
(1993) 10 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1506 of 1986

Jagdish Rai

APPELLANT

Vs

Pacca Kalan Co-op. Service Society Ltd. and Another

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)C

Citation : (1994) 2 ILR (P&H) 367 : (1995) 1 LLJ 752

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Sabina, for the Appellant;

Judgement

G.R. Majithia, J.—The petitioner was employed as Salesman with the Pacca Kalan Co- operative Agricultural Service Society Ltd., Pacca Kalan, Tehsil Talwandi Sabo, District Bathinda (the Society, for brevity). His services were terminated on May 25, 1981. He raised industrial dispute by serving demand notice that his services had been terminated illegally without issuing any charge-sheet, inquiry or payment of compensation. The appropriate Government made the following reference to the Labour Court, Bathinda u/s 10(1)(c) of the Industrial Disputes Act. 1947 (for short, the Act) :

Whether termination of services of Jagdish Rai workman is justified and in order. If not, to what relief/exact amount of compensation is he entitled?

The petitioner then filed his statement of claim before the Labour Court. The Management of the Society controverted the plea made in the statement of claim. It also pleaded that the petitioner had gone on illegal strike and as such, the reference was not maintainable as the Society was not an "industry".

On the pleadings of the parties, the Labour Court framed the following issues:-

1. Whether the order of termination of the workman is justifiable at law and in order?

2. Whether the reference is bad in law as alleged in the preliminary objections of the written statement?

3. Relief.

2. Under Issue No. 1 the Labour Court held that the termination of services of the petitioner was justified, Issue No. 2 was not pressed and was answered against the management of the society. In view of the finding under issue No. 1 the petitioner was held not entitled to any relief. The reference was answered accordingly.

3. The petitioner challenged the award of the Labour Court dated December 18, 1985 through this petition under Articles 226/227 of the Constitution of India. Our learned brother V.K.Bali. J. found that the services of the petitioner were terminated on the ground that he had resorted to an illegal strike in May, 1981. He further found that if the workmen had resorted to en masse strike, the punishment of removal from service was too harsh and, in his opinion, the workman was entitled to reinstatement in service but without payment of any back wages.

4. Learned counsel for the petitioner pressed into service a judgment of a learned Single Judge of this Court in *Sher Singh v. The Presiding Officer, Labour Court, Bathinda* and Ors. 1991 (5) SLR. 671, to contend that the Labour Court did not frame any issue with regard to justification of the strike and, therefore, it would be illegal to withhold the back wages. Our learned brother expressed doubt about the correctness of the ratio of the judgment in *Sher Singh's* and asked for a reference to a larger Bench to decide about the correctness of the view taken in that case. It is how the matter has been placed before us.

5. The Act was designed to provide a self-contained Code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes. It provides the machinery and procedure for the investigation and settlement of industrial disputes. The object of the Act is to ensure speedier resolution of industrial disputes by removing procedural delay. Section 11 deals with the procedure and powers of various authorities under the Act. The Tribunals created under the Act derive power from the statute. These Tribunals have no inherent powers. But apart from powers expressly mentioned in the statute, these Tribunals may have powers which are incidental or ancillary. Such incidental or ancillary powers might have been derived by the Tribunal either from the express provisions of the statute or by necessary implication of the powers conferred, under the statute. Section 11(1) of the Act empowers an industrial Tribunal to follow "such procedure" as he "may think fit" subject to any rules that may be made in this behalf. In other words, the conduct of adjudication is absolutely within the control of the adjudicator, subject only to any rules that may be made by the appropriate Government in this behalf. In other words, if the Act and the Rules prescribe a particular procedure, the Tribunal shall have to follow that and no other procedure. If, however, the Rules

