
(2003) 05 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 150 of 1994 in C.W.P. No. 8125 of 1992

Gurbhej Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2004) 1 LLJ 16 : (2003) 135 PLR 188

Hon'ble Judges : N.K. Sud, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : B.R. Mahajan, for the Appellant; Ashok Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In this appeal, the appellant has challenged the order of the learned Single Judge vide which he allowed Civil Writ Petition No. 8125 of 1992 filed by respondent No. 1 and quashed award dated 30.5.1991 (Annexure P17) passed by Presiding Officer, Labour Court, Amritsar (respondent No. 2).

2. The appellant was engaged as Beldar in the Public Works Department of the Government of Punjab in June, 1981 on monthly wages of Rs. 405/-. His service was terminated with effect from 1.6.1982. He raised a dispute questioning the termination of his service on the ground that he had not been given one month's notice or pay in lieu thereof and retrenchment compensation. The Government of Punjab referred the dispute to Labour Court, Amritsar vide notification dated 7.9.1982. The same was registered as Reference No. 322 of 1982. During the pendency of the reference, the representative of the appellant made a statement on 11.10.1984 that as per the judgment of the Superior Courts "Public Works Department" is not an industry and, therefore, the workman does not want to pursue the reference and he would seek remedy in the proper forum. This statement appears to have been made because in State of Punjab v. Kuldip Singh. ILR (1982) P&H 544, this Court had held that Public Works Department does not fall within the definition of industry u/s 2(J) of the Industrial Disputes

Act, 1947 (for short, "the Act"). However, instead of rejecting the reference as not pressed, respondent No. 2 dismissed the same for non-prosecution and passed award dated 11.10.1984. the relevant extracts of which are reproduced below:-

"1. The Punjab Government through Labour Commissioner. Punjab and vide its notification No. ID/4/4360-B-82/65740-42, dated 7th September, 1982, has referred the following industrial dispute to this Court for adjudication u/s 10(1) (c) of the Industrial Disputes Act, 1947:-

Whether termination of the services of Shri Gurbhej Singh workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?

2. Today, the representative of the workman has made a statement that the respondent is not an Industry as per the judgment of the Superior Courts and the workman does not pursue this reference and would seek his remedy in the proper forum. Hence the reference is dismissed for non-prosecution."

3. After some time, the appellant again raised the dispute because in Des Raj and Ors Vs. State of Punjab and Ors, the Hon"ble Supreme Court and in Kesar Chand v. State of Punjab (1988)94 P.L.R. 223, a Full Bench of this Court held that "Public Works Department" falls within the definition of industry. He served demand notice dated 20.5.1988. The State Government referred the dispute to respondent No. 2 vide notification dated 17.9.1989.

4. In his statement of claim, the appellant claimed that he was entitled to reinstatement with all consequential benefits because his service had been terminated without complying with the provisions of Section 25-F of the Act.

5. The employer resisted the claim of the appellant by asserting that Public Works Department is not an industry and that the appellant was not entitled to reinstatement because he had not worked for one full year.

6. On the pleadings of the parties, respondent No. 2 framed the following issues:-

"1. Whether the respondent is an Industry in view of judgment of Supreme Court of India in 1988?

2. Whether the workman actually worked with the respondent for one year and his services were terminated on 1st June, 1982.

3. Whether the said termination, dated 1st June, 1982 is justified and in order?

4. Relief."

7. After considering the pleadings and evidence of the parties and taking note of the judgment of the Supreme Court in the case of Des Raj v. State of Punjab (Supra) respondent No. 2 held that Public Works Department is an industry. He further held that the workman continuously worked for a period of 22 months before termination of his service and as the employer had not given him one month's notice or pay in lieu thereof and retrenchment compensation, the

termination of his service was liable to be invalidated, accordingly, he passed award dated 30.5.1991 (Annexure P17) for reinstatement of the workman (appellant herein) with continuity of service and full back wages.

8. The Learned Single Judge allowed the writ petition filed by respondent No. 1 and quashed the award on the ground that the reference made by the State Government vide notification dated 17.9.1989 was barred by res-judicata. The learned Single Judge further held the delay of six years between the dismissal of the first reference and resurrection of the dispute was fatal to the second reference and the employer could not be burdened with full back wages.

9. Shri B.R. Mahajan relied on the judgment of the Supreme Court in *Virendra Bhandari v. Rajasthan State Road Transport Corporation and Ors.* J.T. 2002 (5) S.C. 2 and argued that award dated 11.10.1984 passed by the respondent No. 2 dismissing reference for non-prosecution did not amount to adjudication of lis between the parties and the learned Single Judge erred in holding that the said award would operate as res judi-cata and the State Government was not competent to make second reference. On merits, Shri Mahajan argued that respondent No. 2 did not commit any illegality by ordering reinstatement of the appellant with continuity of service and full pack wages because the termination of his service without complying with the mandatory provisions of Section 25 and (b) of the Act was void ab initio and the Learned Single Judge gravely erred in upsetting award Annexure P17.

