

(1972) 12 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Appeal No. 763 of 1972

Delhi Transport Corporation

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 15-12-1972

Acts Referred:

Citation : (1973) 27 FLR 363 : (1973) 1 ILR Delhi 838 : (1973) LabIC 1290 : (1973) 2 LLJ 307

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : S.N. Bhandari, O.K. Sharma and D.N. Vohra, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The award of the Labour Court (Respondent 2) on a reference u/s 10(1) of the Industrial Disputes Act, 1947 made by the Delhi Administration (Respondent No.1) directing the reinstatement of Sadhu Ram (Respondent No. 3) is under attack in this writ petition filed by the petitioner employer.

(2) Sadhu Ram was a probationer bus conductor whose services were terminated on 7-9-1967 in accordance with his contract of service and the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which continued to be in force under the Delhi Municipal Corporation Act, 1957 under which the employer could terminate his services without notice and without assigning any reasons. But on 23-4-1966 Sadhu Ram had lost 50 bus tickets. On 24-9-1966 he was served with a chargesheet. On 21-8-1967 he was informed that the inquiry against him would take place on 8-9-1967. No occasion for holding the inquiry arose, however, because of the above-mentioned termination of services.

(3) Sadhu Ram did not approach the Government directly for making any reference of any industrial dispute between him and the petitioner. During the conciliation proceedings held on 14-4-1969, the question whether he had made a

demand on the petitioner for his reinstatement was neither raised nor discussed nor decided. The following reference by the Delhi Administration was made on 17-11-1970 on the report of the Conciliation Officer u/s 12(5) of the Industrial Disputes Act, 1947-

" WHETHER the termination of services of Shri Sadhu Ram. Conductor, is illegal and/or unjustified and if so, what directions are necessary in this respect?"

(4) Shri R.P. Srivastava, General Secretary of the D.T.U. Employees Union representing Sadhu Ram impugned the order of termination of services before the Labour Court on the ground that it was mala fide and in colourable exercise of power because the employer did not hold any inquiry into the charges which had been communicated to the workman Sadhu Ram. The preliminary objection raised by the employer was that the workman had not raised any demand for reinstatement with the employer. The question of the employer rejecting the demand did not arise. As no industrial dispute existed or was apprehended and as no order as envisaged in section 10 of the Industrial Disputes Act, 1947 was passed, the reference by Respondent 1 to the Labour Court was not competent and deserved to be quashed. On merits, it was stated that the work and conduct of Sadhu Ram were reviewed during the period of his probation and he was discharged simplicities and not by way of punishment and without any stigma. In the rejoinder filed by Shri R.P.Srivastava, Secretary of the Union "it was stated that "the contention of the management that the workman did not raise the demand is baseless. The workman did raise the demand which the management was fully aware when the matter proceeded before the Conciliation officer that is why the management did not raise this objection there before the Conciliation Officer".

(5) Preliminary issues 2 and 3 framed by the Labour Court relating to the preliminary objection raised by the employer were as follows:-

"2.Whether Shri Sadhu Ram raised any valid demand with the - management? 3. Whether the reference is incompetent as alleged in paras 3 and 5 of the written statement?"

(6) The Labour Court found both the preliminary issues and also on the merits of the case; in favor of Sadhu Ram and by the impugned order dated 10th May 1972 ordered his reinstatement with full backwages arid benefits.

(7) The petitioner employer has challenged the award on the following grounds:-

1.A demand by the workman and its rejection by the employer were necessary to constitute an industrial dispute. As no demand and rejection took place prior to the Conciliation proceedings, and the reference, there was no industrial dispute which could be referred to the Labour Court and the reference was, Therefore, illegal and ultra vires; 2. The termination of Sadhu Ram's services was by way of discharge simpliciter. It was not mala fide and did not amount to punishment; 3. The Labour Court granted backwages to the workman mechanically without any

finding that the workman had remained unemployed; and 4. The conciliation and the reference were delayed inordinately and the Labour Court should have, Therefore, refused the relief of reinstatement to the workman.

