
(1998) 12 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : CWP No. 822 of 1998

Jagbir Singh and Others

APPELLANT

Vs

Baba Balak Nath Trust and Others

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 11A, 2, 25F, 25O

Citation : (1999) 1 ShimLC 457

Hon'ble Judges : D. Raju, C.J.;Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : Inder Singh, in CWP No. 822/98 and Onkar Jairath, in CWP No. 824/98, for the Appellant; K.D. Sood and D.V. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The above writ petitions may be dealt with together" since they relate to indential subject-matter and also deal with indential issues raised. As a matter of fact, Mr. Inder Singh, learned Counsel made elaborate leading arguments in CWP No. 822/98 and the learned Counsel in CWP No. 824/98 adopted the said submissions.

For appreciating the submissions of the learned Counsel, the factual details noticed in CWP No. 822/98 may be adverted to. The Petitioners in this writ petition are about 37 and they filed the writ petition seeking for the issue of a writ in the nature of mandamus not to terminate/retrench the Petitioners from the services of Respondent No. 1, which they were said to be rendering under the 1st Respondent, by name, Baba Balak Nath Temple Trust in various capacities. The cause and need for filing the above writ petitions arose on account of the notices issued by the 2nd Respondent invoking the powers u/s 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") dispensing with the services of the respective Petitioners on the ground that there is no work against which they can be deployed for work on daily wages and

that by adopting the principle of last come first go, they were being retrenched and the required notice and compensation is being paid to them. Along with the notices, as we could find, the necessary cheque for the amounts specified in the individual notices is also enclosed. Having regard to the nature of disposal we intend to give these writ petitions, it is unnecessary for us to delve at length to the details of the controversy or disputes between the parties except noticing the salient features for the limited purpose for appreciating the submissions made by the learned Counsel.

2. Some of the Petitioners and others have earlier approached this Court with a batch of writ petitions, which came to be dealt with and disposed Of in CWP No. 294/98 and CWP No. 270/98 etc. Some of the facts, which found noticed in the said writ petition can be noticed again. There was no dispute between the parties that the Petitioners and others were engaged as daily waged workers by the 2nd Respondent-trust and many of them with the exception of a few had completed 240 days in a year before their dis-engagement was said to have been effected orally without giving any notice of compensation. It is at that stage the earlier writ petitions came to be filed contending that the dis-engagement effected orally without giving notice or compensation, constituted retrenchment within the meaning of Clause (oo) of Section 2 of the Industrial Disputes Act and that the mandatory procedure laid down in Section 25F of the Act has not been followed and, therefore, the dis-engagement effected was bad in law. The trust appears to have contested the claim of the workers and on the basis of the controversy raised by the parties before a Division Bench, which rendered its decision on 1.9.1998, it was held that the 2nd Respondent would answer the description of an "Industry" for the purpose of the Act. The Division Bench also rejected the stand taken by the trust about the existence of an alternative remedy operating as a disabling factor to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and in dealing with the same, it was held that the decision relied upon in this regard does not lay down any absolute rule of law that whenever or wherever an alternative remedy is available, be it by way of industrial adjudication too, the High Court has to decline to entertain a litigation and observed further that it is always a matter of discretion, based on the facts and circumstances of each case. In the teeth of such conclusion arrived at by the Division Bench on the earlier occasion, the ultimate decision taken and the directions issued and the relief granted to the Petitioners before this Court were as follows:

14. Applying these principles to the cases in hand we are of the view that it will not be fair and just to relegate the Petitioners to seek reference u/s 10 of the Act in view of our findings that the Trust is an "industry" and the Petitioners are "workmen", who are admittedly retrenched without giving notice and compensation as provided u/s 25F of the Act. Had these facts been disputed, we would have not entertained their claim in exercise of extraordinary jurisdiction under Article 226 of the Constitution. Therefore, we hold in answer to point No. 2 that in the facts and circumstances on record these writ petitions are

maintainable.

15. In view of our findings on points No. 1 and 2, we need not decide point No. 3. So far the stand of the Trust that it does not have any work available to continue engaging the Petitioners is concerned, we are of the view that in such eventuality also, the Trust was required to retrench the Petitioners by following the provisions of Section 25F of the Act. In this view of the matter, the disengagement of the Petitioners as daily wage workers, except those who have not completed 240 days, is not sustainable in law.

16. The result of the above discussion is that there is merit in the writ petitions and these are allowed, and the dis-engagement of the Petitioners as daily wage workers by the Trust, except those who have not completed 240 days, is set aside, with the result the Petitioners, except those who have not completed 240 days, continue to be in the employment of the Trust as daily wage workers with all consequential benefits till they are disengaged in accordance with law.

