently", the Government was not a party before the Labour Court. The Government is not a party before this Court also. In the case of Binny Ltd. Vs. Their Workmen, , it has been held that objection at appellate Stage that an order of reference is invalid is not maintainable when Government is not a party to the proceeding.

12. In view of the above reasons, I find that the reference made by the State Government cannot be said to be a reference not by the appropriate Government.

13. This then takes me to the question of back wages. Sukhbir Singh-petitioner in civil writ petition 16052 of 2000 has been awarded 50% back wages from the date of the demand notice. The labour Court found that the workman has remained unemployed. However, the workman had worked from 15.2.1993 upto 31.1.1996 and that the award was being passed in the year 1999. It was also held that he would not remain totally unemployed and that for survival he must have been striving here and there.

14. So far as workman Balbir Singh, petitioner in civil writ petition 16180 of 2000, is concerned, the Labour Court found that he was terminated on 13th May, 1996 and that the award was being passed in 1999 and it could not be presumed that he must have remained totally unemployed throughout.

15. I find that the Labour Court has erred in denying the back wages to the workman on the ground stated by it. When the termination from the service is

set aside the order for payment of back wages should ordinarily follow except in certain exceptional cases. It has been so held by the Full Bench of this court in the case of Hari Palace, Ambala City v. The Presiding Officer, Labour Court and another 1979 PLR 720. One of them, is that a workman was gainfully employed. Here, both the workmen cannot be said to be gainfully employed, simply on the presumption, that since they have survived, they must have been doing some jobs, during the relevant period.

16. In the case of Narotam Chopra v. Presiding Officer, Labour Court and others JT (1950) S.C. 675, it has been held by the Supreme Court that when the order of termination is rendered ab-initio void, the employee is entitled to reinstatement with full back wages.

17. In view of the above reasons, I find it proper to award back wages to the petitioner-workmen from the date of their demand notice till the date of reinstatement.

As a result, civil writ petitions 880 and 3820 are dismissed. Civil writ petitions 16052 and 16180 of 2000 are allowed and the petitioners-workmen are held entitled to full back wages from the date of the demand notice till their reinstatement.

18. Petitions dismissed.