(8) No counter-affidavits were filed on behalf of the Delhi Administration and the Labour Court. But Sadhu Ram defended the writ petition on the following grounds:-

1. The Labour Court has given a finding of fact that a demand was made by the Secretary of the Union on the petitioner Corporation and as it was not acceded to, an individual dispute was raised before the Conciliation Officer. The finding of fact cannot be assailed under Article 226 of the Constitution in a writ petition. 2. No assessment of work or conduct of the employee was either made by the employer or was brought before the Labour Court. The termination was, Therefore, colourable and mala fide. 3 and 4. The objections against reinstatement and backwages were not raised before the Labour Court and could not. Therefore, be raised in the writ petition.

(9) The first question is a preliminary issue of jurisdiction. The object of the Industrial Disputes Act, 1947 is to provide for "the investigation and settlement of industrial disputes". An industrial dispute as defined in section 2(k) of the Act exists or is apprehended before it could be considered by the Conciliation officer u/s 12 of the Act and then referred to the Labour Court by the appropriate Government u/s 12(5) read with section 10(1) of the Act. The concept of "industrial dispute" is that a demand is made by the workman and is rejected by the employer. It is this demand and rejection which constitutes a dispute between these two parties. In *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, , as construed by a Division Bench of this Court in *Fedders Lloyd Corporation Pvt. Ltd. Vs. Lt. Governor, Delhi and Others*, , it was held that an industrial dispute could not be said to exist unless and until a demand was made by the workman on the employer and it was rejected by the employer. If the workman does not make a demand on the employer but directly goes to the Conciliation Officer then, even if the demand is made before the Conciliation Officer and is not acceded to by the employer in the conciliation proceedings, it could not be said that an "industrial dispute" within the meaning of section 2(K) of the Industrial Disputes, Act, 1947 existed between the workman and the employer. Though the reference is made by the Government on a consideration of the report of the Conciliation Officer u/s 12(5) of the Industrial Disputes Act, 1947, the power of the Government to make the reference is derived from section 10(1) of the said Act which reads as follows:-

" WHERE the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may..refer the dispute,to a Labour Court for adjudication."

(10) The only basis of the jurisdiction of the Labour Court is the reference of the dispute made to it by the Government. If the Government does not make a

reference, the Labour Court does not get the jurisdiction to adjudicate on an industrial dispute u/s 7 of the Industrial Disputes Act, 1947. The subject-matter of the dispute may relate to any of the matters specified in the Second Schedule to the Act. These are within the exclusive jurisdiction of the Labour Court. But the factum and legality of the reference falls outside the subject-matter of the dispute and is, Therefore, not a matter which falls within the exclusive jurisdiction of the Labour Court. The question whether a demand was raised by the workman with the employer and was rejected by the employer is a jurisdictional fact being part of the definition of "industrial dispute" which must exist before the reference can be made by the Government. The challenge to the legality of the reference by the employer both before the Labour Court and in this Court is based on the ground that no industrial dispute existed within the meaning of section 2(k) of the Act.

(11) What is the scope of the power of the High Court under Articles 226-227 to question the formation of the opinion as to the fact of the existence of an "industrial dispute" by the Government u/s 10(1) and the finding of the Labour Court that such a dispute existed prior to the conciliation proceedings and the reference? Findings of fact may be impugned before this Court in different ways such as the following:-

(1)According to the well known classification made by Lord Esher, M.R., in *Queen v. Commissioners for Special Purposes of the Income Tax*, (1688) 21 Q.B.D.313 ,, there are two kinds of tribunals, namely:- (a) those which are not empowered to determine the conditions of their jurisdiction which must be satisfied independently before such tribunals can decide the subject-matters within their jurisdiction; and (b) those tribunals which have been given the power to decide not only the subjects and the merits of the matters within their jurisdiction but also the collateral condition on the satisfaction of which only the jurisdiction arises. The Labour Court is undoubtedly a tribunal of the first kind which does not have the exclusive jurisdiction to determine the factum and legality of the reference which is a collateral, jurisdictional matter. It is well settled that the decision of a quasi-judicial tribunal can be invalidated by showing that the collateral jurisdictional conditions were not satisfied and, Therefore, the tribunal did not get the jurisdiction to make any decision at all .(*Smt. Munni Devi and Another Vs. Gokal Chand and Others*, , *State of Madhya Pradesh v. D.K. Jadav*, Air 1968 S.C. 1186. and *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*,). It is quite immaterial whether the jurisdictional condition was of fact or of law. Findings regarding them whether of fact-or of law are equally .vulnerable in a writ petition under Articles 226-227 of the Constitution, A question of jurisdictional fact can, Therefore, decided by the; reviewing court in. its independent judgment without being fettered, by the finding of a tribunal of limited jurisdiction which ex hypothesis could not finally decide conditions of its jurisdiction.

