
(2001) 03 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12178 of 2000

Karam Chand

APPELLANT

Vs

Govt of India

RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226 , 227
Industrial Disputes Act, 1947 — Section 10 , 10(1)
Limitation Act, 1963 — Article 137

Citation : (2001) 03 P&H CK 0061

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Mr. J.B. Tacoria, for the Appellant; Mr. S.K. Sharma and Mr. I.P.S. Doabia, for the Respondent

Judgement

S.S. Sudhalkar, J.—By this writ petition, the workman is challenging the order of the respondent-Government dated 17.11.1999 (copy Annexure P/3) vide which it had declined to make a reference to the Labour Court.

The reasons for not referring the dispute, as stated in the order are reproduced as under :—"Provisions of I.D. Act, 1947 defining workman are not attracted besides the fact that no terms of settlement/rules has been projected to have been violated by the management and the claim has been raised belatedly.

2. The petitioner was working as Messenger in the respondent No. 2/Bank. He was appointed in the year 1988 and services were terminated in the year 1991. He raised an industrial dispute by demand notice is-, sued in the year 1997, The question for my determination is whether the respondent-Government acted beyond its jurisdiction when it passed the impugned order and delved into the matter, which was to be decided by the Labour Court.

3. By the impugned order, the reasons given for not referring the dispute, can be summarised as under :-

- i) The provision of I.D. Act, 1947 defining workman are not attracted;
- ii) No terms of settlement/rules has been projected to have been violated by the management and
- iii) The claim has been raised belatedly

4. After hearing the learned counsel for the parties, I find that the impugned order cannot be sustained. The respondent had no jurisdiction to delve into the aspect of considering that the petitioner was not a workman especially when the petitioner is a messenger in the respondent-bank.

5. Learned counsel for the petitioner has cited the case of Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, . It has been held therein that where the dispute was whether the persons raising the dispute are workman or not, the same could not be decided by the Government in exercise of administrative functions u/s 10(1) of the Act and the act of the Government refusing to refer the dispute (sic) are not workmen is liable to be set-aside.

6. The second reason given for not referring the dispute is vague one.

7-8. The third reason is regarding the dispute having been raised belatedly. It is not that dispute has to be raised within three years as it is well settled that Article 137 of the Limitation Act is not applicable to the disputes which are raised under the Industrial Disputes Act (hereinafter referred to as "the Act"). Various aspects have to be considered. Relying on the judgments of the Supreme Court in the cases of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, the D.B. of this Court (in which I was a Member) in the case of Surjit Singh v. P.O. and others, Civil Writ Petition No. 958 of 1999 decided on 31.10.2000 2001(2) SCT 497 (DB) has formulated the following points.

1. No limitation is prescribed under the Act.
2. If plea of delay is not taken, the delay may not be considered.
3. If plea of delay is taken, it should be considered.
4. If a dispute has become stale, it should not be revived after a lapse of long period if the plea regarding delay has been taken.
9. The question, therefore, could be decided only by the Labour Court and not by the respondent Government because the matter cannot be just thrown away on the ground of delay, without considering all the above aspects.
10. Learned counsel for the respondents has. cited the case of Ram Avtar Sharma and others v. State of Haryana and another, reported as AIR 1965 SC 915 and has relied on the following observations of the Supreme Court.

"5. Now if the Government performs an administrative act while either making or

refusing to make a reference u/s 10(1) it cannot delve into the merits of the dispute. That would certainly be in excess of the powers conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima-facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review."

11. Even from these observations, it cannot be said that the impugned order of respondent No. 1 was within its jurisdiction and that it has not delved into the jurisdiction of the Labour Court. "

12. In view of these reasons, this writ petition is allowed. The impugned order, Annexure P/3, dated 17.11.1999 declining to make a reference to the Labour Court is set-aside and the case is remanded to respondent No. 1 to take decision in accordance with law. Necessary decision be taken within one month of receipt of copy of this order from this Court or production of certified copy of the order by the petitioner, whichever is earlier.

13. Writ petition allowed.