
(1990) 07 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. 9548 of 1989

Hardip Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 98 PLR 517

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : J.C. Yerma and Dinesh Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—The petitioner has impugned the validity of the award dated November 2, 1988 of the Labour Court, Gurdaspur in this petition under Articles 226/227 of the Constitution of India.

2. The services of the petitioner were terminated on October 18, 1982. The petitioner issued a demand notice to respondent No. 2 and represented to the Government to refer the matter to the Labour Court. The Government vide its letter dated January 10, 1985 declined to refer the matter. The petitioner applied for reconsideration of the case with the request to refer the same to the Labour Court. The Labour Commissioner, Punjab, vide order dated November 26, 1986 referred the following question to the Labour Court. Gurdaspur, for adjudication and submission of award within three months :--

"Whether termination of services of Sh. Hardeep Singh, workman, is justified and in order? if no, to what relief/exact amount of compensation is he entitled?"

3. On the pleas of the parties, respondent No. 1 framed the following issues :--

1. Whether the termination of the services of the workman is justified and in

order ?

2. Whether the reference is maintainable ?

3. Relief.

4. Under issue No. 2, the Labour Court held that the Labour Commissioner had, on earlier occasion, refused to refer the case for adjudication vide his letter Ex. M. 2 and there was no fresh material before the Labour Commissioner for ordering a reference of the dispute for adjudication to it. The Labour Court further held that the reference is vitiated since the order was made without hearing the employer. The order entailed civil consequences and could not be passed in disregard of the principles of natural justice which presupposes an opportunity of hearing to the affected person.

5. In view of the finding under issue No. 2, the Labour Court did not express any opinion under issue No. 1 and rejected the reference.

6. Learned counsel for the petitioner workman raised the following submissions:--

(i) The Labour Court has only to answer the question referred to it and, while doing so, it could not express its opinion on any other ancillary questions.

(ii) The second reference on the basis of the material on record was justified.

In support of the submissions, the learned counsel relied upon the decisions of the apex Court in *Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd* and *Anr.* 1979 Lab. I.C. 827 and *Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees' Union*, .

7. There is no dispute about the proposition of law laid down in these authorities but of its applicability in the instant case.

8. The Labour Court, on appraisal of the evidence, held that the reference was made by the State Government without there being any fresh material before the authorities for that purpose and that it was made without affording an opportunity of hearing to the employer. The finding of the Labour Court reads thus :--

"Thus, it appears that the instant reference has been made to the effect without there being any fresh material before the authorities for that purpose. Apparently, the respondent was not heard before making the reference and this circumstance tenders the reference illegal and unjust as observed by their Lordships of the Supreme Court on the decision cited above. Thus, in my opinion, the ratio of the decision of this case squarely applies to the instant case with the result that the reference ought not to proceed. It has become not maintainable. From whatever has been discussed above, I have reached the conclusion that the instant reference is not maintainable, being illegal and unjust."

9. Learned counsel for the petitioner could not show that the finding arrived at by the Labour Court was not based upon evidence or otherwise vitiated.

Sufficiency or insufficiency of evidence for arriving at a finding by the Labour Court is not for this Court to judge. A finding based on evidence is not open to exception.

10. Learned counsel for the petitioner further submitted that no plea was taken in the written statement by the employer that no opportunity was afforded to it by the Labour Commissioner before making the reference. The submission is without any merit. Objection, if any, that a plea which was not taken in the written statement could not be urged at the hearing ought to have been taken before the Labour Court. Perusal of the award of the Labour Court indicates that no such plea was taken before the Labour Court and the same cannot be taken up in these proceedings. Even otherwise, it is well settled that if the parties know that a point arises in a case and they produce evidence on it, though it does not find place in the pleadings and no specific issue has been framed on it, the Court can still adjudicate thereon. None of the parties can be allowed to say that the Court cannot decide the matter because it was not raised in the pleadings. Reference can usefully be made to a Division Bench decision of this Court in *Ram Niwas and Ors. v. Rakesh Kumar and Ors.* (1982) 84 P.L.R. 9.

11. Learned counsel for the petitioner also pointed out that notice was issued to the employer by the Labour Commissioner before making the reference to the Labour Court. Presumption can be raised in law that the notice was duly served on the employer. This plea deserves to be rejected. On evidence as observed earlier, the Labour Court has given a positive finding that no opportunity was afforded to the employer before making the second reference. A perusal of the award of the Labour Court reveals that if referred to the oral and the documentary evidence produced by the parties and came to the conclusion that the second reference was made without affording an opportunity of hearing to the employer. The learned counsel is not correct in his submission that the Labour Court could not go into the question as to whether the reference was bad. The Labour Court examined the validity of the reference and on merits found that it was invalid. There is no bar in law and none could be pointed out that the question of validity of the reference could not be gone into by the Labour Court.

12. Thus for the reasons recorded above, the writ petition fails and is dismissed but with no order as to costs.