
(1997) 03 AHC CK 0096

In the Allahabad High Court

Case No : Civil Miscellaneous Restoration Application No. 70437 of 1996-IN-C.M.W.P. No. 499 of 1990

Mohammad Mobin

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(4), 12

Citation : (1997) 03 AHC CK 0096

Hon'ble Judges : D.K.Seth, J

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—The writ petition was disposed of by an order dated 20th May, 1996. The said order was sought to be recalled by an application which was dismissed for want of prosecution. Subsequently another application was made for recalling the said order. Notice of the said application was given to the learned counsel for the other side. Mr. Manish Kumar appears to oppose the said application. The grounds made in the said application were found sufficient and accordingly it was suggested that both the learned counsel should address the Court on the merit of order dated 20th May, 1996 for the purpose of recalling/modifying the said order, if it so deserves on its own merits.

2. Mr. Satish Chaturvedi learned counsel for the other side submitted that the scope of reference was not the question of abandonment of his services but as to whether the services of the petitioner was illegally terminated or not. According to him, the services of the petitioner was never terminated. On the other hand, the petitioner had abandoned his service. Therefore, in the absence of any order of termination of service by the employer, no order for reinstatement could be ordered with the scope of the reference on the ground that there was no abandonment. Accordingly, the Tribunal has rightly recorded a finding that the services were never terminated. The learned counsel further submits that this Court cannot direct reinstatement, on the other hand this Court ought to have

remanded the case for adjudication afresh by the Labour Court in view of the order dated 30th July, 1991, wherein such a view was expressed by this court while refusing the interim order. He also drew the attention of the court on the impugned award and pointed out that there was no termination of the service of the workman. On the other hand, the workman did not join his service. On these grounds he assails the order dated 20th May, 1996 and contends that the said order should be recalled and at the best the matter be referred for adjudication afresh if this court intends to interfere with the award.

3. Mr. Manish Kumar, learned counsel, however, opposes the said argument and contended that while exercising the writ jurisdiction, as soon the matter is brought before this court, the entire dispute is open to be adjudicated by this court. Though it can be coined in different terms as abandonment or termination but it is nothing but nonemployment. The reference of termination encompasses nonemployment. The question of non employment can not be excluded simply because the word termination has been used in the order of reference.

4. I have heard Mr. Satish Chaturvedi and Mr. Manish Kumar, learned counsel for the respective parties.

5. Industrial dispute as defined in Section 2(k) of the Industrial Disputes Act,

1947 corresponding to Section 2(1) of the U.P. Industrial Disputes Act, 1947 (herein after referred to as the Central Act and the State Act respectively), means "any dispute or difference between employers and workmen." connected with the employment or nonemployment... of any person". By reason of Section 2A dispute or difference connected with or arising out of discharge, dismissal, retrenchment or termination otherwise from service of an individual workman is deemed to be an industrial dispute. A reference of an Industrial Dispute is made by the appropriate Government to the Labour Court or the Tribunal under Section 10(1) of the Central Act (Section 4(k) of the State Act). Such reference can be made when an industrial dispute exists or apprehended. Under Section 4(k) reference can be made of any matter appearing to be connected with or relevant to the dispute. Section 10(4) of the Central Act provides that the Labour Court or the Tribunal has to confine to the points of adjudication specified in the order of reference and matters incidental thereto.

6. According to the scheme of the said Act a reference is ordinarily proceeded by a conciliation proceeding. If no settlement could be arrived at in the conciliation, the conciliation officer has to submit a failure report under Section 12(4) of the Central Act. An order of reference is made by the Government ordinarily on receipt of such failure report specifying the points of adjudication in such reference. Section 11A of the Central Act empowers the Labour Court or the Tribunal in case of discharge or dismissal to set aside the same and re instate the workman or to substitute any other punishment. Section 6(2A) of the State Act corresponds to Section 11A of the Central Act.

