

(2014) 03 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 86/2010

Kaushal Chandel	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25F

Citation : (2014) 03 RAJ CK 0032

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Kailash Chandra Sharma, Advocates for the Appellant; S.S. Raghaw, Additional Solicitor General, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner Kaushal Chandel inter-alia with the prayer that the impugned order dated 3/8/2009 (Ann.6) passed by the Ministry of Labour, Government of India by which, it denied to send reference of the industrial dispute to the labour court, be quashed and set-aside.

2. Facts to the present petition in brief are that petitioner was initially appointed on the post of Executive Operation on 25/6/2007 under the employment of M/s. Overnight Express Ltd., New Delhi. He was declared permanent on the said post w.e.f. 1/12/2007 vide order dated 21/1/2008. His services were terminated vide order dated 25/8/2008. Petitioner submitted his claim before the conciliation officer on 14/10/2008. The employer submitted reply to the application on 17/12/2008 denying the claim of petitioner for sending his reference to the labour court with the prayer that said application for conciliation should be rejected. The Ministry of Labour, Government of India ultimately vide communication dated 3/8/2009 (Ann.6) to Chief Development Officer, M/s. Overnight Express Ltd., New Delhi and petitioner, refused to refer the industrial dispute of petitioner to the labour court on the premise that petitioner did not join the transferred place and thereby failed to report for duty and hence

voluntarily reversed himself from service. Hence, this writ petition.

3. Shri Kailash Chandra Sharma, learned counsel for the petitioner has argued that the government is not competent to decide the matter of industrial dispute on its merit or demerit. It has only to decide whether the dispute is in existence or not. The Government was bound to refer the industrial dispute to the labour court without adjudging the merit or demerit of the dispute. Petitioner has completed more than 240 days in a calendar year. So far as the premise of not joining the petitioner at the transfer place, on which the government refused to make reference is concerned, it is a matter of evidence and without analyzing that issue in the light of the evidence on record, the government could not have refused to make reference. It was argued that services of the petitioner have been terminated without any notice and making compliance of Section 25F of the Industrial Disputes Act, 1947 (for short, the "Act of 1947"). Otherwise also, the issue of "willful absence" is also come within the ambit of scope of Section 25F of the Act of 1947, hence services of a workman cannot be terminated contrary to it. The issue of "willful absence" therefore ought to have been first decided before terminating his services in the light of the evidence and making compliance of Section 25F of the Act of 1947. The Ministry of Labour, Government of India could not have refused to make reference to the labour court contrary to law.

4. Shri S.S. Raghaw, learned Additional Solicitor General appearing for Union of India has argued that decision of the Ministry of Labour, Government of India in refusing to make reference to the labour court is perfectly justified in the light of the fact that petitioner was transferred but he instead of joining the transferred place, remained absent from duty on his own and did not report back on duty, therefore, his services were terminated on 25/8/2008. Since petitioner remained willfully absent from duty and did not report back, it is deemed that he himself left his job on his own and hence the decision of the Ministry of Labour dated 3/8/2009 (Ann.6) refusing to make reference to the labour court on this premise is perfectly just and in accordance with law.

5. I have heard learned counsel for the parties and perused the material available on record.

6. A bare perusal of the impugned-order refusing to make reference, after the Appropriate Government received the failure report from the conciliation officer reveals that there being no doubt about existence of dispute about termination of services of petitioner. The Ministry of Labour, Government of India has certainly erred in law while upholding the plea of the employer that services of the workman were terminated because he did not join the transferred place and thereby, remained absent from duty willfully. Apparently, the Government acted without jurisdiction in declining to make an existing dispute on its opinion about merit of the claims of the parties. Such an order cannot be sustained on the face of it.

7. The Appropriate Government is only expected to decide before making a reference as to whether on a prima-facie examination of the facts of the case, there is a dispute, which requires a trial or adjudication by a Tribunal or the Government. The Government cannot take up on itself the function of adjudication. The Appropriate Government cannot embark on the merit of the case and refuse to make a reference on the ground whether workman remained absent from duty willfully or not. The discretion by the Appropriate Government has to be exercised in a manner that it does not transgress into adjudicating jurisdiction by pronouncing upon the merit of dispute which exists. In making or refusing to make a reference the Appropriate Government not acts only administratively on its subjective satisfaction on the basis of material available with it.

8. It is trite that that the Appropriate Government does not function as a judicial or quasi-judicial authority for determination of rights of parties.

9. Principally, the position is settled and it does not require elaborate discussion that jurisdiction of appropriate government while considering whether the dispute is referable to Industrial Tribunal or Labour Court for adjudication or not is only confined to whether an industrial dispute exists or is apprehended to exist and such jurisdiction does not extent to consider the merit of dispute, which is shown to exist. A stale dispute may be refused to be referred to the Industrial Tribunal or Labour Court as the case may be, not only on the ground that who is right or wrong, but on the ground that due to passage of time it has ceased to exist or it is not expedient to disturb the industrial peace by taking up stale claims.

10. In the present case, the petitioner is seeking his right to seek industrial adjudication of dispute that exists between himself and his employer. His services were terminated on 25/8/2008. He has immediately approached the conciliation officer on 14/10/12008 complaining about illegal termination of his services without any notice. Relationship of employer and employee is not in dispute. The employer claimed willful absence of the petitioner on the ground of his non-joining the transferred place to be a valid ground for his termination, which is not legally sustainable.

11. The Supreme Court in Dhanbad Colliery Karamchari Sangh vs. Union of India, 1992 (1) PLJR 98 (SC) held that the Government cannot itself decide the dispute. In Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, , the Supreme Court held that refusal to make reference on the part of the State Government was wholly unjustified. Such decision should not be based on merits of the dispute itself as the Government's function under Section 10(1) of the Act is purely an administrative function. In Bombay Union of Journalists and Others Vs. The State of Bombay and Another, , the Supreme Court held that when the dispute raises question of law, then the appropriate Government should not reach at final decision on the said question of law because it lies within the domain of the Labour Court or the Industrial Tribunal.

12. In view of above, the writ petition deserves to succeed and it is hereby allowed. The impugned-order dated 3/8/2009 (Ann.6) is set-aside. The Appropriate Government is directed now to refer the dispute to the competent Labour Court as early as possible preferably within one month from the date of receipt of copy of this order. There shall be no order as to costs.