(2)EVEN when a tribunal is given power to decide the preliminary or collateral

facts after compliance with which alone its jurisdiction arises, its finding on such jurisdictional facts is not conclusive unless such a finding is made conclusive by statute. (*Lilavati Bai v. State of Bombay* (1957) S.C.R. 720 . In other cases, such finding stands on the same footing as a finding of fact relating to the subject matter or the merits of the case entrusted to a tribunal or an administrative authority for decision. The distinction between quasi-judicial and administrative functions is not water-tight. Whenever an administrative authority acts in such a way as to adversely affect the civil rights of a person, the aggrieved person can challenge the legality of the administrative action under Article 226 of the Constitution. (*A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . The formation of the opinion as to the existence of an "industrial dispute" "by the Government u/s 10(1) of the Industrial Disputes Act, 1947 belongs to this category. The scope of judicial review of the formation of such opinion or subjective decisions or matters in discretion is being gradually widened by the courts to do justice as occasion requires. Initially in *State of Madras Vs. C.P. Sarathy and Another*, , the Supreme Court observed that the order of reference by the Government could not; be examined by the High Court under Article 226 of the Constitution if the Government had material before it to support the contention that the dispute existed or was apprehended... *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, , however, it was held. by the Supreme Court that in spite of the fact that the making of a reference by the Government is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved. party to show that what was referred was not an "industrial dispute" at all even though the factual existence of a dispute not be subject to such a challenge... Did the Supreme Court intend to exclude judicial review of facts, in testing the legality of a, reference u/s 10(1) of the Industrial Disputes Act, 1947? With great respect, it appears that no such rigid conclusion was reached by the Court in the above mentioned two decisions. In *C.P Sarathy's*, case, the contention of *Prabhat. Talkies* was that no dispute existed between them and their workmen-: and, Therefore, they should not have been included along with the Other cinema theatres the reference made by the Government to the Industrial Tribunal. This contention was negated by the Court on two grounds. Firstly, it was said that the Labour Commissioner's report showed that an industrial dispute existed between the management and the employees of the cinema theatres. Secondly, reference could be made even when a dispute was apprehended (though it may not be existing) and, therefore. Government had jurisdiction to make reference even in respect of the *Prabhat Talkies*. In the case before me, the question of a dispute being apprehended did not arise at all. Either the dispute existed or it did not. In *C.P. Sarathy's*, case, a dispute was apprehended and it was not, Therefore, necessary to decide if it existed. In *The Newspapers Ltd. v. State Industrial Tribunal*, the question was purely one of law, namely, whether the dispute between a single workman and the employer was an "industrial dispute". It would appear, Therefore, that neither of these two decisions finally establish that judicial review of the factual basis of the reference was precluded in all circumstances. The observations pointing in that direction

may, Therefore, be respectfully regarded as obiter.

(12) In *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, , the factual basis of the reference was directly in issue. The workmen had not made any demand on the employer for reinstatement. This fact appeared to the Supreme Court from the evidence before the Tribunal. It was, Therefore, held that the State Government was not competent to refer a question of reinstatement of the workmen for adjudication by the Tribunal. A mere demand to the Government without a dispute being raised with the employer cannot become an "industrial dispute". In *The Jaipur Udyog Ltd. Vs. The Cement Work Karmachari Sangh, Sahu Nagar*, , also the issue going to the root of the legality of the reference was one of fact, namely, whether the workman had raised a dispute with the employer that his age of superannuation should not be taken to be 55 years as per the standing orders but should be taken to be 58 years inasmuch as the age limit for superannuation had been raised in a sister-concern of the same employer to 58 years. It was found as a fact that such a demand had not been raised by the workman who had, on the other hand, contended before the employer that according to his true age he had not reached the age of 55 years and, Therefore, he was not due for superannuation.

