
(1985) 10 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 286 of 1985 and C.M.P. No. 2935 of 1985

Maruti Udyog Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-10-1985

Acts Referred:

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

Citation : (1994) 3 LLJ 518

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : O.C. Mathur and K.D. Singh, for the Appellant; S.K. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—These are 29 matters (C.W.P.Nos. 286, 2139 to 2144 and 2530 to 2551 of 1985) arising under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). They can conveniently be disposed of by a single order, adopting for use facts of one of them, being Civil Writ Petition No. 286 of 1985, since the points involved in all are identical.

2. The petitioner, the management of Maruti Udyog Limited, Gurgaon (the common petitioner in all cases), had in its employment workmen, each of whom is a party-respondent in the respective cases. In Civil Writ Petition No. 286 of 1985 the services of Raghav Yadav, the workman, were terminated with effect from 24th July, 1982. The workman, on 11th Nov., 1982, gave demand notice relating to the alleged illegal termination of his services. He demanded reinstatement with full back wages and continuity of service. The Labour-cum-conciliation Officer, Gurgaon, undertook the conciliation proceedings in accordance with the procedure prescribed under Sections 11 and 12 of the Act read with the Industrial Disputes (Punjab) Rules, 1958. A notice in terms of Rule 2A was sent by the Conciliation Officer to the petitioner to file rejoinder in the

conciliation proceedings on 18th November, 1982. This was done by means of a registered letter. No one put in appearance on behalf of the management. The Conciliation Officer then recorded the statement of the worker, who reiterated that the management had illegally terminated his services with effect from 24th July, 1982, and his demand was that he should be reinstated with back wages. In that situation, finding the management absent, the Conciliation Officer considered it appropriate to send an ex parte failure report in accordance with section 12(4) of the Act. The Haryana Government then referred the dispute u/s 10(1)(c) of the Act to the Labour Court, Faridabad. The dispute was termed as "whether the termination of services of Shri Raghav Yadav was justified and in order? If not, to what relief is he entitled ? " While forwarding the copy of the referring order to the Presiding Officer, Labour Court, Faridabad, a copy of the demand notice dated 11th November, 1982", given by the workman was also sent. This is how the Labour Court assumed jurisdiction over the matter.

3. In response to the notice issued by the Labour Court, the petitioner management put forward the plea that it had on its own revoked the order of termination of services dated 24th July, 1982, but had passed a fresh order of termination of services of the workman concerned on 14th November, 1982, and had for the intervening period offered requisite payments to the workman in compliance with the provisions of section 25F of the Act. A copy of the letter dated 14th Nov., 1982, allegedly sent by the management to the workman, appended with the petition as annexure P3, is self-revealing as, by the same stroke of pen, order of termination of services dated 24th July, 1982, was revoked and substituted by order dated 14th Nov., 1982. It is the conceded position that the management did not intimate in time the Conciliation Officer about this development, when he could have passed appropriate orders on 18th Nov., 1982, the date fixed for the conciliation. It is also the conceded position that the workman was also not apprised of the said order before that date. It thus emerges that the Conciliation Officer gave his failure report oblivious of the development and the same was based solely on the notice of demand relating to order of termination of services dated 24th July, 1982, and not relating to order of termination of services dated 14th November, 1982. Consequently, the claim of the management is that the Government while referring the dispute to the Labour Court had only in view termination of services effective from 24th July, 1982, relative to the demand notice pertaining to the termination of service of 24th July, 1982. Thus, it is the firm case of the management that the Labour Court was required to determine whether the termination of service of Raghav Yadav by means of order dated 24th July, 1982, was justified and in order, and if not, what relief was he entitled to. And further, when the Labour Court stood apprised that the order of termination of services dated 24th July, 1982, had been revoked, the Labour Court should have either passed a ""no dispute award" or declared the reference itself to have been rendered infructuous as the management had conceded that the termination of services of the workman effective from 24th July, 1982, stood revoked, and he had been treated to be in

service till 14th November, 1982, when his services were terminated afresh.

4. The Labour Court, however, did not straightaway accede to the request of the management and proceeded to frame the following three issues on 9th Nov., 1984:

1. Whether the reference is bad in law?

2. Whether the termination took effect on 24th July, 1982, or any other date? If so, its effect ?

3. As per terms of reference, (whether the termination of services of Shri Raghav Yadav was justified and in order ? If not, to what relief is he entitled?)

