
(2006) 07 P&H CK 0015
In the Punjab And Haryana At Chandigarh

Nasir Hussan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 12, 2

Citation : (2007) 4 PLR 407

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arvind Kumar, J.—Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing order 7.2.2006, Annexure P-4, vide which the Government has refused to refer the matter to the Industrial Tribunal.

2. The facts as stated in the writ petition are that petitioner (hereinafter referred to as the workman) was appointed as driver by respondents 3 and 4 on 27.8.2003 (hereinafter referred to as the management). He continued to work as such till 31.3.2005 with notional breaks when his services were terminated without giving any retrenchment compensation or notice/pay in lieu thereof. Petitioner-workman served upon the management a demand notice. Reply was filed thereto by the management, where after the petitioner-workman submitted rejoinder. The Labour-cum-Conciliation Officer then referred the matter to the Government which vide the impugned order, Annexure P-4, declined to refer the same to the Industrial Tribunal primarily on the ground that after enquiry it has been found that the petitioner-workman was appointed by the respondent-management for a fixed period and as such, his appointment does not come under retrenchment in view of the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (in short, the Act). Hence, the present writ petition.

3. Arguments have been heard.

The question as to whether services of the petitioner-workman had been terminated or the case falls within the exceptional Clause (bb) of Section 2(oo) of the Act *ibid*, to say that it was not retrenchment, was not within the domain of the Government to adjudicate upon. It is only within the ambit of the jurisdiction of the Industrial Tribunal constituted under the Act to determine this dispute. The Government cannot encroach upon the functions which have been specifically entrusted to the Industrial Tribunal under the Act. It was held by the Hon"ble Supreme Court in *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, , that Section 10 of the Act permits appropriate Government to determine whether dispute "exists or is apprehended" and then refer it for adjudication on merits. The demarcated functions are (1) reference; (2) adjudication. Government should be very slow to attempt as examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Sections 10 and 12(5) of the Act nugatory.

4. Considering the law on this point, we find that the impugned order passed by respondent No. 2 is wholly unsustainable. The same is accordingly set aside and the petition is allowed. Respondent No. 2 is directed to refer the industrial dispute for adjudication to the Industrial Tribunal-cum-Labour Court. No order as to costs.