(13) The reference to the tribunal as to whether the age of superannuation should be 55 or 58 years was, Therefore, held to be illegal and the decision in *Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal*[^]) was followed. Again in *Chhotobhai Jethabhai Patel and Co. Vs. The Industrial Court, Maharashtra Nagpur Bench, Nagpur and Others*, , under the provisions of the Bombay Industrial Relations Act 1947 two pre-conditions were necessary (as also under the Industrial Disputes Act, 1947 in the present case) before reference could be made to the Labour Court for adjudication. Firstly, the employee had to approach the employer with a request for the change and no agreement should have been arrived at in respect of the requested change between the employee and the employer. This was equivalent to the demand and its rejection which was a condition-precedent under the Industrial Disputes Act, 1947 before a reference could be made. Secondly, resort to conciliation proceedings also had to be taken before a reference could be made. This is also necessary in case of a public utility under the Industrial Disputes Act, 1947. As these two preliminary steps had not been taken, the reference was held to be illegal in *Chhotobhai Jethabhai Patel & Co.*, These three decisions of the Supreme Court, Therefore, establish beyond doubt that the legality of a reference can be impugned by disproving its factual basis. Such factual basis may either consist in a component of the definition of an "industrial dispute" as in *Sindhu Resettlement Corporation Ltd.* and *Jaipur Udyog Ltd.* or that combined with the failure to take some other necessary preliminary step as in the case of *Chhotobhai Jethabhai Patel & Co.*

(14) It is true that the question as to whether an industrial dispute exists or not is primarily a matter of opinion of the Government. Such opinion may be

subjective to a large extent. Nevertheless, a judicial review of the formation of such opinion cannot be altogether excluded. It will be recalled that the decision of the majority of the House of Lords in *Liversidge v. Anderson*, (1942) A.C.205, in favor of such subjective opinion being unreviewable was justified mainly by the abnormal conditions of the Second World War in which the security of Britain was threatened. But the consensus of judicial opinion was adverse to the decision. In *Nakkuda Ali v. Jayaratne*, (1951) A.C. 66, Lord Radcliffe took an early opportunity to observe as follows:-

" INDEED, it would be a very unfortunate thing if the decision of *Liversidge*'s case came to be regarded as laying down any general rule as to the construction of such phrases..... After all, words such as these are commonly found when a legislature or law-making authority confers powers on a minister or official. However read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. But if the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power; the value of the intended restraint is in effect nothing. Their lordships Therefore treat the words in regulation 62, "'where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to 'continue as a dealer' as imposing a condition that the must in fact exist such reasonable grounds, known to the Controller, before he can validly exercise the power of cancellation".

(15) The existence of an industrial dispute is, Therefore," a condition limiting the exercise of an otherwise arbitrary power" of making a reference u/s 10(1) of the Industrial Disputes Act, 1947. It must exist as a fact before the reference can be made.

(16) Subsequently, the Supreme Court has held- in a series of decisions that even the exercise of discretion based on subjective satisfaction is not entirely beyond judicial review. The material on which such discretion is exercised must exist. If it does not, then the discretion would be held to be unlawfully exercised. Of course, the sufficiency or the adequacy of the material and the propriety or otherwise of the formation of the opinion is not to be considered by the courts. But the material must be shown to exist. Otherwise, the courts would be entitled to quash such baseless discretionary action. (*The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , *Rohtas Industries Vs. S.D. Agarwal and Others*, , and *Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another*, .

(17) In the light of the law slated above, the employer in the present case was justified in challenging the legality of the reference before the Labour Court on the ground that Sadhu Ram had not raised any demand with the employer and the same had not been rejected by the employer before Sadhu Ram went to the Conciliation Officer; The question is whether the employer has succeeded in making good his contention. It is again urged, by Shri D.N.Vohra, learned counsel for Sadhu Ram, that the findings of fact recorded by the Labour Court on