10. Shri Ashok Bhardwaj, learned Assistant Advocate General, Punjab argued that the second reference made by the State Government was barred by resjudicata because the first reference had been answered against the appellant and the learned Single Judge did not commit any error by quashing the award passed by respondent No. 2 for reinstatement of the appellant with continuity of service and back wages. He further argued that even though first reference was dismissed by respondent No. 2 non-prosecution, the State Government did not have jurisdiction to make fresh reference of the so-called dispute raised by the appellant because the previous reference would amount to an adjudication of the dispute.

11. We have thoughtfully considered the respective arguments and perused the record. The term award had been defined in Section 2(b) of the Act in the following words:-

"(b) "award" means an interim or a final determination of any Industrial Dispute or any question relating thereto by any Labour Court Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10-A."

12. A reading of the definition of "award" reproduced above shows that interim or final determination of any industrial dispute or any question relating thereto by an adjudicating authority constituted under the Act is sine qua non for treating an order of such authority as an award within the meaning of Section 2(b) of the Act. A determination made u/s 10-A also falls within the ambit of the

said definition of award. In *Krishnakutti Nair v. Industrial Tribunal* (1957) 11 C.L.J. 45, a learned Single Judge of the Kerala High Court observed that the expression determination in the definition of award indicates only a coming to an award. This view was not accepted by another Learned Single Judge of that Court in *Workmen of Travancore Rayons Ltd. Vs. Manager, Travancore Rayons Ltd. and Another*, A Division Bench of Bombay High Court in *Maharana Mill Kandar Union v. N.L. Vyas* (1959) XI L.L.J. 172 disagreed with the view expressed by the Learned Single Judge of Kerala High Court in *Krishnakutti Nair* (supra) and observed that there must be determination of industrial dispute or a question relating thereto and if the dispute remains unresolved and is to be determined in future either by private arbitration or negotiation, the determination cannot be termed as an award even though the order may be described by the Tribunal as an award and published in the official gazette. This view was taken by the Division Benches of Madhya Pradesh High Court in *Sital Sukhiram Vs. Central Government Industrial Tribunal Cum Labour Court, Jabalpur and Others*, and of Mysore High Court in *Pandavpura Sahakara Sakkare Karkhane Ltd. v. State of Mysore* (1969) L.I.C. 729. The controversy must be deemed to have been finally settled by the recent decision of the Supreme Court in *Virender Bhandari's* case (supra). The facts of that case were that on a reference made by the Government of Rajasthan, Industrial Tribunal-cum-Labour Court passed an ex-parte order that there was no surviving dispute between the parties requiring adjudication. The restoration application filed by the appellant was dismissed with the observation that he had not evinced any interests in the disposal of the dispute. A second reference was made by the State Government at the instance of the appellant. This time the Tribunal adjudicated the matter and made an award in his favour. The High Court quashed the award by observing that second reference was incompetent. Their Lordships of the Supreme Court reversed the order of the High Court and held that first adjudication was not on the merits and did not operate as a bar to the second reference. The relevant extracts of the judgment of the Supreme Court are reproduced below:-

"A perusal of the award made on the earlier occasion will clearly indicate that there is no adjudication of the dispute at all. All that was stated was that the concerned parties had not appeared before the tribunal and in such an event, the tribunal should have noted its inability to record the finding on the issue referred to it not that the dispute does not exist. When there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists, as is opined by the government such a matter can be referred u/s 10 of the Industrial Disputes Act. What is to be borne in mind in proceedings of this nature is that the industrial disputes are referred to the labour court or the industrial tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. That aspect seemed to have been lost sight of by the tribunal on the first occasion and by the High Court in the order under appeal. In this background, it was certainly

permissible for the government to have made the second reference on which occasion after inquiring into the matter, the tribunal adjudicated the matter finally."

13. In the Sight of the afore-mentioned judgments of Bombay, Madhya Pradesh and Mysore High Courts and the Supreme Court, we shall now consider whether award dated 11.10.1984 passed by respondent No. 2 can be treated as an award within the meaning of Section 2(b) of the Act and, therefore, the second reference made by the State Government was barred by resjudicata. A reading of Annexure P. 16 shows that first reference made by the State Government was dismissed by respondent No. 2 for non-prosecution. He passed that order because representative of the appellant gave out that his client does not want to pursue the reference and would avail remedy elsewhere. This shows that respondent No. 2 did not make any adjudication on the merits of the dispute referred by the government. He did not even decide the issue relating to maintainability of the reference. It is, thus, clear that respondent No. 2 did not decide the lis between the parties. To put it differently, respondent No. 2 did not make any determination of the industrial dispute raised by the appellant. Therefore, even though respondent No. 2 had described his order (Annexure P16) as an award, the same cannot be treated as an award in the eye of law and the reference made by the State Government vide notification dated 17.9.1989 cannot be held as barred by resjudicata.

