
(1984) 01 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 5 of 1976 (R)

G.L.N. Shastri

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1987) 35 BLJR 122

Hon'ble Judges : S.K. Choudhuri, J;Abhiram Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Choudhuri and Abhiram Singh, JJ.—By this writ application filed under Articles 226 and 227 of the Constitution of India the petitioner prays for quashing of the award passed by the Labour Court, Bokaro Steel City, Dhanbad (Respondent No. 2) in Reference Case No. 1 of 1975, a copy of which is Annexure 11 to this application.

2. It appears that by Government Notification No. III/D1-1807/74 L and E-780 dated the 26th February, 1975, the following dispute was referred to the Industrial Court for decision:

Whether the dismissal of Sri G.L.N. Shastri Stenographer by the management Kumardhubi Engineering Works Limited is justified. If not, whether he is entitled to reinstatement and/or any other relief?

3. A primary objection was raised by the Management of the Kumardhubi Engineering Works Limited (Respondent No. 3), by which the jurisdiction and competency of the present reference by the State Government was challenged. Accordingly this primary point was heard and has been decided under the impugned annexure against the workman who is the petitioner before this Court. It has been held that the reference was made without any dispute being raised by the employee with the employer, and so it was incompetent. It has also held

that there was extraordinary delay of more than two years in raising the dispute.

4. learned Counsel Mr. T. K. Das appearing on behalf of the petitioner has challenged the impugned order (Annexure-11) by contending that when a reference has been made u/s 10 of the Industrial Disputes Act (hereinafter referred to as "the Act") to the Labour Court, it could not go into the question as to whether there was a dispute raised by the workman with the management and that the reference was incompetent on that account. He argued that it is an administrative act and the reference having been made u/s 10 of the Act, the same cannot be challenged before the labour court alleging that such a reference is incompetent.

5. In order to appreciate the point, it will be necessary to state here the relevant facts of the case. It appears that the petitioner was the confirmed stenographer under respondent No. 3, and his services were terminated by the letter dated 9th of December, 1970, as he was declared to be medically unfit. The petitioner accepted the said termination order and did not raise any dispute. It is the admitted position that the petitioner thereafter opened an institute known as "Shastri's Commercial Institute" at Kumar-dhubi Bazar, for imparting training to persons in shorthand and typewriting. It is for that reason that the Company also disposed of some of the typewriters to the petitioner. It further appears that in spite of the aforesaid termination of the petitioners' services, he did not vacate the Company's quarters, and, accordingly, by letter dated 4th July, 1973, the petitioner was asked to vacate the Company's quarters within seven days of the receipt of that letter. A reply to that letter was sent by the petitioner which is dated 10th July, 1973 (Annexure-6) and for the first time the petitioner stated in that letter that the termination of the services of the petitioner was unconstitutional, unjustified and unfair. Thereafter the matter went to the Conciliation Officer on the failure of the conciliation proceeding, the dispute was referred to the Labour Court for adjudication. It is in these set of circumstances and facts that this Court is to decide the question raised by the learned Counsel on behalf of the petitioner as to whether he was correct in his submissions.

6. Some Supreme Court decisions were referred to us by the learned Counsel for the petitioner. The controversy in law appears to have been settled by several decisions of the Supreme Court. A reference of some of which, as were referred to at the time of arguments, will be discussed here. The case of The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, will be discussed in the first instance. Here the workman was respondent No. 3, who was originally an employee of the appellant and willingly joined the subsidiary Company of the appellant. He was appointed in the subsidiary Company afresh on probation and thereafter he was confirmed. The services of respondent No. 3 was terminated after payment of retrenchment compensation. After that respondent No. 3 also claimed retrenchment compensation from the principal Company which was the appellant before the Supreme Court. The said principal Company refused to allow respondent No. 3 to join there. Thereafter

respondent No. 3 demanded retrenchment compensation from the appellant Company also which was refused. Respondent No. 2, the Union, then wrote a letter to the Management of the appellant-Company asking for payment of the retrenchment compensation to respondent No. 3. There was some conciliation proceeding and after the report was submitted by the Conciliation officer, the State of Gujarat, referred the following dispute to the Industrial Tribunal;

Demand 1: R.S. Ambwaney should be reinstated to the service of Sindhu Resettlement Corporation Ltd., and he should be paid his wages from 21 February, 1958.