the. preliminary issues Nos. 2 and 3 in this respect are conclusive and cannot be challenged before this Court in a writ petition., I am unable to accept this contention of the learned counsel. The reason is that these two preliminary issues do not relate to matters which are within the subject-matter of the reference made to the Labour Court. On the other hand, they relate to preliminary or collateral conditions to be satisfied before the reference could be made. Just as the formation of opinion by the Government under-section 10(1) as to the existence of the industrial dispute is not unreviewable, a fortiori, the finding of the Labour Court that such industrial dispute existed, though one of fact, is one of jurisdictional fact and is, Therefore, reviewable. There is a difference between the scope of the judicial review of a jurisdictional finding of fact and a finding of fact on the merits of the case. While the former is fully reviewable, the review of the latter is a restricted one. Even in regard to the finding of fact on the merits of the case by a quasi-judicial tribunal. the scope of judicial review has shown a constant tendency to widen. Originally a finding of fact on the merits of the case was thought to be not reviewable at all. A classic expression of this view was by Lord Sumner in *The King v. Nat Bell Liquors Ltd.* (1922)2 A.C.128. The only evidence of the fact of sale by the respondents in that case was that of an agent provocateur of the police which, it was argued. could not be relied upon. Could the decision of the inferior court be quashed as ultra virus because it had no proper evidence before it ? In rejecting the contention that "want of evidence" is the same as "want of jurisdiction", Lord Sumner said:-

" TO say that there is no jurisdiction to convict without evidence is the same thing as saying that there is jurisdiction if the decision is right, and none if it is wrong".

(18) The view that a finding of fact by an inferior tribunal or authority cannot be reviewed even though it may be erroneous was also expressed by our Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . In *Union of India (UOI) Vs. H.C. Goel*, , the test of reviewing such a finding of fact was laid down in the following words :-

"If the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence the impugned conclusion follows or not".

(19) In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , also the majority held that even if the tribunal had, failed to consider material evidence but there was evidence to support its finding, then it could not be said that the finding of fact was based on no evidence at all.

(20) But as pointed out by Professor H. W. R. Wade in his "Administrative Law", 3rd Edn" page 100, "no evidence" does not necessarily mean a complete absence of evidence. The question is whether the evidence, taken as a whole, is

reasonably capable of supporting the finding". This test is based on the decision in *Allinson v. General Council of Medical Education and Registration*, 1894-1 Q.B. 750 at 761,. The same wider view of judicial review is noticeable in the opinion of our Supreme Court in *State of Andhra Pradesh Vs. Sree Rama Rao*, where it was observed --

" WHERE there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere wherethe conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds".

(21) In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, , also the Supreme Court adopted this wider view of the reviewability of the findings of fact. To quote head-note (b) :-

" WHERE the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion, interference under Article 226 would be justified."

(22) Commenting on the present position of law Professor S. A. de Smith in his "*Judicial Review of Administrative Action*", 2nd Edn" pages 120-121, observes as follows :-

"If the drawing of an inference or the application of a statutory term is held or assumed to be a matter of fact (or fact and degree) for the "tribunal" of first instance, a court may still hold that the decision is erroneous in point of law if any of the defects listed in paragraph (5) is present or if the inference or conclusion is one that no reasonable body of persons could arrive at (as where the evidence and primary facts point unmistakably to a contrary conclusion). If the formulation is slightly changed, and it is said that an error of law exists whenever the conclusion is one to which the competent authority cannot reasonably come on the evidence adduced, the scope of judicial review is significantly extended; there can be a wide difference between power to set aside unreasonable decisions and power to set aside only those decisions which no reasonable person could make. The adoption of the narrower test by the Divisional Court in relation to the concept of "material change of use" in enforcement notice appeals has aroused some criticism. Certainly it is open to the courts to expand the scope of review for errors of law by adopting the broader test".

(23) The last stage would, of course, be the American law of judicial review in which a finding of fact by an administrative tribunal is reviewed on substantial evidence on the record. That stage is hardly distinguishable from the way an appellate power (as distinguished from judicial review) is exercised. But neither the English nor the Indian decisions have gone so far and are, Therefore, clearly distinguishable in this respect from the American decisions.

(24) It would appear, Therefore, that even when findings of fact on the merits of the case are under review, the mechanical test of assuming of evidence to be true breaks down. For, a finding of fact does not become worthy of being left undisturbed merely because it is supported by the quantum of evidence which is obviously false or unreliable. The modern test, Therefore, is that a finding of fact even on the merits is reviewable if it is either baseless, i.e., not supported by any evidence at all, or is perverse, i.e., is such as no reasonable person would arrive at. In *State of Assam v. Mohan Chandra Kalita* (Civil Appeal 1620 of 1967 decided on 8-8-1972), the question before the Supreme Court was whether an official of the State Government had collected money for his travel expenses. The charge against him in a departmental inquiry was that "he himself" collected it. Even though one witness actually stated that the said official had asked people to pay money this solitary witness was disbelieved because the rest of the evidence on record showed that the concerned official himself did not ask for money and did not ask others to collect it for him though some others of their own collected such money. The finding of guilty by the Inquiry Officer was, Therefore, quashed.