14. In view of the above conclusion, we would have set aside the impugned order and remitted the case to the Learned Single Judge for fresh decision of the writ petition, but keeping in view the fact that a period of more than 20 years has lapsed, we have thought it proper to dispose of the matter on merits.

15. A perusal of award dated 30.5.1991 shows that on a consideration of the pleadings and evidence of the parties, respondent No. 2 recorded a finding of fact that the appellant had worked for 12 months preceding the termination of his service and before terminating his service, the employer did not comply with the mandatory provisions of Section 25-F of the Act. Learned Assistant Advocate General could not point out any infirmity in the said finding. Therefore, keeping in view the limited scope of jurisdiction of this Court in such like matters as indicated in the judgments of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others, Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, R.S. Saini Vs. State of Punjab and Others, and Mohd. Shahnawaz Akhtar and Another Vs. Ist ADJ Varanasi and Others, we hold that award dated 30.5.1991 passed by respondent No. 2 does not call for interference by this Court under article 226 of the Constitution of India.

16. Shri Ashok Bhardwaj made half-hearted attempt to persuade us to quash the impugned award by arguing that the direction given by respondent No. 2 for reinstatement of the appellant with continuity of service and back wages would operate harshly against respondent No. 1. However, we have not felt impressed

with the submission of the learned counsel. In *The State Bank of India Vs. Shri N. Sundara Money*, a Division Bench of the Supreme Court gave broad meaning to the term "retrenchment" as defined u/s 2(oo) of the Act and held that termination of the service of the workman for any reason whatsoever would amount to retrenchment except in the cases of punishment. That decision was approved by the Constitution Bench of the Supreme Court in *Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, Chandigarh and Ors.* J.T. 1990 (2) S.C. 489. Therefore, we do not find any reason to interfere with the finding recorded by respondent No. 2 that service of the appellant had been terminated by way of retrenchment.

17. What are the consequences of the termination of service of the workman without complying with the necessary provisions of Section 25-F of the Act. This question was considered in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, in the context of violation of Section 25-F(b) of the Act and it was held as under:

""Having regard to the fact that the words used in Section 25F(b) are mandatory and their effect is plain and unambiguous it seems to us that the Court of Appeal was right in holding that Section 25-I covered cases of recovery of monies other than those specified in Section 25F(b) and it is obvious that there are several other cases in which monies become due from the employers to the employees under Ch. V; it is for the recovery of these monies that Section 25-I had been enacted. Therefore, we see no substance in the argument that the Court of Appeal has misconstrued Section 25-F(b). That being so, failure to comply with the said provision renders the impugned orders invalid and inoperative."

(Underlining is ours).

18. In *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, the Supreme Court referred to the judgment in *State Bank of India v. N. Sundara Money* (supra), and observed:

"Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make in roads by making etymological excursions. Void ab initio, invalid, and inoperative or call it what you will the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums the workmen concerned might have secured better or other employment elsewhere and so on. In such situation is there is a vestigae of

discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief but ordinarily relief to be awarded must be reinstatement, with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

19. In *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, the Supreme Court declared that termination of the service of the workman without complying with the provisions of Section 25-F is void ab initio.

20. By applying the ratio of the judgments noted above, we hold that termination of the service of the appellant was void ab initio and the direction given by the respondent No. 2 for his reinstatement and continuity of service does not call for interference.

21. However, we find considerable merit in the argument of Shri Ashok Bhardwaj that the award of full back wages should be modified. It is not in dispute that as on the date of termination of his service, the appellant had worked for about one year. It is also an admitted position that the State Government had made second reference after a gap of seven years and the award was passed by respondent No. 2 on 30.5.1991. Thereafter, the matter has remained pending before this Court for almost 12 years. Neither the appellant nor respondent No. 1 can be blamed for this delay. Therefore, keeping in view that fact that he was a daily wage employee, we feel that award of full back wages would place unjustified burden on respondent No. 1. We are further of the view that ends of justice would be met by directing payment of a consolidated amount of Rs. 25,000/- to the appellant in lieu of back wages. Sh. B.R. Mahajan says that in the circumstances of the case, his client will feel satisfied with the award of back wages in the terms indicated by the Court.

22. Before concluding, we may mention that learned Assistant Advocate General did not challenge the finding of respondent No. 2 that Public Works Department falls within the definition of industry u/s 2(j) of the Act.

23. In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition filed by respondent no. 1 is dismissed. As a consequence, the appellant shall be entitled to be reinstated with continuity of service. However, the award of full back wages is set aside and is substituted with the direction that respondent No. 1 shall pay a sum of Rs. 25,000/- to the appellant towards back wages. The amount of back wages shall be paid to the

workman in the form of fixed deposit of a duration of three years. He shall be entitled to withdraw this amount only after the period of three years. This unusual direction has been given by us keeping in view the interest of his two minor daughters.

24. However, it is made clear that for the period subsequent to award, the workman shall be free to file an application u/s 33-C(2) of the Act as held in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, .

Sd/- N.K. Sud, J.