7. It has been held in that case as follows:-

....It was urged by Sri Gopalakrishnan on behalf of the respondents that this Court cannot examine whether the Government, informing its opinion that an industrial dispute exists, came to its view correctly or incorrectly on the material before it. This proposition is, no doubt, correct; but the aspect that is being examined is entirely different. It may be that the conciliation officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No. 3 and payment of wages to him from 21 February, 1958, but, when the dispute came up for adjudication before the tribunal, the evidence produced clearly showed that no such dispute had ever been raised by either respondent with the management of the appellant. If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and their employer. An industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen and workmen and workmen- A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute. Consequently, the material before the tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State Government to the tribunal, had ever existed between the appellant-Corporation and the respondents and the State Government, in making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion. The Government had to come to an opinion that an industrial dispute did exist and that opinion could only be formed on the basis that there was a dispute between the appellant and the respondents relating to reinstatement. Such material could not possibly exist when, as early as March and July, 1958, respondents 3 and 2, respectively, had confined their demands to the management to retrenchment compensation only and did not make any demand for reinstatement. On these facts, it is clear that the reference made by the Government was not competent. The only reference that the Government could have made had to be related to payment of retrenchment compensation which was the only subject-matter of dispute between the appellant and the respondents.

8. The next case cited was in Shambu Nath Goyal Vs. Bank of Baroda, . It appears on a careful reading of this decision that it does not help the petitioner

to support his contention. In this case charge-sheet was submitted against the workman. There was an enquiry held before the enquiring officer. The workman appeared and claimed reinstatement. After enquiry he was dismissed from service. The workman preferred an appeal to an appellate forum challenging the order of dismissal and claimed reinstatement in service. Under these circumstances, it has been held that there was a demand for reinstatement raised by the workman with the employer and, therefore, it was held that the reference was a valid one and will not be challenged on the ground that there was no demand, either oral or written anywhere made by the concern, d workman before approaching the conciliation officer, and, therefore, there was no dispute in existence on the date of the reference. While discussing the relevant law on this issue, this decision has laid down as follows:

....However, it would be open to the party impugning the reference that there was no material before the Government, and it would be open to the Tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the Government.

9. Another decision which was referred to if the case of State of Madras Vs. C.P. Sarathy and Another, . It is a case of apprehended dispute and suffice it to say that it does not lay down anything contrary to what has been discussed above in the two Supreme Court decisions.

10. Now coming to the facts of the instant case, it has already been pointed out that the services of the petitioner was terminated in the year, 1970 and he never raised any dispute. It appears that only when the management gave to the petitioner on 4th July, 1973, that the petitioner in reply thereto raised a controversy that his termination was unconstitutional, unjustified and unfair. The petitioner having acceded to the termination order dated 9-12-1970, and not having raised any dispute which could have been raised then with the management, that the termination of the petitioner was unconstitutional, there could not have been a reference u/s 10 of the Act after a long lapse of time, and that also on the basis of the reply to the notices of the management dated 4-7-1973. Therefore, in the present set of facts, it cannot be said that there existed an industrial dispute on the date when the reference was made by the State Government, or even when the matter was before the Consolidation Officer. The matter rested finally when the termination order dated 9-12-1970 was accepted by the petitioner and he was also shown favour when some typewriting machines etc, were disposed of in his favour by the management enabling him to open and run his commercial Institute for imparting training in shorthand and typewriting. In the circumstances, it has to be held that the present case is governed by the decision laid down by the Supreme Court in the case of Sindhu Resettlement Corporation Ltd. (supra).

11. In the circumstances and in view of the discussions made above, it has to be held that the reference made by the State Government was illegal and without

jurisdiction, as no industrial dispute existed then.

12. In the result that is no merit in this application. It is accordingly dismissed. As there is no appearance on behalf of the respondents, there shall be no order as to costs.