
(2012) 04 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26662 of 1998

M/s. Raunaq Automotive Components

APPELLANT

Vs

Labour Court, Bareilly and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2012) 6 ADJ 128 : (2012) 4 AWC 4965 : (2012) 133 FLR 1008

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : S.S. Nigam, for the Appellant; S.C. Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble B. Amit Sthalekar, J.—This writ petition was taken up for arguments yesterday on 24.4.2012 in the revised list. Nobody appeared on behalf of the respondent No. 3. However, due to paucity of time the arguments could not be concluded, therefore, the matter has been posted for today. Today, again nobody has appeared on behalf of the respondent No. 3. Notices were issued to the respondent No. 3 on 25.8.1998 but till date no counter-affidavit has been filed in this case. In the circumstances, the Court is left with no option except to proceed to hear the matter in the absence of respondent No. 3. This writ petition has been filed by the petitioner assailing the order dated 6.5.1998 by which a second reference has been made by the Dy. Labour Commissioner, Moradabad referring a dispute regarding termination of the respondent No. 3 to the Labour Court, Bareilly.

2. The facts of the case, in brief, are that an industrial dispute was raised by the respondent No. 3 by filing an application u/s 2-A of the U.P. Industrial Disputes Act, 1947 which was registered as CP case No. 111 of 1996. A reference was made by the Dy. Labour Commissioner, Moradabad referring the dispute to the Labour Court Bareilly by his order dated 13.2.1997 and the question referred to

the Labour Court is as follows:

KYA SEWAYOJAKO DWARA UNKE SHRAMIK SHREE CHAMAN SINGH PUTRA SHRI JAGRAM SINGH "OPERATOR" KI SEWAYE DINANK 30.6.1996 KO SAMAPT KIYA JANA UCHIT AVAM VAIDHANIK HAIN. YADI NAHI TO KARAMCHARI KYA HITLABH PANE KA ADHIKARI HAIN.

3. Before the Labour Court an objection was filed by the petitioner-employer, inter alia, on the ground that as on 30.6.1996 the workman, respondent No. 3 had no cause of action for raising the industrial dispute. The second objection was that the reference has not been properly framed and that it should have been framed as follows:

KYA SHREE CHAMAN SINGH PUTRA SHREE JAG RAM SINGH NE GAVAOHN KO KARAYA VA DHAMKAYA THA JISKE FALSWAROOP JAANCH PURI KARNA SMAHAV NAHEEN THA. PARINAM SWAROOP SHRAMIK KI SEVAYEN PATRA DINANK 29.6.1996 KE DWARA SMAPTA KIYA JANA UCHIT VA VAIDHANIK HAI ATHAVA NAHEEN? YADI NAHEEN TO KARMCHARI KYA HIT LABH PANE KA ADHIKARI HAI.

4. The Labour Court took cognizance of the reference and it is informed by Shri Nigam, learned counsel appearing for the petitioner that the reference was decided against the workman by award dated 20.5.2000. The respondent No. 3, workman after raising the industrial dispute never appeared before the Labour Court and therefore, the award was given ex-parte.

The award of the Labour Court under the first reference order dated 13.2.1997 was still pending and during the pendency of the first reference order the Dy. Labour Commissioner, Moradabad passed another reference order dated 6.5.1998 which reads as follows:

KYA SEWAYOJAKO DWARA UNKE SHRAMIK SHRI CHAMAN SINGH PUTRA SHRI JAGRAM SINGH "MAINTENANCE TECHNICIAN" KI SEWAYEIN DINANK 29.6.1996 SE SAMAPT KIYA JANA UCHIT/VAIDHANIK HAIN. YADI NAHI TO KARAMCHARI KYA HITLABH PANE KA ADHIKARI HAIN.

5. I have heard, Shri Shakti Nigam, learned counsel for the petitioner. The order is being dictated in open Court.

6. The submission of learned counsel for the petitioner is that when the first reference order had already been made and was under consideration before the Labour Court, Bareilly, second reference order could not have been made.

7. At the time of admission of the writ petition, this Court vide order dated 25.8.1998 directed that the dispute referred in the earlier reference order dated 13.2.1997 shall be heard and decided by the Labour Court, Bareilly. So far as the second reference vide order dated 6.5.1998 was concerned, the same was stayed by this Court.

8. A perusal of the first reference order dated 13.2.1997 will show that the question referred by the Dy. Labour Commissioner, Moradabad for adjudication

was as to whether the termination of services of the respondent No. 3, working as operator under the petitioner, by order dated 30.6.1996, was valid or not and if not whether the respondent No. 3/workman was entitled to any relief on that account. The respondent No. 3 filed his application before the Labour Court on 5.9.1997 and his contention was that his services had been terminated by the employer by the order dated 30.6.1996 and that since he had completed 240 days of continuous service as such his termination was bad in law.

9. The written statement was filed by the employer and objection was taken that as on 30.6.1996 the workman had no cause of action as mentioned in the employer's objections. It was also stated that the dismissed employee was working as "technician" and not as "operator" as was wrongly shown in the reference order. A further objection was taken that the reference order had not been correctly framed and that it should have been framed in the manner as given in paragraph G of the written statement/objections filed by the employer. The proposed reference, as per the employer, has already been quoted herein above.

10. Be that as it may, the question for consideration before this Court now is confined to the question as to whether a second reference order was permissible in law when a first reference had already been made by the Government and cognizance of the same had been taken by the Labour Court and the same was being adjudicated by the Labour Court.

11. In support of this submission, the learned counsel for the petitioner has referred to a decision of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, wherein a similar question came up for consideration before the Supreme Court. The Supreme Court held that once a reference had been made by the appropriate Government, a second reference was not permissible. The relevant pronouncement of law by the Supreme Court is to be found in paragraph 15 of the judgement, which reads as under:

Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made u/s 10(1). If on the representation made by the employer or his workmen the appropriate Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference u/s 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made u/s 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate Government it would be open to the appropriate Government to terminate the

proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate Government u/s 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by implication on the strength of Section 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Industrial Disputes Act.

12. Applying the law laid down by the Supreme Court in the case of D.N. Ganguly (*supra*) it is quite clear that the second reference order dated 6.5.1998 made by the Dy. Labour Commissioner, Moradabad was not maintainable nor permissible under the law. In view of the above, the second reference order dated 6.5.1998 is held to be illegal and inoperative and is, therefore, quashed. The writ petition is allowed. There shall be no order as to cost.