Thereupon, the 2nd Respondent appears to have issued notices u/s 25F of the Act, as noticed earlier, and this necessitated the filing of the present writ petitions.

3. Mr. Inder Singh, learned Counsel appearing for the Petitioners on our request to convince us of the justification to maintain the present writ petitions without availing of the remedies available under the Act itself in respect of any of the alleged grievances arising out of the impugned notices issued u/s 25F of the Act forcefully submitted that the remedy to seek for a Reference u/s 10 of the Act for adjudication of the disputes between the parties cannot be said to be an effective and efficacious remedy since according to the learned Counsel, the question of Reference always depended upon the discretion of the Government and it is not as though the worker as such can on his own and that he has a right to seek for an adjudication, straightaway and consequently this Court may not be pleased to reject the writ petition at the threshold declining to entertain the writ petition on the ground of availability of remedies under the Industrial Law. In support of the said stand taken for the Petitioners, the learned Counsel placed strong reliance upon the decisions reported in *Fertilizer Corporation of India v. Hindustan Fertilizer Corporation Ltd.* and Anr. 1992 Lab.I.C. 991 ; *Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another*, Assistant Personnel Officer, S. Rly. Olvakkot v. K.T. Anthony 1978 Lab. I.C. 394 and *John Fernandez and Anr. v. Executive Engineer, P.H. Division Alleppey and Anr.* 1979 Lab. I.C. 255. Argued the learned Counsel further that the subject-matter, since involved mass retrenchment, the writ petitions have to be entertained and considered and need not be thrown out at this stage.

4. We have carefully considered the submissions of the learned Counsel for the Petitioners. In *Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another*, the apex Court was dealing with an appeal, which arose out of the termination of the services of the Appellant therein, who was an

employee of the management of Ambala Central Co-operative Bank Ltd. The worker therein appears to have raised an industrial dispute and the State Government made a Reference. The Industrial Tribunal appears to have concurred with the action of the management, which necessitated the filing of the writ petition, which also ended in dismissal for the worker, and the worker approached the apex Court by filing appeals both against the orders of the High Court as also against the orders of the Tribunal. It is in such circumstances, the management appears to have taken up a plea that against the order of retrenchment passed by the competent authority, the worker concerned had a right of appeal to the Board of Management and he not having availed of or pursued the same, is barred from raising an industrial dispute. This stand taken for the management did not meet with the acceptance of the apex Court and it is in that context which has been observed that raising an industrial dispute is a well recognised and legitimate mode or redress available to a workman, which has achieved statutory recognition under the Industrial Disputes Act and such statutorily recognised mode of redress should not be denied to a workman because of the existence or availability of another remedy. While disapproving of the manner of disposal adopted by the Tribunal in that case, their Lordships of the apex Court further observed that an Industrial Tribunal to whom a dispute has been referred to for adjudication cannot refuse to adjudicate upon it and surrender its jurisdiction though the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication. It was emphasised therein that the Tribunal at any rate has no discretion to decide whether to adjudicate or not. It is this observation, which we could observe to have been made in passing, that is strongly relied upon to contend for the Petitioners, that the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication. This stand taken does not merit our acceptance for the reasons to be set out hereinafter.

5. In 1992 Lab. I.C. 991 (supra), a Division Bench of the Madhya Pradesh High Court had an occasion to deal with a challenge made in a writ petition to an order of closure without obtaining the permission u/s 250 of the Act while dealing with a writ petition filed challenging the closure and consequent transfer of the employees outside the place of their employment. In the said proceedings, the issue relating to the existence of an alternative remedy under the Industrial Disputes Act and the extent to which it disables on that account the Petitioners from moving the Court was taken up for consideration and the Division Bench observed that since the question of Reference of an industrial dispute is dependent on the discretion of the appropriate Government in some measure, it cannot be regarded as an alternative remedy and in coming to such a conclusion, the Division Bench seems to have placed reliance upon the decision reported in 1978 Lab. I.C.394 , rendered by a Division Bench of the Kerala High Court and the observation contained therein that Reference of industrial dispute to the Tribunal can only be at the instance of the Appropriate Government on certain conditions mentioned in Section 10 of the Act and, therefore, cannot be regarded

as an alternative remedy to the worker for the purpose of holding that a petition under Article 226 of the Constitution of India is not maintainable. The observation of the Kerala High Court seems to have been made without noticing the view expressed by the apex Court in *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, that notwithstanding the fact that Reference of an industrial dispute is dependent on the discretion of the appropriate Government in some measure it will still be an alternative remedy excluding the writ jurisdiction of High Court. The learned Counsel for the Petitioners also invited our attention to the decision of the Kerala High Court.

