
(1986) 05 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4548 of 1986

Industrial Ancillaries Pvt. Ltd.

APPELLANT

Vs

Roop Chand and Others

RESPONDENT

Date of Decision : 29-05-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1996) 114 PLR 431

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : A.P. Bhandari, for the Appellant; I.K. Mehta and M.S. Kohli, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed to quash the award of the Labour Court, Faridabad, vide Annexure P-6 dated 19.2.1986.

2. According to the petitioner, the Ist. respondent was appointed as a Helper in the petitioner industrial unit on 1.8.1981 for a period of three months. After the expiry of three months the services of the Ist respondent were further extended and his services were finally terminated on 30.10.1981. On settling his dues, the Ist respondents received all his dues as full and final settlement on 8.11.1981. Thereafter the demand notice dated 26.11.1981 was served on the petitioner with a copy to the Labour-cum-Conciliation Officer, Faridabad, who after recording the statements of the petitioner and the workman (respondent No. 1) sent the case to the Government for making a reference to the Labour Court, and the Government of Haryana by its letter No. ID/FD/19/82/18327-30 dated 16.4.1982 refused to make any reference of the industrial dispute and informed the Ist respondent as well as the petitioner that since the appointment of the Ist respondent was on adhoc basis and his services have been terminated as per terms and conditions of the appointment letter, there was no case for making a reference to the Industrial Tribunal. Thereafter the Ist respondent made a

representation to the State of Haryana. That was also rejected by the State of Haryana vide Annexure P-5 dated 24.8.1982. Thereafter the Ist respondent again made a representation on which the State Government made a Reference No. 374 of 1984 referring the dispute regarding the termination of services of the Ist respondent for adjudication to the Labour Court. The Labour Court entertained the reference and by the impugned award dated 19.2.1986 allowed the reference holding that the termination of services of the Ist respondent was illegal and unjustified and directed the workman to be reinstated with continuity of service with full back wages.

3. Challenging the said award, the petitioner filed the above writ petition.

4. The learned counsel for the petitioner mainly contended that the State Government has no authority or power to refer the dispute to the Labour Court when once the reference was rejected by it earlier. He relied upon the decision of this Court in Escorts Limited, Faridabad v. Industrial Tribunal, Haryana (1983(1) Lab. I.C. 223) wherein it was held as follows:-

"It is true that the earlier rejection does not give any vested right to the employer to have the issue finally closed and no considerations of res judicata can possibly arise in this situation. Nevertheless in view of adverse consequences that may well ensue by referring a dispute which has been earlier rejected, the employer would be entitled to be heard before it is re-opened.

In paragraph 10 of the said judgment, this Court summarised the decision as follows:-

"In the light of the aforesaid discussion the answer to the question posed at the outset is rendered in the affirmative and it is held that the rule of audi alteram partem is attracted to the exercise of the power a second time u/s 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected".

5. But in Ram Lal v. The Presiding Officer, Labour Court, Patiala (1987)91 P.L.R. 122) another Bench of this Court held that the proceedings u/s 10 before the appropriate Government are administrative in nature, they are not even quasi Judicial Proceedings. Even in the Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, the workman had first applied for reference of his dispute and his prayer had been declined and when a second representation for making a reference was made, the same was held to be legal, valid and in order. In a recent judgment in Sultan Singh v. State of Haryana and Anr. (1996(1) S.C.C. 66) the Supreme Court observed as follows:-

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 not 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 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. Thus, it is clear that the decision in M/s Escorts Limited (Supra) would not render any help to the petitioner. On the other hand the said decision which was relied upon by another division Bench of this Court in Sultan Singh v. State of Haryana (CWP No. 2825 of 1984) was reversed by the Supreme Court. The Supreme Court categorically stated that the previous decision of this Court relied in, in the case of Sultan Singh was wrongly decided. Thus it is clear that the decision in M/s Escorts Limited (supra) was specifically ever ruled by the Supreme Court. I am therefore, of the opinion that the second reference of the dispute between the employer and employee to the Labour Court for adjudication without issuing notice to the employer is valid in law and the reference can't be rejected on the ground that no notice was given to the employer before making the reference.

7. It is next contended by the learned Counsel for the petitioner that the Ist respondent did not work for more than 240 days in a year. Therefore, the order of the termination is not violative of Section 25F of the Industrial Disputes Act. The facts in this case clearly show that the Ist respondent worked for more than 240 days and the Labour Court on appreciation of evidence on record found that the petitioner completed 240 days of service upto 30.10.1981 inclusive of the period during which he remained in Hospital for undergoing treatment. It is not disputed before me that the workman is entitled to medical leave and leave under the Employees State Insurance Act. I, therefore, find no illegality or infirmity in the impugned award of the Labour Court.

8. The writ petition is devoid of any merit and is accordingly dismissed, but without costs.