

(1998) 01 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Letter Appeal No. 1294 of 1990

Hardip Singh

APPELLANT

Vs

Presiding Officer, Labour Court, Gurdaspur and another

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1998) 01 P&H CK 0019

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

Bench : Division Bench

Advocate : Mr. Praminder Singh, for the Appellant; Mr. J.P.S. Sandhu, for the Respondent

Judgement

G.S. Singhvi, J.—Appellant-Hardip Singh raised an Industrial dispute regarding his termination from the services of the second-respondent Punjab State Electricity Board. The said Industrial dispute was referred to the Labour Court, Gurdaspur, for adjudication, u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), as to whether the termination of the appellant was justified and if not, to what relief he was entitled. Before the Labour Court, the respondent-management pleaded that the reference is not maintainable since the services of the appellant-workman were never terminated, but, he had deserted the work and, therefore, is deemed to have voluntarily retired from service. The Presiding Officer of the Labour Court framed the following three issues :

1. Whether the termination of the service of the workman is justified and in order ?
2. Whether the reference is maintainable ?
3. Relief.

He took up issue No. 2 with reference to the maintainability for consideration. He held that the reference was not maintainable on the facts alleged in the demand

notice, and as the workman had not given any reasonable explanation for not faking any action for two years after the alleged termination of his service. The Presiding Officer of the Labour Court also held that the Government had previously declined to make a reference as is seen from Ex. M-2, and could not make a reference later without hearing the respondent and without any notice to the respondent-management. He also held that though Ex. W-7 would show that a notice was issued to the respondent- management, there was nothing on record to show that the notice was in fact served on the respondent. The Presiding Officer of the Labour Court also observed that without any fresh material before the authorities, the reference has been made and that too without hearing the respondent-management. In these circumstances, the Presiding Officer of the Labour Court held that the reference was not maintainable and, therefore, rejected the same without answering the other issues.

Aggrieved by the above decision of the Presiding Officer of the Labour Court, the appellant-herein filed Civil Writ Petition No. 9548 of 1989 for the issue of a certiorari for quashing the impugned order of the Labour Court. Before the learned Single Judge, the appellant contended that the management had not taken the plea in their written statement that no opportunity was afforded to it by the Labour Commissioner before making a reference. But the learned Single Judge, however, held that the appellant himself had not taken this objection before the Labour Court and, therefore, cannot take up the same in the writ proceedings. The learned Single Judge also held that if the parties know that a point arises in a case and produce evidence on it, though, the point does not find a place in the pleadings and no specific issue has been framed on it, the Court can still adjudicate thereon, and that none of the parties can be allowed to say that the Court decided the matter though it was not raised in the pleadings. The learned Single Judge also rejected the plea of the appellant that there is presumption that the notice issued by the Labour Commissioner was served on the employer since, the Labour Court has given a positive finding that no opportunity was given to the employer before making the second reference. The learned Single Judge also did not agree with the appellant that the Labour Court could not go into question as to whether the reference is bad. Therefore, learned Single Judge dismissed the writ petition.

2. This Letters Patent Appeal has been filed questioning the dismissal of the above-said writ petition.

3. We have heard the counsel for both the sides and perused the records.

4. The appellant/workman has taken a specific plea that the learned Single Judge has not taken note of the fact that the respondent/management was served with the notice before referring the dispute to the Labour Court and, therefore, the finding of the learned Single Judge that no opportunity of hearing was given to the respondent/management is not based upon facts. The learned counsel for the appellant also contended that the finding of the Labour Court also suffers

from the same infirmity. But we are of the view that without even going into this question of fact, we can dispose of this L.P.A. on purely a question of law i.e. whether any notice or hearing is at all necessary to the respondent/management before the reference is made by the Government ?

5. A Division Bench of this Court in C.W.P. No. 17237 of 1995 : 1997(1) SCT (P&H)(DB)M/s Thomson Press (India) Ltd. v. The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad and others, and C.W.P. No. 3944 of 1996, Kanhiya Singh v. The Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Faridabad and another, decided on 3.9.1996 after referring to the various decisions on this aspect, relied upon the decision of the Hon"ble Supreme Court in Sultan Singh Vs. State of Haryana and another, , and took the view that no notice or hearing is necessary. The Hon"ble Supreme Court in Sultan Singh's case (supra) after noting the facts of that case held as follows :

"The appropriate Government is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on record. Being an administrative order no lis is involved. Thereby there is no need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference. Subsection (5) of Section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference u/s 10(1). It enjoins to record reasons only when it refuses to make a reference.

The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative order and so is not incumbent upon the State Government to record reasons therein. Therefore it is not necessary to issue notice to the employer nor to consider his objections nor to hear him before making a reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on second application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference. The previous decision of that Court relied on in the case at hand was wrongly decided."

6. In view of this categorical finding of the Hon"ble Supreme Court, this contention put forward by the respondent/management that the notice should have been issued and it should have been heard before the reference was made is wholly unacceptable.

7. Therefore, it is clear that the Presiding Officer of the Labour Court as well as learned Single Judge have erred on a question of law and held that the reference is not maintainable. We hold that the reference is maintainable and that the learned Presiding Officer of the Labour Court ought to have answered the same on merits as well.

8. The appeal is allowed setting aside the award of the learned Presiding Officer of the Labour Court and the order of the learned Single Judge. Accordingly, the

writ petition filed by the appellant/workman stands allowed. While quashing the order of the Presiding Officer of the Labour Court, we direct him to restore the reference to its original number and dispose it of on merits in accordance with law, after issuing notice to the parties to appear before him. If necessary, the learned Presiding Officer of the Labour Court may also allow the parties to let in further oral and documentary evidence on the merits of the case.

9. Appeal allowed.