6. The observations in the judgment of the Madhya Pradesh High Court and Kerala High Court, in our view, are not only superficial but do not appear to be made with the seriousness with which the issue deserved consideration. There are innumerable decisions of the Apex Court itself holding that the appropriate Government cannot ordinarily decline to make a Reference of the industrial disputes arising out of the termination of the services of the workmen and the normal rule shall be to refer in all cases of dismissal, discharge or termination of the services of the workmen falling u/s 2A and Section 11A of the Act. This view was taken with particular reference to the nature and character of the powers and jurisdiction exercised by the appropriate Government u/s 10 of the Act holding that the administrative powers conferred therein was to refer only a dispute and not adjudicate on the merits of the dispute themselves, before and while taking a decision to refer or not to refer. In view of the above, it cannot be legitimately contended that the right conferred upon a worker under the Act is neither an effective nor an efficacious remedy, on the supposition that an appropriate Government may in its discretion refuse to refer a dispute. In our view, in certain given cases and circumstances the adjudicatory remedies under the Industrial Law could only be the effective and proper remedy. Consequently, it becomes necessary for us to consider as to whether the cases on hand warrant our exercise of jurisdiction to entertain the disputes raised before us in this proceeding under Article 226 of the Constitution of India. We are alive to the position of law that even the existence of an alternative remedy does not operate as a bar for the court exercising powers of judicial review under Article 226 of the Constitution of India to entertain a writ in respect of the very matter since such considerations have always been considered to be more a rule of prudence and a matter of discretion and that too by self-imposed restriction and was never treated as a fetter and limitation on the exercise of powers under Article 226 of the Constitution of India. In our view, the expansive use and exercise of powers under Article 226 of the Constitution of India cannot be made as a matter of course merely because some grievance of wrongful dismissal is made. Consequently, it is always a matter, which the court in the individual cases has to weigh the need and necessity by-pass the statutory and adjudicatory remedies available in a given case depending upon also the nature of the issues raised. We are unable to agree with the learned Counsel for the Petitioners that merely because more than one worker or a group of workmen and their rights are

involved either the issue could be projected as a matter pertaining to the public law field or on that account necessitate re-course to Article 226 of the Constitution of India for redress. As pointed out earlier, there was an earlier litigation among some or more of the workers, who are now before us and the Respondent-Temple Trust. The Division Bench, which dealt with their claim left liberty with the 2nd Respondent to act in accordance with law and in the light of the principles laid down and the liberties granted if the 2nd Respondent management so desired and it appears to be that taking advantage of the same only the 2nd Respondent has now chosen to invoke the provisions and procedure contained u/s 25F, presently. The nature of the disputes that are sought to be raised involve vertical differences and vital and serious nature of the fact about the existence or otherwise of the required employment opportunities and sufficient amount of work to continue to engage the Petitioners on daily wages. These are all factual claims, which require to be gone into on the basis of oral and documentary evidence that may be let in by either of the parties and on an appreciation of such evidence that may come on record. In a matter of such kind and disputes involving such factual issues to be found, in our view, the Courts exercising jurisdiction under Article 226 of the Constitution of India would be well advised to withhold their hands from entertaining such disputes involving factual clarification and adjudication of disputed factual issues. We are also fortified in our view by the decision of the Apex Court reported in Scooters India and Others Vs. Vijai E.V. Eldred,

In view of the above, we are of the view that there is no justification to countenance the claim of the Petitioners for consideration even in these writ petitions for more than one reason assigned by us supra. Consequently, these writ petitions fail and shall stand dismissed.

7. The dismissal of the writ petitions shall not stand in the way of the Petitioners vindicating their rights before the authorities constituted under the Industrial Disputes Act.

8. Before concluding our order, Mr. Inder Singh, learned Counsel for the Petitioners invited our attention to an order dated 12.10.1998 passed by us in CWP No. 553/98 Rajinder Singh and Anr. v. State of H.P. and Ors. wherein we have made reference to Section 2A of the Act and directed the Labour Court to entertain, a dispute, on being moved. We are afraid, we can adopt the same course of action in this case by setting at naught the role of the Government and the need for an order of reference. From the order, we could see that it was a case where the Petitioner-workers got made an earlier a Reference Petition, which was disposed of by the Labour Court in a slip shod manner without giving any reason and it is in such circumstances only we permitted directly the workers to approach the Labour Court and not in a case like the one before us where a Reference has yet to be sought for atleast once and the Labour Court has to be moved.

CMP No. 1573/98:

Allowed.

CMP No. 1572/98:

In view of the dismissal of the writ petitions, this application is also dismissed.