(25) To sum up, in reviewing a jurisdictional fact the Court can arrive at an independent conclusion. In reviewing a fact within the jurisdiction of a quasi-judicial tribunal the Court cannot arrive at an independent conclusion as to it but has only to see whether it is either baseless or perverse. If it is neither, then it cannot be reviewed. The findings of the Labour Court in the present case on preliminary issues. Nos. 2 and 3 are of jurisdictional facts. They are, Therefore, fully open to review. But even if they were findings of fact relating to some subject-matter within the jurisdiction of the Labour Court. they would appear to be so perverse that no reasonable person could arrive at them. The following analysis of the circumstances, the pleadings and the evidence on record would show that these findings would have to be quashed not only by the application of the first test, namely, relating to jurisdictional fact, but also of the second test, namely, relating to findings of fact within jurisdiction.

(26) The circumstances relating to the making of the demand by the workman with his employer are as follows :-

(1) Services of the workman were terminated on 7-9-1967. ..He apparently did not regard his termination as illegal. For, he took no steps against it till the conciliation proceedings on 14-4-1969. (2) In the conciliation proceedings, the workman did not say that he had asked the employer to reinstate him and that the employer had refused to do so. It would have been very natural for a

workman to make such a complaint to the Conciliation Officer if the workman had really demanded reinstatement with his employer. His inaction from 7-9-1967 to 14-4-1969 and the failure to make a complaint in the conciliation proceedings that the employer had refused to take him back are circumstances tending to show that no demand had been raised by the workman with the employer. (3) It is true that the employer also did not take up the point before the Conciliation Officer that no demand had been raised by the workman against the employer prior to the conciliation. The failure of the employer to urge this point would, however, only show that whoever appeared for the employer was not keenly aware of the law as was recently propounded in *Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal* by the Supreme Court. (4) In the statement of claim filed before the Labour Court also the workman did not state that he had raised any dispute with the employer before the conciliation and the reference. It was only when the employer raised a preliminary objection to the maintainability of the reference before the Labour Court on this ground that a perfunctory statement in the rejoinder was made by the workman. Both the statement of claim and the rejoinder were filed for the workman by Shri R. P. Srivastava, Secretary of the Union. In the rejoinder Shri Srivastava stated that "the workman did raise the demand which the management was fully aware when the matter proceeded before the Conciliation Officer, that is why the management did not raise this objection there before the Conciliation Officer". The assertion that the demand was raised was thus a very belated one. It was an afterthought which was provoked only by the objection made by the employer. (5) Even after preliminary issues Nos. 2 and 3 were framed, the Labour Court examined Shri R. P. Shrivastava Secretary of the Union as the sole witness for Sadhu Ram on 17-9-1971. In his examination-in-Chief, Shri Srivastava did not say a word about the workman or the Union having raised any demand with the employer. He was, however, asked by the representative of the employer in his cross-examination whether demand had been raised. He then said that he wrote to the management in 1968 but admitted that he did not bring a copy of the letter written to the management. He at first said that he sent the letter by hand but then said that he himself delivered it. He said that the matter was discussed with the General Manager Sardar Rajender Singh in February 1969. His evidence was falsified by the evidence of the representative of the management that Sardar Rajender Singh joined as a General Manager in June 1969 and that no demand was ever received from Sadhu Ram or his Union by the employer. On this evidence it was obvious that no demand was proved to have been made either by the workman or the Union with the employer. The evidence of both the workman and the management was closed and the case was fixed for argument on 22-10-1971. On that date, the workman filed three documents. The management objected. The Labour Court, however, allowed the documents to be filed and took additional evidence of both the parties on 26-11-1971. Shri R. P. Srivastava was again examined for the Union which acted on behalf of the workman. At that time he said that Exhibit W-5 was a copy of the demand notice sent to the General Manager (Transport) and said that he had himself delivered it

