

(2004) 08 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No. 904 of 2003 (MS)

Ester India Employees Union

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2005) 1 LLJ 356 : (2004) 2 UD 318

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : S.N. Babulkar, for the Appellant; R.K. Rajada and C.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard the learned counsel for the parties at length. By the present writ petition the petitioner has prayed for setting aside of the order dated September 11, 2003. Further prayer was made directing the respondent No. 1 to decide the impugned reference on merit.

2. Brief facts giving rise to the present writ petition are that Ester Industries Ltd. is a company registered under the Companies Act, having its registered office at Khatima, District Udham Singh Nagar and Head Office at 75-76, Amrit Nagar. The controversy in the present writ petition is as to whether the Industrial Tribunal has power to look into the validity of reference made by the State Government as well as scope of Section 4-K read with Schedule I of U.P. Industrial Disputes Act, 1947.

3. The counsel for the petitioner has submitted that the claim of the workmen for payment of arrears of bonus became due for the period 2000-01 at the rate of 20%. The bonus claimed by the workmen was withheld by the management on the ground that the company is under loss. A notice dated November 24, 2001 for going on strike was given by the petitioner to the management stating

therein that if the management fails to resolve the demand of the workers, the workers would go on strike from December 10, 2001 as on December 19, 2001 the management has suspended nine workers and thirteen workers on January 9, 2002.

4. The Government vide order dated March 11, 2002 referred two references to the Presiding Officer, Industrial Tribunal, Uttaranchal Haldwani. One of the questions was with regard to the validity of the suspension of 28 workers and another question was about the entitlement of workers for bonus for the year 2000-01. The aforesaid references were registered as Case No. 189/2002,

5. It appears that management thereafter initiated ex parte proceedings and charge-sheet were supplied to the workmen. After conducting inquiry the management passed order for dismissal of as many as 28 workers. Before the Tribunal following disputes were referred:

" Vernacular matter omitted."

6. The Tribunal has replied the aforesaid four questions by observing that suspension being not a punishment, the same is not covered under the definition of Industrial Dispute and as such the Tribunal has no jurisdiction to adjudicate the dispute. The counsel for the petitioner has submitted that the Tribunal has no jurisdiction to adjudicate whether the dispute is liable to be referred or not and if the dispute has been referred to the Tribunal, the Tribunal is bound to decide the same.

7. The controversy is fully covered by the judgment of the Apex Court in J. K. Synthetics v. Rajasthan Trade Union Kendra AIR 2001 SC 531 : 2001 (2) SCC 87 : the Apex Court has observed as under at p. 565 of LLJ:

"23. This Court in the case of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, : has held that if the Industrial Tribunal had to decide whether strike was justified, it would have to examine the question whether or not the dispute referred to it was an Industrial dispute. This Court held that the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the Company is a closure or a lock-out. It was observed as follows:

It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement, the Industrial Tribunal will have to examine as a preliminary issue the question as to whether, the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as whether the action taken by the appellant is a closure or a lockout. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merit of the dispute or not."

Further in I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others, : has held as under:

"12. Ordinarily and generally in a large number of cases, a reference is made when the Government finds that an industrial dispute exists. There are cases where a dispute is only apprehended or even there may be somewhere some disputes exist and some are apprehended. To keep an order or reference free from the pale of attack on such a ground the Government will be well advised to specify one or the other in their order of reference"

8. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, : the Apex Court after relying on the case of *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, : held as under:

"8. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the industrial dispute, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it, if there is no industrial dispute in existence or apprehended appropriate Government lacks power to make any reference."

9. The Tribunal has recorded a finding that mere suspension order cannot be treated to be the industrial dispute. The Tribunal has relied upon the judgment of Apex Court report in *State of Orissa Vs. Bimal Kumar Mohanty*, : where it has been held by the Apex Court as under:

"13. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him....."

10. The findings recorded by the Tribunal that the suspension order passed against the petitioner cannot be treated to be an industrial dispute, so as to refer the same to the Industrial Tribunal.

11. In *Mukand Ltd. Vs. Mukand Staff and Officers' Association*, the Apex Court while deciding the matter with regard to jurisdiction of the Industrial Tribunal has held that the Tribunal cannot decide disputes relating to non-workmen. It has been held that High Court can interfere only in a writ of certiorari when a Court has acted without or in excess of jurisdiction and mere wrong decision cannot be corrected by a writ of certiorari. In the case of *Mukand Ltd. (supra)*, the Apex Court has referred the case of *Parry and Co. Ltd. Vs. P.C. Pal and Others*, : It has been held by the Apex Court as under :

"11. The grounds on which interference by the High Court is available in such writ petitions have by now been well established. In *T.C. Basappa Vs. T. Nagappa and Another*, it was observed that a writ of certiorari is generally granted when a Court has acted without or in excess of its jurisdiction. It is available in those cases where a Tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural

justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or excess of jurisdiction, when shown can be corrected....."

12. In view of the aforesaid proposition of law, I find no infirmity in the findings of the Tribunal. The findings being cogent and well reasoned, I find no merit in the writ petition. The writ petition is dismissed. No order as to costs.