

(2001) 07 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11762 of 2000

Narinder Pal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25

Citation : (2001) 07 P&H CK 0180

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Mr. H.S. Sethi, for the Appellant; Mr. S.K. Sharma and Mr. I.P.S. Doabia, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution of India seeks issuance of a writ of certiorari quashing the order dated 6.10.1995 communicated to the petitioner vide letter dated 18.1.1996 (Annexure P.5) wherein respondent Nos. 1 and 2 have declined to refer the industrial dispute of he petitioner to the Labour Court.

2. The petitioner was initially appointed in the office of respondent No. 4 as causal labourer on 27.5.1988 and worked upto 23.8.1990. Thereafter, he again worked from 29.10.1991 to 8.4.1992. An advertisement was issued by respondent Nos. 3 and 4 on 1.5.1991 inviting applications from casual labourers who had worked for a period of 30 days in the year 1988 for making appointment as peon. Since the petitioner had already worked for a period of 150 days, he submitted his application for appointment as Peon on 9.5.1991. The claim of the petitioner, however, is ignored by respondent Nos. 3 and 4 and persons who had worked for a lesser period were appointed. Consequently, the petitioner claims that the action of respondent Nos. 3 and 4 is in violation of Section 25(h) of the Industrial Disputes Act, 1947. The petitioner served the necessary demand notice u/s 2 of the Industrial Disputes Act, 1947. This demand

notice was contested by respondent Nos. 3 and 4. Considering the conciliation proceedings held on various dates the Conciliation Officer submitted a failure report on 29.7.1994. Thereafter, the impugned order was passed and the petitioner was informed that respondent No. 1 has refused to refer the dispute to the Industrial Tribunal on the ground that the petitioner had not put in 240 days service in 12 consecutive months.

3. Mr. Sethi, learned counsel appearing for the petitioner has submitted that the impugned order passed by respondent No. 1 is illegal, arbitrary and in violation of the law laid down by the Supreme Court, in a catena of judgments. For the purpose of this case, the learned counsel has relied on the judgments, rendered by the Supreme Court in the cases of Punjab Anand Lamp Employees Union v. Punjab Anand Lamp Industry Ltd. 1996(3) SCT 57, Ajaib Singh v. The Sirhind Coop Marketing-cum-Processing Service Society Ltd. 1992(2) SCT 667, Baljil Singh v. State of Haryana 1995(3) SCT 154.

4. It is a settled proposition of law that the Government can not go into the merits of the reference. Whether the workman had completed 240 days service would have to be decided by the Industrial Tribunal. The Government can not be permitted to encroach upon the function which has been specifically entrusted to the Industrial Tribunal under the Industrial Disputes Act, 1947.

5. Mr. Doabia has submitted that this writ petition ought not to be entertained as the same has been filed after a period of 5 years of the passing of the impugned order by respondent No. 1.

6. Mr. Sethi has further pointed out that the petitioner has been making repeated representations but no response was received from the respondents and the petitioner was constrained to file the petition.

7. In view of the above, I find that the impugned order passed by respondent No. 1 is wholly unsustainable. The same is hereby quashed. The petition is allowed. Respondent No. 1 is directed to make a reference of the dispute to the appropriate Industrial Tribunal. Let the reference be made within a period of two months of the receipt of copy of this order. No order as

8. Petition allowed.