
(2014) 07 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 5054 of 2014 in/and CWP No. 15926 of 2004

Gursewak Singh

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j)

Citation : (2015) 145 FLR 924 : (2015) 177 PLR 200

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : A.S. Gagrha, Advocates for the Appellant; Deepak Balyan, Addl. A.G, Advocates for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.

C.M. No. 5054 of 2014

Application has been filed for early hearing and to decide the case on merits. In view of the averments made in the application, same is allowed and the main case is taken on Board and disposed of today itself.

CWP No. 15926 of 2004

1. Challenge in the present writ petition is to the award dated 23.04.2004 (Annexure P2), passed by the Labour Court, Patiala, whereby it held that the respondent-Department, namely, the Agricultural Department is not an industry and accordingly, decided issue No. 1 in favour of the respondent-Department and rejected the reference. Accordingly, the issue on merit, whether the retrenchment of the petitioner was legal or not, was not decided. Present case is a classic case where the travails of the workman continue. The case of the petitioner-workman is that he had worked as a Laboratory Attendant from 04.07.1995 to 28.03.1996 and was drawing salary of Rs. 1195/- per month. Initially, an award was passed in his favour way back in 2002 and he was ordered to be reinstated with continuity of service and full back wages, vide an ex parte

award. The said award was, however, set aside by the Labour Court inspite of the fact that it was notified in the Gazette on 04.04.2003, which would be apparent from the written statement filed by the State. However, it seems that the workman chose not to contest the setting aside of the said order. The matter was again put to trial and a preliminary objection was raised that the Labour Court had no jurisdiction as the Agricultural Department does not come within the definition of industry. The Labour Court has placed reliance upon a Division Bench judgment of this Court in *State of Punjab v. Labour Court (Bathinda)* (1994-1)106 PLR 266 to decline the reference on the ground of maintainability.

2. Counsel for the petitioner has placed reliance upon another Division Bench judgment of this Court in *Divisional Forest Officer, Social Forestry Project Vs. Presiding Officer, Industrial Tribunal and Another*, to submit that the earlier Division Bench had also been considered along with the judgment of the Apex Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, to hold that the Forest Department was not exercising sovereign functions strictly and was an industry.

3. The Division Bench judgment on which reliance has been placed upon by the Labour Court had never taken into consideration the judgment of the Apex Court in the case of *Bangalore Water Supply* (supra). Another Division Bench of this Court in *Divisional Forest Officer Sirsa v. Jagdish* 2003 (4) RSJ 264 has held that merely because of the activities of the Government Department are engaged in welfare works, it cannot be treated as falling outside the definition of industry unless it is proved that such activities are akin, inalienable and sovereign functions of the State. By holding so, it was held that the Forest Department would also come within the definition of industry and the Labour Court would have jurisdiction.

4. In CWP No. 11040 of 1999 titled *Angrej Singh v. P.O. Labour Court, Gurdaspur & others* decided on 19.08.2009, similar issue arose and the award was set aside and the matter was remanded for fresh decision. Relevant observations read as under:

"The test for consideration whether a particular organization, unit or department is an industry shall be by examining whether there is a systematic activity which is carried on. It is irrelevant that there is no commercial motive for the same. The distribution of medicines, fertilizers, agricultural implements and pesticides which the Agriculture Department of the Government engages in for improving productivity in the agriculture sector and for fostering the needs of the agriculturists shall be seen as an activity that shall answer the definition made under Section 2(j) of the Industrial Disputes Act. Section 2(j) defines industry to mean any business, trade, undertaking, manufacture or calling of employers or includes any calling service implement incorporation or industrial occupation avocation of workman. An expansive meaning to the definition of industry was given by the Hon''ble Supreme Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa and others* 1978 LIC 467. It is too late in the day to contend

that the Agriculture Department that engages itself in distribution of seeds and pesticides, among other activities, could be denied the status of an industry and defeat the right of persons, who were working in their capacity as workmen, to secure redress through the mechanism provided under the Industrial Disputes Act."

5. Accordingly, keeping in view the abovesaid Division Bench judgments, this Court is of the opinion that the Labour Court was well within its jurisdiction to decide the litigation on merits and unfairly abdicated its role. To be fair to counsel for the State, he has relied upon a reference order whereby the Apex Court has referred the matter to a Larger Bench on 05.05.2005 in State of U.P. Vs. Jai Bir Singh, . Admittedly, the reference is still pending but mere pendency of reference would not bar the Labour Court to decide as per the settled law. In such circumstances, it would be appropriate that the impugned award dated 23.04.2004 (Annexure P2) is set aside and the matter is remanded to the Labour Court to decide the issue on merits. Since the dispute has been pending for two decades, the Labour Court will decide the same within a period of 6 months, from the date of receipt of a certified copy of this order. Writ petition is allowed in the above stated terms.