in the General Manager's receipt section to a person working there whose name he did not remember but that office stamp on it was initialled by the clerk concerned. The date bore by Exhibit W-5 is 3-1-1969. This is contrary to what Shri Srivastava had stated in his cross-examination on 17-9-1971 that he wrote to the management in 1968. It is only because, he then stated that he met the General Manager in February 1969 that Exhibit W-5 seems to be dated 3-1-1969. But February 1969 was the date given by Shri Srivastava of his meeting with Sardar Rajender Singh. It was not the date of his writing to the management about the reinstatement of Sadhu Ram. (6) The pleading in the rejoinder was that the demand was raised by the workman but the evidence given by Shri Srivastava is that Shri Srivastava] himself wrote the letter of demand and himself delivered it to the clerk concerned in the receipt section of the General Manager. The evidence is thus contrary to the pleading. Shri D. N. Vohra, learned counsel for the workman, relies on *Tandur & Navandgi Stone Quarries (P) Ltd. v. Their Workmen*, 1968 F.L.R. 277 for the proposition that pleadings before the Industrial Tribunal are not to be strictly construed. The question in that case was whether evidence of matters all of which had not been specifically pleaded should be disbelieved for want of pleading. The lack of pleading in that case was not serious. But in the present case, the evidence is directly contrary to the pleading. The rejoinder as well as the statement of claim was filed by the Secretary of the Union. If the Secretary had himself made the demand for the workman it was easy for him to say so as the rejoinder was also made by him. But at the stage of the rejoinder, the Secretary of the Union chose to say that it was the workman who had raised the demand. At the stage of the evidence he said that he himself made the demand. His own evidence given on 17-9-1971 is contrary to his evidence given on 26-11-1971. (7) Even his evidence of 26-11-1971 purporting to prove the copy of the demand was completely rebutted by the evidence of Shri M.S. Yadav, Management witness No. 3 Yadav worked as a diarist in the General Manager's section from 1965 to 1970. He received letters in the said section. Thereafter the letters were entered in the diary. Exhibit W-5 did not bear his initials. Nor did it bear the initials of Sat Pal who was the other clerk working with him. Nor did it bear the initials of the Secretary to the General Manager. Yadav brought the dispatch registers. Exhibit W-5 was not entered in the dispatch register. Shri Vohra argued that Yadav had not brought the receipt register but the dispatch register. The learned counsel for the employer had arranged to bring these registers to the Court. He pointed out that the same register had the receipt and the dispatch columns. A letter was diarised when it was received and it was sent to the officer concerned mentioned in the same register in the dispatch column. It is thus both a receipt and desptach register. It cannot be that Yadav had not produced a register in which letters received were diarised but had produced some register in which letters sent from the General Manager's section to third persons were only diarised. The letter would have been of no relevance in the Labour Court. Nobody could be so foolish as to bring some register with which the Labour Court was not concerned at all. I, Therefore, accept the argument of the counsel for the employer that what Yadav had

produced were the dispatch and receipt registers .The fact that the so-called demand letter was not diarised in the said registers shows that no such demand notice was ever received by the receipt section of the General Manager's office at all. (8) Yadav said in his cross-examination that Prakash Lal was the Stenographer to the General Manager and Yadav did not recognise his initials. He also said that the letters given direct to the General Manager were not entered in these registers. He also said that peons also could receive letters and that the stamp seal remains in his custody. But in his absence it could be used by the peons and that the peons also initial after putting the stamp and that the stamp on Exhibit W-5 was of the General Manager's Section.

(27) The finding of the Labour Court on this evidence is that Yadav had conceded that peons also receive letters in the General Manager's section and they also initial the stamp. The Labour Court found as follows :-

" IN view of this admission I accept Shri Srivastava's testimony as worthy of trust and hold that the demand notice Exhibit W-5 was duly given by the Union whose member the workman concerned was."