are silent on any particular matter, it is open to the Tribunal to follow such procedure, as it may think fit. That is to say, the width and amplitude of the powers of the Tribunal is unrestricted unless the same is restricted by any provision of the Act and the Rules made thereunder. The wide powers given to the Tribunals to follow their own procedure are aimed at mitigating the rigor of the technicalities of the procedural law for achieving expeditious investigation and settlement of industrial disputes. However, the words "as it thinks fit" used in Sub-section (1) of Section 11 are not to be taken literally. Except to the extent specified in Sub-section (3) of Section 11 and the relevant Rules, the provision of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in Sub-section (1). The provisions of the Evidence Act in their strict sense too do not apply to proceedings before the authorities under the Act. An Arbitrator u/s 10A of the Act, Labour Court, Industrial Tribunal or National Tribunal which has to adjudicate upon a matter on reference u/s 10 or Section 36A or applications u/s 33 or section 33C(2) of the Act, exercises quasi-judicial powers which means that certain content of the judicial powers of the State is vested in it and it is called upon to exercise it. A quasi-judicial decision pre-supposes an existing dispute between two or more parties and involves presentation of their case by the parties to the dispute and if the dispute between them is on a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of arguments by or on behalf of the parties on the evidence. Parties are arrayed before these quasi-judicial Tribunals. There is thus a *Us* between the parties. There would be assertion and denial of facts on either side. With the permission of the Tribunal and consent of the opposite side, parties are entitled to appear through legal practitioners before these quasi-judicial Tribunals. The system adopted by these Tribunals is an adversary system, a word as understood in *contra* distinction to inquisitorial system. Rules 9 to 30 contained in Part III of the Industrial Disputes (Central) Rules, 1957 (for short, the Rules) and the Forms, prescribed thereunder, lay down the powers, procedure and duties of these Tribunals. Forms prescribed under the Rules are more or less analogous to a plaint in a suit and the reply to be filed would take, more or less, the form of a written statement. Any party appearing before these Tribunals must make a claim or demur a claim of the other side. Where the parties are at variance, for facility of disposal issues will have to be framed. Parties have to lead evidence. When there is a burden upon a party to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. Obligation of leading evidence to establish an allegation or averment made by a party is on the party making such allegation or averment. It must seek an opportunity to lead evidence. Pleadings before such Tribunals have not to be read strictly. It is equally true that pleadings must be such as to give sufficient notice to other party of the case it is called upon to meet. The rules of fair-play demand that where a party seeks to establish a contention which, if proved, would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. The Tribunal has to decide the *lis* on the evidence adduced before it by the

parties, in respect of the averments and allegations made and contentions raised in their pleadings. Rule 15 of the Rules provides that the Tribunal may accept, admit or call for evidence at any stage of the proceedings before it and in such a manner as it may think fit. It is not bound by the Rules prescribed in the Evidence Act. It is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a dispute between the parties before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the dispute on any extraneous considerations. Justice, equity and good conscience will form the basis of its adjudication. Therefore, these Tribunals have all the trappings of a Court of law. Sub-section (1) of Section 11 confers powers on the authorities mentioned therein to follow such procedure as they "may think fit" and Sub-section (3) confers upon them powers of a Civil Court under the CPC in respect of matters therein specified. Rules 10-A and 10-B of the Rules prescribe the procedure for filing pleadings of the parties, hearings, grant of adjournments, examination of witnesses etc. before the Labour Courts, the Tribunals and the National Tribunals. It has been made mandatory for the National Tribunals to follow the procedure laid down in Rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908 while it is only directory for the Labour Courts and the Industrial Tribunals to follow these provisions of the CPC if they consider it necessary in view of the nature of the particular industrial dispute pending before them. It is not the requirement in law that a Tribunal cannot answer a point unless it forms part of an issue.

6. In Sher Singh's case (supra), Sher Singh, petitioner-workman, was working as Secretary of the Baghapurana Co-operative Agriculture Service Society Ltd., Baghapurana, District Faridkot. His services were terminated by the Society. He got the following reference made to the Labour Court:-

Whether termination of services of Sher Singh workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?

The Labour Court, after examining the pleadings of the parties, framed the following issues:-

"(1) Whether the orders of termination of services of workman is justifiable at law and in order?

(2) Whether the reference is not maintainable for the reasons mentioned in the preliminary objections of the written statement?

(3) Relief."

The Labour Court held the termination of services of Sher Singh workman to be justified, but on the question whether the strike was justified or not, it held that the workman had not led any evidence to show as to whether there was any justification for the strike. The counsel for the workman raised a plea before this Court that no specific issue regarding the legality of the strike was framed by the Labour Court and the workman could not lead any evidence on that aspect of

the dispute. It was further submitted that since the issue was not framed the workman did not lead evidence regarding the legality or justifiability of the strike and the Labour Court was not justified to record a finding that the strike was illegal and unjustified. On the basis of the argument the learned Single Judge concluded thus:-

"It is well settled that no amount of evidence can be looked into on a matter which is not in issue between the parties. No issue regarding the validity of the strike having been framed, even if some evidence had been led on behalf of the respondent-Society, it could : not have been looked into by the Labour Court. That being the position, the finding in this behalf as recorded by the Labour Court is untenable."

