

(2004) 12 JH CK 0040
In the Jharkhand High Court
Case No : L.P.A. No. 508 of 2003

Kauleshwar Sharma

APPELLANT

Vs

Tata Engineering and Locomotive Company Ltd.

RESPONDENT

Date of Decision : 24-12-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(1)

Citation : (2005) 1 JCR 332

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : A.K. Sahani, for the Appellant; V.P. Singh and Manish Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the appellant against the order dated 3.7.2003 passed by the learned Single Judge in C.W.J.C. No. 268/2001 whereby the appellant's writ application has been dismissed and thereby the award under challenge in the said writ application rendered in Reference Case No. 12/1987 and M.J. Case No. 1/88 has been affirmed and upheld.

2. The facts giving rise to this appeal is that the appellant was employed as a Progress Supervisor in the respondent Company- M/s. TELCO. He was served with a charge-sheet dated 19.11.1974 arising out of the alleged theft of two numbers of H.R.C. Fuse and 61 numbers of Welding Rods amounting to Rs. 830. The appellant denied the charges and claimed that he has been falsely implicated. There was a domestic enquiry and on the basis of the enquiry report the appellant's services were terminated on 15.11.1974. The same was disputed by the appellant and he demanded his reinstatement on 30.5.1975, which was forwarded to the Assistant Labour Commissioner, Jamshedpur. On 5.12.1975 the under Secretary of Labour Department, Government of Bihar declared the dismissal order to be valid one. According to the appellant he thereafter made a fresh application before the Labour Commissioner for recommendation of his

case on 17.12.1975, followed by several reminders up to 11.12.1976. The Deputy Commissioner (Labour), Jamshedpur then asked the General Manager of the respondent No. 2 to appear in the conciliation proceeding. The conciliation proceeding ended in a failure report and by notification dated 14.4.1987 the Government of Bihar, Labour Employment and Training Department, issued notification dated 14.4.1987 u/s 11(1)(C) of the Industrial Disputes Act, 1947 for adjudication. The term of reference reads that : "Whether the termination of services of Sri Kauleshwar Sharma, Progress Supervisor, TELCO, Jamshedpur is justified? If no, what relief he is entitled to?" The said reference after adjudication was inspected by the Labour Court, Jamshedpur by its award dated 1.7.2000. In course of the adjudication the learned Labour Court formulated the following four points for consideration and adjudication.

(i) Whether the reference is valid and competent and whether the reference case is maintainable before this Court.

(ii) Whether the charges levelled against Shri Kauleshwar Sharma stand established.

(iii) Whether the charge-sheeting authority and punishing authority had the necessary power in disciplinary matter.

(iv) Whether the dismissal of Shri Kauleshwar Sharma is justified or not and whether he is entitled to any relief?

3. The learned Labour Court after thorough consideration of the facts and the law held (i) that the dispute which has been referred was already refused by the Government in the year 1975 and the same has been again referred to this Court after a gap of long period of 12 years which is totally incompetent and thus reference case is not maintainable; (ii) in view of the non- maintainability of the award no finding was required to be given on the merit of the case. The reference case was thus held to be not maintainable.

4. Aggrieved by the said award, the appellant filed a writ application being C.W.J.C. No. 268/2001. Both the parties were heard by, the learned Single Judge at length. The learned Single Judge in view of the controversy raised by the parties formulated three questions :

(i) Whether the Labour Court can examine the stateness of the reference and can dispose of the reference holding that it is non-maintainable

(ii) Whether the Labour Court is required to answer all the issues and

(iii) Whether the High Court can interfere with the impugned award?

5. After detailed discussion and consideration of facts, documents and materials on records and law, the learned Single Judge recorded the following findings :

(i) The reference was refused by the Government and communicated to the petitioner under the order of the under Secretary to the Government in the

Department of Labour and Employment, Annexure-2.

(ii) The representation for review, which the petitioner made, was not made to the Government, but to the Labour Commissioner, Annexure-3.

(iii) Annexure-4 has been issued by the Deputy Labour Commissioner, directing, the respondents to appear before him on 20.12.1976. This letter does not say that this was issued by the Deputy Labour Commissioner under the orders of the Government for reviewing the order of refusal of reference.

(iv) There is nothing on the record, except the averment made in the writ petition that from 20.12.1976 till 14th April, 1987, any other representation was filed by the petitioner before the Government for reviewing the order of refusal of reference.

(v) There is a delay of 11 years in referring the matter after the reference had been refused earlier. The learned Single Judge after recording the said findings, held that the dispute did not exist at the time of reference which was made after 11 years of the refusal of the reference and thus the reference was incompetent on the ground on stateness and non-existence of the dispute and dismissed the writ application by the impugned order dated 3.7.2003.

6. Mr. A.K. Sahani, learned counsel appearing on behalf of the appellant submitted that the learned Single Judge has failed to take into consideration that there was no laches and delay only on the part of appellant but respondent No. 2 was also responsible for causing delay in the conciliation matter. He further submitted that the dispute regarding his reinstatement is still in existence as the appellant has not been reinstated as yet. According to the learned counsel, there is no time limit for consideration or submission of earlier report or for reference of the dispute. He further submitted that even once declined, reference can also be subsequently referred and the same cannot be treated as a review. It is also not necessary that there ought to have been some fresh material before the Government for reconsideration of the earlier decision. Learned counsel relied on a decision *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, Learned counsel thus argued that the Labour Court as well as the learned Single Judge have erred in holding the reference not maintainable on the ground of the dispute being state and non-existent.

7. Mr. V.P. Singh, learned Senior Advocate, appearing on behalf of the respondent, on the other hand, submitted that the award as well as the judgment of the learned Single Judge are well considered, sound and well founded and there is absolutely no infirmity or illegality. Learned counsel submitted that in the case of *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, the Apex Court has held that an administrative order which does not take into consideration statutory requirement or travels outside that is certainly subject to judicial review and the High Court in exercise of its jurisdiction under Article 226 of the Constitution can exercise its power to consider the question of the very jurisdiction of the Labour Court. The High Court has jurisdiction to entertain a

writ petition when there is an allegation that there is no industrial dispute, which could be the subject-matter of reference for adjudication of the Industrial Tribunal u/s 10 of the Act: In the above referred case the dispute was referred after seven years which was held to be state and the non-existent. According to the learned counsel in the Instant case the learned Labour Court as well as the learned Single Judge have thoroughly considered the facts and provisions of law and decisions of the Apex Court, supra, and have come to the finding that the reference having been made after 11 years the same is state and the dispute itself does not exist. It has been thus concurrently found and decided that the reference was not maintainable.

8. After hearing the learned counsel and perusing the records, we find that the Labour Court as well as the learned Single Judge have concurrently found that the reference made after 11 years with regard to the alleged dispute was state and the dispute itself is non-existent and the reference is not maintainable. The decision cited by the learned counsel for the appellant, supra, has got no application in the facts and circumstances of the case. In that case, the Apex Court held thus : The powers remains intact and can be exercised if the material and relevant considerations for its exercise like the continued existence of the dispute and the wisdom of referring it in the larger interest of industrial peace and harmony are available".

In the instant case it has been concurrently found by the learned Labour Court as well as by the learned Single Judge that the case is state and the dispute has not been found to exist. The facts and circumstances of the instant case thus do not fit in the compass of the said decision of the Supreme Court and the same is of no help to the appellant. No other infirmity or illegality in the judgment of the learned Single Judge could be brought to our notice warranting any intervention in the impugned Award/judgment.

9. We, therefore, find no merit in this appeal which is accordingly, dismissed.

S.J. Mukhopadhaya, A.C.J.

10. I agree.