

(1961) 04 P&H CK 0028
In the Punjab And Haryana At Chandigarh

Dalmia Dadri Cement Limited	Vs	APPELLANT
Industrial Tribunal and Others		RESPONDENT

Date of Decision : 28-04-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33B

Citation : (1961) 2 LLJ 607

Hon'ble Judges : Gosain, J

Bench : Single Bench

Judgement

Gosain, J.—An Industrial dispute having arisen between the petitioners Dalmia Dadri Cement, Ltd., Charkhi Dadri, Punjab, on the one hand, and their employees on the other, the Punjab Government referred the name for decision to the labour court by virtue of Notification No. 1924-VII-DS-Lab-6 0/16830, dated 30 May 1960. The following items of dispute were specifically mentioned in the said notification:--

- (1) Whether the termination of the services of Sri Ghamandi Ram, store clerk, is justified and in order? If not, to what relief he is entitled ?
- (2) Whether the workmen are entitled to production bonus? If so, what should be the terms and conditions of its payment ?
- (3) Whether the workmen are entitled to profit bonus? If so, what should be the term and condition of its payment ?
- (4) Whether the following categories of workmen should be given uniforms? If so, with what details?
 1. Fitters.
 2. Crusher attendant.
 3. Blacksmiths.

4. Hammermen.
5. Khalasis.
6. Testers.
7. Cera pump attendant.

It later came to the notice of the Government that the dispute referred by them was beyond the jurisdiction of the labour court as probably items (2) and (3) of the same related to bonus and fell within the Ambit of Schedule III to the Act which mentions the disputes exclusively triable by an Industrial tribunal. On 2 July 1960 they issued a notification which is No. 2886-VIII-DS-Lab-6 0/20153, by virtue of which they withdrew the said dispute from the labour court, Rohtak, and transferred it u/s 33B of the Industrial Disputes Act, 1947, as amended by Act 36 of 1956, to the industrial tribunal, Punjab, Patiala. The reason given in this order is as follows:--

And whereas the aforesaid dispute falls within the jurisdiction of the industrial tribunal, Punjab, Patiala;

When the matter went to the Industrial tribunal, an objection was taken by the present petitioners that the order of the Punjab Government, dated 2 July 1960 was wrong because the Government could only transfer a reference from a labour court to a labour court, from an industrial tribunal to an industrial tribunal and from a national tribunal to a national tribunal, but had no power to transfer proceedings of a labour court to a tribunal or vice versa. Sri Kesho Ram Passey, who was presiding over the industrial tribunal, found force in it and passed an order giving effect to the objection of the present petitioners. The Government then issued a notification on 25 October 1960 making a fresh reference of the dispute to the industrial tribunal and this time they purported to act under Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, as amended up to date. The employers feeling aggrieved against the fresh references have come up to this Court under Article 226 of the Constitution of India and seek to have the said reference quashed.

2. The main ground on which they rely is that a reference having once been, made to the labour court, Rohtak, could not be withdrawn from the said Court and that the dispute could not be made the subject-matter of a fresh reference to the industrial tribunal, Punjab. The petition is opposed both by the State and by the workers, who urge that the labour court at Rohtak had no jurisdiction to hear the reference and, therefore, the said reference was wholly inoperative and amounted to a nullity. Dr. Anand Parkash, learned Counsel for the petitioners, raises three contentions before me which are as under:

- (1) that the reference made to the labour court could not in any case be withdrawn by the Punjab Government;
- (2) that Section 33B contemplated one order both for withdrawal of the case

from a labour court and for transfer of the same to another labour court, and such an order having never been passed, the disputes could not be said to have been legally withdrawn from the labour court under the provisions of the aforesaid section; and

(3) that under proviso to Section 10 of the Industrial Disputes Act, any matter specified in Schedule III could also be tried by the labour court provided it was not likely to affect more than one hundred workmen and there was nothing on the present record to show that items (2) and (3); of the dispute were likely to affect more than the aforesaid, number of workers.

3. The first two contentions have got a good deal of force, but in the present case the real point on which the decision of this case Hinges is whether the labour court, Rohtak had any jurisdiction to try the dispute referred to it. In their order, dated 2 July 1960, the Government stated that the dispute referred to the labour court really fell within the jurisdiction of the industrial tribunal, Punjab, and presumably the basis for this order were that items (2) and (3) of the dispute affected more than one hundred workmen. The petitioners in the present case have not pleaded that the labour court, Rohtak, had jurisdiction to try the case, or that items (2) and (3) of the dispute were to affect workers who were less than one hundred in number. In order to challenge the action of the Government successfully, it was necessary for the petitioners to have controverted the position taken by the Government and to have made definite allegations on the point that the labour court, Rohtak, had jurisdiction to try the reference. It, is conceded by Dr. Anand Prakash that items (2) and (3) of the dispute could be tried by the labour court only if the decision on the same would affect workers, less than one hundred in number. He could not, however, state at the Bar that this was the factual position. In these circumstances it cannot be held that the Government was in error in saying that the labour court at Rohtak had no jurisdiction to try the reference and the reference to the said Court in these circumstances must be held to be inoperative and as a thing non-existent in the eye of law. The position that emerges, from this is that the dispute had never been legally referred to the labour court and the Government was, therefore, at liberty to refer it to the industrial tribunal, Punjab. The petition, in these circumstances, has no merits at all and is accordingly dismissed with costs.