
(2003) 07 CAL CK 0030
In the Calcutta High Court
Case No : Writ Petition No. 2425 of 2002

Novattis India Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Industrial Disputes Act, 1947 — Section 10, 2(K), 2A

Citation : (2004) 1 CALLT 1 : (2004) 101 FLR 278

Hon'ble Judges : Dipak Prokash Kundu, J

Bench : Single Bench

Advocate : Tapas Banerjee and M. Mehta, for the Appellant; Bikash Ranjan Bhattacharyya, Senior Advocate, Santi Das, Rajat Dutta and Ashis Das, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Prokash Kundu, J.—In the present writ proceeding the writ petitioner has challenged (a) Order No. 25 dated 30th, March, 1999 (Annexure-"P-15" of the writ application) passed by the Third Industrial Tribunal. West Bengal (hereinafter referred to as the Tribunal) in Case No. VIII-69 of 1997, (b) Award dated 10th October, 2002 (Annexure-"P-19" of the writ application) passed by the Tribunal in Case No. VIII-69 of 1997 and (c) Order No. 888-IR/(IR/11L-11-95) dated 12.6.1997 (annexure-"P-12" of the writ application) issued by Government of West Bengal, Labour Department, under the signature of the Assistant Secretary to the Government of West Bengal.

2. In exercise of the power conferred by section 10 read with section 2A of the Industrial Disputes Act, 1947 (herein after referred to as the said Act) the Governor of West Bengal was pleased to refer the industrial dispute between M/s. Sandoz (I) Ltd., 3A, Shakespeare Sarani, Calcutta-71 (hereinafter referred to as the company) and their workmen (1) Shri Bikash Bhusan Ghosh, (2) Shri Pradip Kumar Mukherjee and (3) Shri Shyama Charan Mallick to the Tribunal for

adjudication of the following issues.

Issue(s)

Whether the termination of service of (1) Shri Bikash Bhusan Ghosh (2) Shri Pradip Kumar Mukherjee and (3) Shri Shyama Charan Mallick is justified? What relief, if any, are they entitled to?

3. Before the Tribunal the parties to the disputes submitted their respective written statements. Witnesses were examined by the parties to the disputes before the Tribunal.

4. Before the Tribunal the company raised objection regarding maintainability of the reference by the State Government. By an order No. 25 dated 30.3.1999 (annexure "P 15" of the writ application) the Tribunal held that the reference was very much maintainable for adjudication by the Tribunal.

5. The Tribunal on 10.10.2002 passed an award in the aforesaid Case No. VIII-69/97. The relevant part of the award is set out herein below:

"On the question of relief, it is well settled that in cases of wrongful dismissal, the normal relief is to award reinstatement. Accordingly, I held that all the employees are entitled to reinstatement with back wages for the period for which they have been kept out of employment. It transpires from the evidence adduced by the workmen that they retired from service. The date of superannuation of Shri Shyama Charan Mallick was 11.11.99, Shri Pradip Kumar Mukherjee was 31.3.2001 and Shri Bikash Bhusan Ghosh was 10.6.2001. No specific plan was taken by the employer that all the employees are gainfully employed elsewhere during the period of unemployment. When all the employees retired from service, there is no possibility of their reinstatement in service, acceptance of all legal dues upto the date of termination cannot be a bar to relief of reinstatement unless it is proved that acceptance was voluntary.

In view of my above findings, I held that all the three employees have been able to establish their case beyond doubt and they are entitled to full back wages on the basis of last pay drawn by them from the date of termination till superannuation.

Accordingly, the company is directed to pay full back wages to Shri Bikash Bhusan Ghosh, Shri Pradip Kumar Mukherjee and Shri Shyama Charan Mallick within two months from the date of publication of this award. The back wages to be calculated on the basis of last pay drawn by them.

This is my award. The instant reference is thus disposed of."

6. Dr. Banerjee, the learned senior advocate for the writ petitioner argued that by virtue of three separate letters of transfers all dated 03.10.1994 the workmen were duly transferred from Calcutta w.e.f. 17.10.1994 and they were relieved from their Calcutta posting. Dr. Banerjee argued that, therefore, it is manifest that on maturity of the stipulated period for reporting at their respective places

of transfer viz. Siwan (Bihar), Farrukhabad (Uttar Pradesh) and Karimgani (Assam), the orders of transfers had become complete, enforceable at law and therefore, binding on the concerned workmen. It was argued that upon the completion of the orders of transfers, the places of employment, contractual obligations, enforcement thereof etc., falls squarely outside the territorial jurisdiction of the State of West Bengal as also outside the territorial jurisdiction of the Tribunal. It was argued that under the circumstances the State of West Bengal was not appropriate Government under the provisions of the said Act and had no competence, jurisdiction or authority to make the reference which is under challenge in the present writ proceeding. It was argued that the causes of action, if any, would be within the jurisdiction of the appropriate respective Government having its office at respective place of transfer. Dr. Banerjee argued that situs of employment should be the prime factor for determining the appropriate Government under the provisions of the said Act to make a reference. In support of this contention Dr. Banerjee referred to and relied upon a decision of a single Bench of Andhra Pradesh High Court in *Siemens Ltd. v. Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and Anr.* (2003) 1 CLR 241, wherein it was held that the status of employment would become paramount in raising the industrial dispute. In *Siemens Ltd.* case (supra) transferability was one of the conditions of the workmen. He was transferred from one place to another on different occasions, but he never disputed those transfers or disobeyed them. The Head Office of the workman was at Chennai and it had branch officers at Hyderabad and Bangalore. The workman was transferred to Manipal from Hyderabad Branch and it was stated in the said order of transfer that w.e.f. 3.10.1994 the services of the workman should stand transferred to Manipal office. The workman refused to go to the new place and had been trying to attend the office at Hyderabad. The management by a letter dated 6.10.1994 informed the workman that he ceased to have any link with Hyderabad office w.e.f. 3.10.1994. Since the workman did not join duty at the new place obeying order, of transfer, the disciplinary authority at Chennai passed order of termination on 26.7.1996. Being aggrieved by the order of termination the workman raised a dispute before the Labour Court in ID No. 15/1996. The management raised several objections regarding maintainability of the dispute raised by the workman. One of such objection was want of jurisdiction of the Labour Court. Labour Court held that it has jurisdiction to entertain the dispute. Labour Court ordered reinstatement of the workman treating period of absence as leave without allowances. The learned single Bench of Andhra Pradesh High Court held that the situs of employment assume significance in determining the territorial jurisdiction. The learned single Bench of Andhra Pradesh High Court held that the workman had created an artificial cause of action to raise the dispute at Hyderabad by incidentally questioning the order of transfer also while challenging the order of termination. The learned single Bench of Andhra Pradesh High Court held that the Industrial Tribunal-cum-Labour Court at Hyderabad had no jurisdiction to entertain the application filed by the workman u/s 2A(2) of the said Act and set aside the judgment of the Labour