5. On the framing of the issues, the petitioner management claimed that issue No. 2 be treated as preliminary. Seemingly, it wanted to hammer that the termination had taken place not on 24th July, 1982, but on 14th Nov., 1982, and on that analysis it wished to contend under issue No. 1 that the reference was bad in law, and under issue No. 3 that the reference was infructuous. It was obvious that the management sought decision on issue No. 2 so as to ramify instant decision on issue Nos. 1 and 3. The Labour Court, however, vide order dated 14th December, 1984, annexure 1-1, declined to treat issue No. 2 as preliminary, taking aid of the dicta of the Supreme Court in various cases, depreciating the practice of framing preliminary issues in industrial disputes. The Labour Court further remarked that the reference was pending since the beginning of 1983, and its disposal had been delayed for a long time, and the management was trying to delay the disposal of the reference by filing such applications. Aggrieved against the said order, the petitioner management has approached this Court under articles 226/227 of the Constitution of India.

6. Reply has been filed by the workman-respondent. There is an effort on the part of the petitioner-management to file a rejoinder and permission has been sought to amend the petition. These petitions are being disposed of herewith. In the return on the factual side, there is not much of it. Yet it need be noticed that a vague assertion has been made by the respondent that the Haryana Government, before referring the matter for adjudication to the Labour Court, had perhaps, on its own, become aware of the order of termination of services dated 24th July, 1982, to have been substituted by order dated 14th November, 1982, and thus sequently it was contended that in the order of reference, annexure P-11, the terms thus did not confine to order dated 24th July, 1982, but were fairly comprehensive to seek determination of the dispute, whether the termination of services of the workman was justified and in order. Otherwise, it is the conceded position on behalf of the workman that before the Labour Court, he has amended his pleadings, so as to challenge order of termination of services dated 14th November, 1982, and the Labour Court has permitted such amendment, of which the petitioner has notice. The petitioner-management termed the step of the workman to be a tacit admission, as before such step was taken before the Labour Court, his only challenge by means of demand notice or

otherwise, was to the order of termination of services dated 24th July, 1982.

7. The facts, as narrated heretofore, are plain and simple though their description in the pleadings by employment of various expressions is variegated. The point which thus arises for consideration is whether the Labour Court acted within its jurisdiction in not treating issue No. 2 as preliminary and keep proceeding with the reference in the facts and circumstances of the case, and whether this Court should in the exercise of powers under Articles 226/227 of the Constitution of India, issue any direction to regulate the proceedings in a particular manner, in the interest of justice, or to order dropping of proceedings in the peculiar facts and circumstances of the case.

8. The object of the Act is to make provision for the investigation and settlement of industrial disputes as also their adjudication. The steps are taken to promote industrial peace and to avoid industrial unrest. The machinery for conciliation and adjudication is to secure that end. The powers of the authorities deciding industrial disputes under the Act are very extensive much wider than the powers of the civil court while adjudicating a dispute which may be an industrial dispute. The Supreme Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, observed as follows (at p. 258):

"...Since the time of the earliest decisions of the Federal Court and the Supreme Court of India it has been recognised fully well that the powers of the authorities deciding industrial disputes under the Act are very extensive much wider than the powers of a Civil Court while adjudicating a dispute which may be an industrial dispute... .

Bearing these principles in mind, one has to view the demand notice of the workman. What he demanded was merely his reinstatement with back wages. It is with regard to that demand notice that conciliation was resorted to but conveniently the management ignored the legal process. The reason is not far to seek, because even if the order dated 24th July, 1982, had been revoked, in the same breath, order dated 14th November, 1982, had been passed. Resultantly, the demand of the workman for reinstatement with back wages was still not met when on 18th November, 1982, conciliation proceedings were to take place. Same was the position when the matter was examined by the Government and referred for adjudication. The contention of the petitioner's learned counsel that the workman should have raised a fresh demand in relation to order dated 14th November, 1982, and that conciliation proceedings pertaining to that order had to be gone into before failure report could be given by the Conciliation Officer, appears to me fallacious. As said before, the demand was towards reinstatement with the back wages. Unless that state of things had permanently been withdrawn, like revoking the order dated July 24, 1982, altogether without any reservations, the dispute persisted and there was a recurring source of danger to industrial peace and subsistence of industrial unrest. In this situation, the Haryana Government, in either situation, whether it was aware of order dated November 14, 1982, or not, was justified to make a reference to the Labour