7. Section 2A has used the expression "where an employer discharges,

dismisses, retrenches and otherwise terminates the services"....and "any dispute or difference.....arising out of such discharge, dismissal, retrenchment or termination" to define deemed industrial dispute. Industrial dispute is a dispute relating to employment or nonemployment. The word "otherwise terminates" does not confine only to termination. It includes deemed termination. The definition is not exhaustive: The expression used makes it inclusive. It has to be interpreted having regard to the definition of industrial dispute which includes nonemployment. Refusal of employment is nonemployment. Nonemployment due to refusal of employment is otherwise termination of service. Refusal of employment on the ground that the workman has abandoned his service is also a nonemployment. By refusing employment the employer otherwise terminates the service of the workman. Therefore, the reference made on the basis of failure report on the point of termination cannot in the facts and circumstances of the present case exclude the jurisdiction of the Labour Court or Tribunal from adjudicating the dispute.

8. Then again in view of Section 10(4) of the Central Act Tribunal can go into the matters incidental to the points specified. Refusal of employment on the alleged ground of abandonment is surely a matter incidental to termination which conceives of otherwise termination. The definition in Section 2A supplanting definition of industrial dispute in Section 2(k) of the Central Act (Section 2(1) of the State Act) is to be given a reconciled meaning which furthers the object of the Act. An interpretation defeating the object is to be avoided.

9. As held in the case of *State of Madras v. C.P. Sarathy*, 1953 (1) LLJ174, followed in *Sambhu Vidyan v. Industrial Tribunal*, 1961 (11) LLJ 476, it is not necessary that the dispute between the parties should be specified in the order of reference under the Act. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal is clear from the order. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Employees Union and others*, 1978 (2) SCC 188, it has been held that reference under Section 10 should be construed liberally and not pendantically. In *Hotel Imperial v. Chief Commissioner Delhi*, 1983 (1) SCC 436, it was laid down that minute technicalities in the reference order has to be avoided. In *M/S Agra Electric Supply Co. Ltd. v. Workman*, AIR 1959 SC 1214 it was observed that the terms of reference impeaching a dispute for industrial adjudication should not be construed too pedantically. In industrial law, the rigid rule of contract do not govern the situation and an amount of flexibility in the exercise of powers taking liberties with the strict rights of the parties is permitted to Tribunals. Industrial jurisprudence is an alloy of law and social, justice, where it is one thing to say that an action is legal and another that it is justified.

10. In the present case after going through the impugned award tran Stated at the bar, it does not appear on the facts that there is any mistake with regard to the facts of the case as recorded in the said order dated 20th May, 1996. So far as the question that the scope of reference was confined to the order of

termination and it was so found by the Tribunal, there was no order of termination does not debar this Court from going into the question. Inas much as the matter which was referred to is a dispute with regard to employment as between the employer and the workmen. Even if it may be termed as termination as the same is the result of nonemployment. Even though no order of termination is there, the employer was not prepared to allow him to work even if he was not been terminated. This results into refusal of employment amounting to nonemployment. However, Mr Satish Chaturvedi contends that the employer has agreed to offer him employment but on account of his insistence for back wages and also for tendering apology by the employer, the employer could not agree to such a term for which the employee himself was responsible.

11. Be that as it may, it was the question of nonemployment or a dispute with regard to employment. The reference was made on the back ground of these facts which had already been brought on record in conciliation proceedings. Reference was made on the basis of failure report of the conciliation, though coined in different manner reference was on a dispute which could not be reconciled in the conciliation proceedings. Failure report was submitted. The reference related to the facts as involved in the conciliation. It is the same dispute that has been referred to. Thus it cannot be said that the said dispute was not referred to disentitling this Court to adjudicate to the extent as it has done on the basis of the contention raised by the learned counsel for the respondents. Apart from these proposition, Mr Satish Chaturvedi has not raised any other point with regard to the merit of the case. On the basis of reference I do not find any reason to alter the order already passed.

12. In that view of the matter, the application for restoration is, thus, disposed of in terms of the order. There will however, be no order as to costs.

Restoration disposed of.