(28) The words "in view of this admission" refer to the admission of Yadav that peons also receive letters and initial the stamp. The Labour Court, Therefore, apparently held that the demand notice was received by the peon who initialled the same. But Shri Srivastava never said that he had ever delivered the demand notice to the peon. On the contrary, he had said that he had delivered it to the "clerk concerned". The words "clerk concerned" mean the receipt clerk in the General Manager's section. It, Therefore, refers either to Yadav or his colleague. But Yadav has stated in his evidence that neither he nor his colleague had initialled Exhibit W-5. Shri Vohra then argued that it could have been initialled by Prakash Lal, the Stenographer of the General Manager. But Prakash Lal could not be described as the clerk concerned. He was not the receipt clerk in the General Manager's section. Therefore, the finding of the Labour Court is completely baseless. It is not supported by any evidence in as much as there is absolutely no evidence to show that the demand notice was delivered to a peon and that the peon had initialled it. The evidence is that it was delivered to the clerk concerned but the clerk concerned has denied its receipt. He has also produced the receipt and dispatch registers to show that it was not received and entered in those registers. The employer could not do anything more than to show that the demand notice had not been received. From the beginning till very late the Union and the workman never stated anything about the demand having been made on the employer. The Union had to make an averment of the demand only as an afterthought in answer to the employer's objection before the Labour Court. Even then the pleading was that the demand was made by the workman while the evidence was that it was made by the Union. The evidence of Shri Srivastava given on 17-9-1971 is contrary to his own evidence given on 26-11-1971. Even the latter is falsified by the evidence of Yadav and the registers .Shri Srivastava has shown no regard for truth in giving the evidence. He said that he personally

met Shri Rajender Singh General Manager in February 1969 when Shri Rajender Singh never assumed that office till in June 1969. It would appear that the workman and the Union were not aware of the requirement emphasised by the Supreme Court in the Sindhu Resettlement Corporation's case for the first time that a demand had to be raised on the employer before conciliation and reference. They did not, Therefore, raise a demand at all. It is only because of the objection taken by the employer before the Labour Court that the Union had to invent the story of the demand having been made. This invention was in a crude stage when it was asserted in the rejoinder that the workman had raised the demand. This could not be proved when the evidence was first recorded on 17-9-1971 and the claim of the Union acting for the workman was in danger of being dismissed by the Labour Court. The Union, was, Therefore, apparently forced to fabricate the document Exhibit W-5. The stamp seal is not kept in close custody. It could, Therefore, be obtained on Exhibit W-5 and some illegible initials could be made on it. This was why Shri Srivastava could not say to whom the document was delivered. To any person of common sense or to any reasonable person it should have been plain from the above that the document Exhibit W-5 was not genuine. It was brought into existence after the evidence of the parties had been closed and it is only because the Labour Court reopened the case that it could be proved to bolster up the tottering case of the Union acting for the workman. It was most surprising that the case should have been reopened by the Labour Court without giving any reasons whatever and the Union should not have been asked for any Explanation as to the delay in producing Exhibit W-5. The Labour Court should have regarded the document as suspicious and should have insisted on it being proved to be genuine. It should have held that it was clearly fabricated so late in the day just for the filling up of the grave lacuna in the case. In shutting its eye to such grave defects, the Labour Court must be said to have acted as no reasonable person could have done. It must be said. Therefore, that there was no evidence to support the Labour Court's finding. At any rate, the finding was so perverse that no reasonable person could arrive at it. The finding being of a jurisdictional fact, this Court would have been entitled to quash it in its own independent judgment even though it may not have been baseless or perverse.

(29) As no demand was made by Sadhu Ram on the employer prior to conciliation and the reference, the impugned order of reference by the Government was not based on the relevant material at all. The reference was, Therefore, incompetent. Consequently the Labour Court acted coram non judis and all the proceedings before the Labour Court were without jurisdiction.

(30) It is to be noted that the requirement for making a reference was that the Government should have been satisfied that an industrial dispute existed. It is clear that the Government was not so satisfied. Because it was not brought to the notice of the Government either by the Conciliation Officer's report or otherwise that the demand and its rejection had taken place before the conciliation. The Labour Court has not found that the demand and its rejection

had become known to the Government. Therefore, an independent finding by the Labour Court of such a demand is irrelevant. It does not amount to saying that the demand had been brought to the notice of the Government which was the requirement for making a reference.

(31) In view of the above finding that the reference itself was illegal and the Labour Court had no jurisdiction to entertain it, it would not be proper to consider the other three contentions of the petitioner which relate to the merits of the decision given by the Labour Court.

(32) The reference made by the Delhi Administration on 17th November 1970 as well as the award of the Labour Court given on 10th May, 1972 are both quashed as being without jurisdiction. The writ petition is allowed in the above terms but in the circumstances without any order as to costs.