Court for adjudicating the matter. The terms of reference are comprehensive enough to include both orders of termination, be it of July 24, 1982, or November 14, 1982. It is the conceded position that on the material, which was supposedly with the Government, a valid reference had been made relating to order dated July 24, 1982. On that premise, I fail to see how the Government was unjustified in making the reference even in relation to order dated November 14, 1982, when the recurring dispute was whether the petitioner was entitled to reinstatement with back wages as was his demand. It is fallacious to assume, more so in the instant case, that hypothetically the workman might have been satisfied with order dated November 14, 1982, or that the matter could have been solved by conciliation, or that the Government may not have referred the matter at all for adjudication to the Labour Court. Thus, it is my considered view that the order of reference is comprehensive enough to encompass the dispute regarding termination of services of the workman with his claim to reinstatement with back wages and the date of termination of order/orders is merely to identify the source of the industrial dispute. Learned counsel for the petitioner relied on the following observations of the Supreme Court in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, .

"....Thus, both the respondents, in their claims put forward before the management of the appellant, requested for payment of retrenchment compensation and did not raise any dispute for reinstatement. Since no such dispute about re-instatement was raised by either of the respondents before the management of the appellant, it is clear that the State Government was not competent to refer a question of reinstatement as an industrial dispute for adjudication by the Tribunal. The dispute that the State Government could have referred competently was the dispute relating to payment of retrenchment compensation... On these facts, it is clear that the reference made by the Government was not competent. The only reference that the Government could have made had to be related to payment of retrenchment compensation which was the only subject-matter of dispute between the appellant and the respondents".

9. These observations have been pressed into service to contend that the demand of the workman was that the order dated July 24, 1982, was illegal and that since that order had unilaterally been revoked by the management before the day when the reference was made, the reference per se was meaningless and infructuous. The argument has not appealed to me from any angle. In the first place, as is clear from the report in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, , the workman could have asked for reinstatement by raising a demand to that effect, but they did not and instead confined to the lesser relief of payment of retrenchment compensation. No occasion thus arose for conciliation on reinstatement and thus, obviously, there could be no failure report in that regard, which alone would have justified reference by the Government to get the matter about reinstatement adjudicated. In other words, a larger relief could be claimed by the workmen but they instead

claimed a lesser relief. Having taken that position, they were not allowed to enlarge the scope of the dispute merely because the Government had come to the opinion that an industrial dispute existed regarding the reinstatement. Rather, the dispute relating to reinstatement had first to arise between the employer and the workman but which had not arisen at all, the workman having not raised it. The ratio of that case on facts is distinguishable, for, in the instant case, there is no such graded relief. In the second place, the sole relief sought is reinstatement with back wages, whether it is based on order dated 24th July, 1982, as known to the workman, or on order dated 14th November, 1982, as projected by the employer, the existence of the industrial dispute raising a demand of reinstatement was alive and simmering. Rather, on the other hand, as urged by the learned counsel for the workmen in *Shambu Nath Goyal v. Bank of Baroda* [1978] 52 FJR 159 the Supreme Court explained the term "industrial dispute" in the following manner at p. 162:

"...The term "industrial dispute" connotes a real and substantial difference having some element of persistency and continuity till resolved and likely, if not adjusted, to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment or non-employment, or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into the definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section".

10. As is plain, the Act nowhere contemplates that an industrial dispute can come into existence in any particular way or in a specific or prescribed manner. Section 2(k) of the Act, which defines the term "industrial dispute" covers both "dispute" and "difference". A difference can exist long before the parties became locked in a combat, as Lord Denning put it in *Beetham v. Trinidad Cement Ltd.* [1960] 1 All ER 274 at page 279. I see no reason why the existence of a difference cannot be seen through in a calculated unilateral peace or when a new opening has obviously been made for a future combat. As I can perceive, if the undercurrent of the difference keeps existing, which could only be resolved by adjudication, the referring Government, the Labour Court and for that matter any court, seized of the matter, can certainly pierce the veil of the apparent peace or truce and discover the persisting difference to base its jurisdiction. On taking this view, it becomes patent that the Management right from 24th July, 1982, onwards, had kept effected a termination order against the workman denying him reinstatement and the effect had not been nullified ever, despite order dated 24th July, 1982, being substituted by order dated 14th Nov. 1982. Thus, the substantial difference had an element of persistency and continuity (to use the expression of the Supreme Court) and till it was resolved was likely to endanger the industrial peace of the undertaking. The Government was thus well within its rights to have the matter adjudicated.

