
(1993) 08 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6051 of 1985

Haryana Agro Industries Corporation Ltd.

APPELLANT

Vs

Chandigarh Administration Union Territory and Others

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1)(C), 33C(2)

Citation : (1994) 106 PLR 56

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : C.B. Kaushik, for the Appellant; Ashok Aggarwal and Rakesh Garg and S.P. Laler, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—This order will dispose of Civil Writ Petition Nos. 6051 of 1985 and 10768 of 1991, both having arisen from the same reference.

2. Gurdev Singh, respondent No. 3 was appointed as Tractor Driver on February 28, 1969 at Neelokheri. Services of this respondent workman were terminated on May 2, 1977 while he was posted at Neelokheri. He was paid one month's salary in lieu of notice. The workman feeling aggrieved by the order of termination, served a demand notice on July 20, 1978 but the matter was not referred to the Labour Court for adjudication. After about five years thereof, the workman served another demand notice dated March 31, 1982. This demand notice was referred to the Labour Court for adjudication vide notification dated September 13, 1983. It may at this stage be noticed that the office of the petitioner Corporation is located at Chandigarh and it was perhaps for this reason that the Chandigarh Administration referred the dispute to the Labour Court, Union Territory, Chandigarh in exercise of its powers u/s 10(1)(c) of the Industrial Disputes Act (for short "the Act").

3. The Labour Court, Union Territory, Chandigarh by its award dated March 26,

1985 came to the conclusion that the order of termination of services was illegal and unjustified and that the workman was entitled to reinstatement in service with continuity of service and all benefits including back wages. The petitioner Corporation filed Civil Writ Petition No. 6051 of 1985 challenging the said award of the Labour Court.

4. It is not disputed that the workman was taken into service thereafter but his services were again terminated and this fact is now not in dispute. The workman having not been given some of the benefits of back wages in terms of the award dated March 26, 1985 filed a petition u/s 33C(2) of the Act. The Labour Court, Union Territory, Chandigarh by its award dated April 11, 1991 came to the conclusion that the workman was entitled to Rs. 78.423/- and consequently directed the Managing Director, Haryana Agro Industries Corporation to pay the said amount to the workman within one month of the passing of the award. This award of the Labour Court has been challenged by the petitioner Corporation in Civil Writ Petition No. 10768, of 1991.

5. The primary contention of the learned counsel for the petitioner is that the Chandigarh Administration had no jurisdiction to make reference to the Labour Court, Union Territory, Chandigarh and consequently the said Labour Court had no jurisdiction to make award in respect of the workman who was appointed at Neelokheri and whose services were terminated while he was working at Neelokheri. According to the learned counsel, the appropriate Government was the State Government i.e. the State of Haryana to make reference to the Labour Court concerned and not the Chandigarh Administration. Learned counsel in support of his contention relied upon a Division Bench judgment of this Court in *Ram Lal v. The Presiding Officer, Labour Court, Patiala* and Ors. 1986(1) S.L.R. 633. In the aforesaid case the workman was employed in the territory forming part of State of Punjab and the Head Office of the Bank was situated in Chandigarh. Services of the workman had been terminated while he was working within the territory of State of Punjab. The State of Punjab made reference to the Labour Court u/s 10(1)(c) of the Act.

In these circumstances a question arose, whether the appropriate Government to refer an industrial dispute for adjudication u/s 10 is the State Government within whose territorial jurisdiction the workman was working and orders of dismissal had been received, or the State Government within whose a territorial undertaking is located and where the orders dismissing the workman had been passed. On consideration of the entire matter, the Division Bench answered the question in the following manner: -

"In the result the answer to the first question is that the State Government within whose territorial limitation the industrial dispute arose and the orders of dismissal had been received and became operative is the appropriate Government for referring the industrial dispute for adjudication. The answer to question No. 2 also is in the affirmative. The appropriate Government is competent to refer industrial dispute for adjudication even if it had refused to do

so at an earlier occasion."

In the present case it could not be disputed by the learned counsel for the workman that the workman was employed at Neelokheri and his services were terminated and orders of termination received by him at Neelokheri. Thus, having regard to the binding precedent it has to be concluded that appropriate Government to make reference to the Labour Court was the State Government i.e. the State of Haryana in whose territorial jurisdiction the workman had been working. Reference to the Labour Court made by the Chandigarh Administration on that score and consequently the award passed by the Labour Court pursuant to the said reference has to be set aside.

6. Learned counsel for the workman, however, contended that the petitioner Corporation did not raise any objection as to the jurisdiction of the Chandigarh Administration to make reference and as to the jurisdiction of the Labour Court to entertain and adjudicate the reference made to it and, therefore, now it was too late in the day for the Corporation to raise this objection for the first time in the writ proceedings. The contention is factually correct. But the objection as to the jurisdiction, in my view can be raised at any stage. Reference in that behalf may be made to *Gurdial Singh and Ors., v. State of Punjab and Anr.* 1986 P.L.J. 248.

7. There is however, another aspect of the matter, i.e. Whether the peculiar facts and circumstances of this case, the respondent workman is entitled to some relief. It may be noticed that the workman had been reinstated back into service after passing of the award dated March 26, 1985 of the Labour Court. His services as also of many others, were terminated again on a later date. The latter termination is not in dispute in this case or in any other proceedings, the workman perhaps having accepted that termination. Relief of reinstatement thus, is no longer available to the workman in these proceedings. No useful purpose would be served by giving a direction to the appropriate Government to again refer the dispute to the Labour Court as a sufficiently long time has gone by and the workman had been reinstated in terms of the award of the Labour Court. The only question thus arises, whether the workman is entitled to some monetary benefits on account of back wages. The answer, in my view, has to be in the affirmative. Services of the workman were terminated in the year 1977 and the reference was made to the Labour Court on the demand notice dated March 31, 1982. The Labour Court gave its award on March 26, 1985. The Workman thus, continued to pursue his remedy for a period of about three years till the passing of the award and again he approached the Labour Court u/s 33C(2) of the Act and these proceedings also remained pending for about two years. The workman had been allowed to join duty in terms of the award on January 29, 1986. In the petition u/s 33C(2) the workman had been held entitled to a sum of Rs. 78,423/- relating to the period 1977 to 1986. The workman is clearly not entitled to any amount prior to March 31, 1982 as he served demand notice on which the reference was made to the Labour Court, on March 31, 1982. Thus, the workman

is not entitled to the amount as determined by the Labour Court by its award dated April 11,1991 but is entitled to a much lesser amount. Having regard to the facts and circumstances of this case, particularly, the fact that no objection was raised before the Labour Court by the management as to its jurisdiction, I feel that the ends of justice would be best served if the management is directed to pay a consolidated sum of Rs. 15,000/- to the workman.

8. For the foregoing observations, writ petition No. 6051 of 1985 is allowed and the award of the Labour Court, dated March 26, 1985 is set aside, the reference made to it by the Chandigarh Administration being without jurisdiction, whereas writ petition No. 10673 of 1991 is dismissed in the terms indicated above and accordingly, the petitioner Corporation is ordered to pay a consolidated sum of Rs. 15,000/- to the workman within a period of three months in lieu of the amount determined by the Labour Court by its award dated April 11,1991. If the amount as afore said is not paid within three months. The workman will be entitled to interest thereon at the rate of 12% per annum from the date of this order till the date of payment. No costs.