
(2009) 12 P&H CK 0114
In the Punjab And Haryana At Chandigarh

Haryana State Industrial Development Corporation Ltd.	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal-cum-Labour Court and Another	RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

INDUSTRIAL DISPUTES ACT, 1947 — Section 25G

Citation : (2010) 124 FLR 1067 : (2010) 3 LLJ 722 : (2010) 157 PLR 448 :
(2010) 1 RCR(Civil) 303 : (2010) 4 SLR 141

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The principal issue for consideration in the present petition is the validity of a reference by the Government for industrial adjudication before a Labour Court a second time after an initial rejection, without notice to the Management before making the reference. The Labour Court's finding relating to a violation of Section 25-G of the I.D. Act, was the other issue which was answered in favour of the workman.

2. On a dispute raised by the workman complaining of alleged illegal termination of service on 24.05.1999, the workman had issued a notice on 26.06.1999. Conciliation was taken up before the Conciliation Officer who, after notice to both the parties, ultimately sent to the Government a failure report. The Government vide its order dated 06.03.2000, rejected the reference. It appears that the workman had again applied to the Government raising the very same issue and the Government without any further notice to the Management made a reference on 09.01.2002 u/s 10(1)(C) of the I.D. Act to the Presiding Officer, Labour Court, Hisar. On notice from the Labour Court, the Management responded with several objections and contended, inter alia, that the reference was bad, the same having been done without prior notice to the Management. On the merits of the contentions that there had been illegal termination, the contention of the

management was that the workman had been engaged on daily-wage basis for the project of establishing industrial sheds at Chickanwas and when his services were no longer required, he was later posted at Sirsa and Julana and when his services were not any longer necessary, his services had been dispensed with. Further contention by the workman was that a junior workman had been retained while he was singled out for termination and that there was violation of Section 25-G. The contention of the Management was that the junior workman Subhash Chander had been working in some other unit and the workman was not entitled to treat his case as illegal termination with reference to workman employed in another place not Chickanwas but at Sirsa. The Labour Court found that even as per the document produced by the Management Ex. P-2, it had been specifically mentioned that Subhash Chander was junior to the workman, who has been retained in service on the day when the present workman was retrenched. The Labour Court found the admission of the management to be sufficient to uphold the claim of the workman that the termination was bad and directed reinstatement with 50% back-wages.

3. The learned Counsel appearing for the management placed as threshold argument that a second reference without notice to the Management was illegal. The contention was that principle of audi alteram partem was a fundamental tenet of natural justice and if it was breached, the reference itself would be bad and the Labour Court did not have the jurisdiction to decide the reference. The learned Counsel refers to the decision of the Division Bench of this Hon'ble Court in M/s Escorts Limited, Faridabad v. Industrial Tribunal, Haryana 1983 LAB.I.C. 223, and two other Single Bench judgments in Hamco Industries Pvt. Ltd. v. Presiding Officer Pvt. Ltd. and Ors. 1991(3) R.S.J., 6, and Management of Electronic Ltd. Vs. State of Haryana and Others, in support of his contention. In the decision in M/s Escorts Limited, Faridabad the Division Bench of this Court referred to the decision of the Full Bench by the Madras High Court in G. Muthukrishnan v. Administrative Manager, New Horizon Sugar Mills Private Ltd., Pondicherry 1980 (I) LLJ 475 and decision of the Karnataka High Court in Indian Telephone Industries Ltd. v. State of Karnataka and Ors. 1978 (I) LLJ 1779, and held that second reference without notice to the Management was bad in law. The Division Bench also referred to the earlier decision of the Hon'ble Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , where the reasonableness of a decision without affording an opportunity to the aggrieved person was taken to be a predominant consideration and administrative decisions rendered without such notices were found to be bad. The Division Bench also distinguished the decision of the Hon'ble Supreme Court in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, that held that the power of the appropriate Government to make reference could be exercised second time, but did not however squarely address the issue of want of notice before making the second reference.

4. In my view, the decisions of the Division Bench and other decisions of other High Courts are no longer valid precedents after the point of the effect of the reference without notice was squarely answered by the Hon''ble Supreme Court in *Sultan Singh Vs. State of Haryana and another*, . In that case, the appropriate Government had refused to make the reference on the ground that there was no existing dispute. The workman again represented to the Government to make the reference and the Labour Ministry had made a note on the representation, directing the government to make a reference. No reference was made and on a further representation, the Labour Commissioner ordered that in view of the decision already taken it was not necessary to reconsider the earlier decision and therefore again declined to make the reference. A writ petition against the order of the Commissioner for refusing to make the reference was dismissed and a SLP had been filed to the Hon''ble Supreme Court. The Court held that from a joint reading of Section 10(1) and Section 12(5) of the Act, the State Government was required to form an opinion whether an industrial dispute existed or not and then to decide whether to refuse or to make the reference. In that case, the government refused to make the reference. Section 12(5) required it to record and communicate reasons to the parties concerned. But in case the Government decided to make a reference, there was no requirement of law to record or communicate the reasons for making the reference as the finding for making the reference was only administrative and not quasi-judicial for forming its opinion. The appropriate Government was entitled to go into the question whether any industrial dispute existed or was apprehended on a subjective satisfaction on the basis of the material on record. In an administrative order, no lis was involved hence, the Supreme Court held that there was no need to issue any notice to the employer to hearing before making or refusing to make a reference. The need for hearing was obviated, if it was considered on second occasion and even if it made a reference, it did not cease to be an administrative order and so was not incumbent upon the State Government to record the reasons. It held emphatically, "Therefore, it is not necessary to issue notice to the employer to consider either his objections or to hearing before making a reference"

This decision, in my view, squarely governs the issue. There certainly existed a dispute. The workman was contending that his termination was bad and the management was contending that the termination was justified. The dispute required an adjudication and in this case, it must be noticed that the Management had allowed the adjudication to take place on the validity of the termination of the services of the workman. The Management is therefore barred from taking an objection that the Labour Court did not have the jurisdiction to entertain the case and answer the reference.

5. As regards the contention of the Management that the junior workman in an other unit who was retained could not be stated to be in violation of Section 25-G, it is also liable to be rejected. The test invariably is, whether the post is transferable. The management was bound under the Industrial Dispute Rules to maintain a common seniority list. It is an admitted case that the workman who

had been originally employed in Chikanwas had been transferred to Sirsa and in that transferred place a person who had joined subsequently, and hence a junior to him, had been retained. The termination of the workman who was senior and at the same time, retaining the services of the junior clearly breached the mandate of Section 25-G. The Labour Court had come to a correct conclusion in that regard and the decision for reinstatement under circumstances was therefore justified. The decision of the Labour Court fully accords with law and there is no scope for interference with the same.

6. The Civil Writ Petition is, accordingly, dismissed. No costs.