7. The aforementioned observations of the learned Single Judge cannot be sustained in view of an authoritative pronouncement of a Division Bench of this Court in *Ram Niwas and Ors. v. Rakesh Kumar and Ors.* 1982 (84) PLR. 9 In that case, Rakesh Kumar, plaintiff respondent, purchased the shop in dispute from the real owner and served a notice on the firm M/s Om Parkash Ghansham Dass, defendant No. 1 of which Ram Niwas appellant and three others were the proprietors, informing it that he had purchased the shop and asked it to pay the damages and vacate the same. The appellant disputed the claim of the plaintiff and this led to the filing of the suit for ejectment and recovery of damages for use and occupation of the shop in dispute. The tenant-appellant took the plea that they were tenants under one Smt. Mohinder Kaur, who was the owner of the shop in dispute and they were not liable to pay any damages to the plaintiff or vacate the same. The learned Single Judge of this Court in second appeal held that Mohinder Sing had a valid title to the dispute-property and had made a valid sale in favour of the plaintiff-respondent and that a valid title had been acquired by the plaintiff-respondent. He further found that an overall reading of the plaint showed that the suit was for possession on the basis of title and a decree for possession on the basis of title could be passed in his favour. Consequently, he passed a decree for possession in favour of the plaintiff-respondent. One of the proprietors of the firm, which was in possession of the disputed shop, assailed the decree of the learned Single Judge in Letters Patent Appeal. A plea was raised by the counsel for the appellant before the Letters Patent Bench that in a suit for ejectment filed by the landlord on the ground of tenancy, a decree for possession on the basis of title could not be passed. The contention was negated by the Bench observing thus:-

"The main question which arises for decision is that if in a suit for ejectment on the ground of tenancy, the plaintiff pleads title and the parties lead evidence in that regard, can a decree for no possession on the basis of title be passed. According to the learned counsel for the appellant, it cannot be done. 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. The matter is not *res integra*. A similar question arose before the Privy Council in *Rani Chandra Kunwar v. Narpat Singh* 34 I.A. 27 . In that case, the defendants at the time of the trial raised a contention that the plaintiff had been given away in adoption and was, therefore, not entitled to inherit. This plea was neither taken in the written statement nor an issue had been framed thereon. The contention was raised before the Privy Council by the plaintiff that in view of the pleadings, the question of adoption could not be gone into. It was held by Lord Atkinson that as both the parties had gone to trial on the question of adoption and as the plaintiff had not been taken by surprise, the plea as to adoption was open to the defendants. The objection was consequently overruled. The view of the Privy Council was followed by the Supreme Court in *Nagubai Ammal and Others Vs. B. Shama Rao and Others*, . In that case no specific plea that the sale in favour of defendants was affected by the doctrine of *lis pendens* was taken in the plaint and no specific issue had been framed on the question. However the defendants went to trial with full knowledge that the question of *lis pendens* was in issue, had ample opportunity to adduce their evidence thereon and fully availed themselves of the same. Venkatarama Ayyer, J. speaking for the court, observed that the principle that the evidence led on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue which was not present to the minds of the parties, has no application to a case where the parties go to trial with the knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto. The absence of a specific pleading on the question is a mere irregularity which causes no prejudice to the defendant."

8. In the light of this authoritative pronouncement in *Ram Niwas* 's case (*supra*), it is no more open to exception that a particular question cannot be answered merely because no specific issue was framed although the parties had led evidence on that question. The observations of the learned Single Judge in *Sher Singh* 's case, referred *supra*, being contrary to the judgment of the Division Bench of this Court in *Ram Niwas*'s case (*supra*) have to be overruled.

9. Apart from this, the learned Single Judge in *Sher Singh*'s case did not appreciate that it was present to the mind of the parties to lead evidence in proof or disproof of the plea whether the strike was legal or illegal. The parties had gone to trial with full knowledge that a particular question was in issue. Though no specific issue had been framed by the Labour Court on that point, but evidence had been adduced by the parties thereto and the question was answered. The finding could not be reversed merely on the technical ground as observed by the learned Single Judge.

10. For the reasons stated above, the view taken by the learned Single Judge in *Sher Singh*'s case (*supra*) reproduced above, cannot be sustained and the same is accordingly overruled.

11. The question having been answered, we direct that the papers of this case be laid before our learned brother V.K. Bali, J. expeditiously for disposing of the writ petition on merits.