11. Now coming to the arena of the Labour Court the learned counsel for the

petitioner-management contended that the Labour Court could not enlarge the scope of its jurisdiction and decide on the question of the legality of the order dated 14th November, 1982, especially when the management has conceded before it that there is no order dated 24th July, 1982, existing after its revocation. Reliance was placed on Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, . In that case, the terms of reference specifically had raised an issue about the legality and justification of the strike and lock-out in a particular mill on a particular date for a certain period. The Industrial Tribunal concluded that there was no strike or lock-out at all. The point then raised was that in accordance with the terms of reference, the existence of the strike and lock-out was innate and that the Tribunal was only required to examine its legality and justification and not its existence. This case is of no assistance to the cause of the petitioner, because the existence of an order of termination effective from 24th July, 1982, is not in dispute except the meaning which is sought to be given to its form and substance. The powers of the Labour Court are far wide in such matters than even the civil court, as is clear from the observations of the Supreme Court in Premier Automobiles Ltd's case [1975] 48 FJR 252. This is all the more significant when viewed with the aid of Sub-section (4) of Section 10 of the Act, which provides:

"10. Reference of Disputes to Boards, : Courts or Tribunals:-

(1) * * * *

(2) * * * *

(3) * * * *

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto".

12. The Supreme Court in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, explained matters incidental to a dispute as follows (at p. 538 of 30 FJR):

"Something incidental to a "dispute" must, therefore, mean something happening as a result of, or in connection with, the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct....."

The fundamental thing of the dispute in the instant case is the termination of services and it is incidental that firstly it was based on order dated 24th July, 1982, and, on its substitution, stands based on order dated 14th November, 1982. The Labour Court, with wide powers, is certainly entitled to take into account the change of fact and circumstances, as disclosed to it, so as to mould

the relief accordingly. It would obviously be thus a matter incidental to the point referred to it for adjudication. Thus, I find no reason to oust the jurisdiction of the Labour Court when it is proceeding to determine the questions as posed inter-linkedly in the three issues aforequoted. The Court has also the right to examine the question whether the dispute referred to it has ceased to exist or not and if existing what should be its adjudication.

13. On larger interest of industrial peace even, I am of the considered view that the petitioner should not be allowed to set a precedent for hide and seek. Any cunning employer, when faced with an industrial dispute before a Tribunal or Labour Court, could machinate ouster of its jurisdiction by contending that the order which spurted the industrial dispute has been withdrawn and, in the wake of any fresh order it might have passed to achieve the same result, requiring the workman and the Government to do the exercise again to have the matter freshly referred for adjudication before a Tribunal or a Court. The game can be kept repeated to tire and bend the spirit of the workman. Such a course, to my mind, would lead to disastrous results. The High Court shall, in no case, take any such step which may even remotely encourage such a calculated game. Far from it, it shall stay its hands from indulging in the matter and leave it to the Labour Court to deal with it in the manner which it thinks fit.

14. So far as the demand of the petitioner to have issue No. 2 treated as preliminary is concerned, it is clear from D.P. Maheshwari Vs. Delhi Administration and Others, that the Supreme Court depreciates the practice of trying some issues as preliminary issues. High Courts have been cautioned to exercise their jurisdiction under Article 226 of the Constitution to have a preliminary issue decided by the Court or the Tribunal. This Court must thus, on the basis thereof, avoid granting indulgence to the petitioner to have issue No. 2 decided as a preliminary one as otherwise the process before the Courts, and Tribunals set up under the Industrial Disputes Act, would tend to be back-breakingly litigative for the ones who can ill-afford to be dragged from court to court.

15. Thus, to conclude, I hold

(i) the Labour Court did not commit any error of jurisdiction in declining to treat issue No. 2 as preliminary and rightly kept proceeding with the reference, and that

(ii) this Court need not give any direction to regulate the proceedings before the Labour Court and in no event shall it put an end thereto. At this stage, interest of justice rather lies to let the proceedings go on before the Labour Court, so that it can give its decision unimpeded.

16, Resultantly, these petitions fail and are hereby dismissed with costs. Along therewith are disposed of applications for filing rejoinders to the written statements and for permission to amend the respective writ petitions.