Court. It appears from the aforesaid reported decision that the workman made an application before the Labour Court u/s 2A(2) of the said Act. It further appears that the question of "appropriate Government" as contemplated in Section 10 of the said Act was not under consideration of the learned single Bench of Andhra Pradesh High Court. Therefore, this Court is of the view that the Siemens Ltd. case (supra) is not an authority for the proposition that for determining the "appropriate Government" as contemplated in Section 10 of the said Act. The situs of employment would become a paramount consideration.

7. This Court in paragraphs 16 and 17 of the reported decision in *B.G. Sompat v. The State of West Bengal and Ors.* (1999)1 CLJ 338 held as follows:

"16. The Act has not laid down any criteria for determining the "appropriate Government", the Act has only defined the term. When a question arise regarding who of the State Governments is the appropriate Government", in my opinion, such question should be answered after taking into consideration of the facts and circumstances involved in each case. No straight-jacket formula can be laid down or followed. For determination of the question very many factors are to be taken into consideration. Situs of employment is one of such factors but not the only factor. Another factor is the place where the workman has been served with the order of termination or discharge as penal measure. This place may not be situs of employment but he suffered the penal consequence at that place and he can legitimately raise industrial dispute as contemplated u/s 2A of the Act in that place and in that event the Government of that place shall be the "appropriate Government" who can u/s 10 read with Section 2A of the Act refer the industrial dispute to the Tribunal. Industrial dispute relating to termination of service of a workman as penal measure is qualitatively different from the industrial dispute relating to other matters."

"17. At Calcutta, the workman suffered cessation of relationship between master and servant. At Calcutta, the order of termination or discharge was served upon him. At Calcutta, the workman has suffered penal consequences due to discharge from service as a measure of penalty. At Calcutta, the workman raised the dispute. Therefore, in my view, Government of West Bengal was the appropriate Government to refer the industrial dispute to the Third Industrial Tribunal."

8. Mr. Bikash Ranjan Bhattacharya, the learned senior advocate for the workman argued that essence of determination of appropriate Government would be the responsibility of the Government for maintenance of industrial peace in the territory. Mr. Bhattacharya argued that the object of enacting the said Act and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. He argued that whenever a reference is made by a Government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In support of this contention Mr. Bhattacharya referred to an relied upon a Supreme Court decision in *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others*, , wherein in paragraph 10 of the

reported decision Supreme Court observed as follows:

"The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."

9. It is evident from the above quoted paragraph of the reported decision that Supreme Court held that whenever a reference is made by a Government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication.

10. Mr. Bhattacharya referred to and relied upon a Supreme Court decision in *Hindustan Aeronautics Ltd. Vs. The Workmen and Others*, . In this case competency of the Government of West Bengal to make the reference was challenged. On behalf of the employer it was contended that the appropriate Government within the meaning of Section 2(a) of the said Act competent to make the reference was the Central Government, or, if a State Government, it was the Government of Karnataka where the Bangalore Divisional Office of the Company was located and under which the Barrackpore Branch worked. It was assumed by the Supreme Court that the Barrackpore Branch was under the control of the Bangalore Division of the Company but held that yet it was a separate Branch engaged in an industry of repairs of aircrafts or the like at Barrackpore. It was held that for the purposes of the said Act and on the facts of the case the Barrackpore Branch was an industry carried on by the company as a separate unit. The workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there. In paragraph 4 of the reported decision Supreme Court, inter alia, held as follows:

"..... If there was any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working the appropriate Government concerned in the maintenance of the industrial peace was the West Bengal Government. The grievances of the workman of Barrackpore were their own and the cause of action in relation to the industrial dispute in question arose there. The reference, therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid....."

11. The Court is of the view that Mr. Bhattacharya is correct in his submission

that essence of determination of "appropriate Government" as contemplated in Section 10 of the said Act would be the responsibility of the Government for maintenance of industrial peace in the territory.

12. Mr. Bhattacharya argued that the question regarding which of the states has jurisdiction to make a reference u/s 10 of the said Act should be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. In support of this contention he relied upon and referred to a Supreme Court decision in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, . In this case Supreme Court referred to and relied upon its earlier decision in *Indian Cable Co. Ltd. v. Its Workmen* (1962)¹ Lab IC 400 (SC). In *Indian Cable Co. Ltd. case* (supra) Supreme Court held as follows:

"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in *Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others*, :

But what we are concerned with to decide is: where did the dispute substantially arise? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer Jurisdiction upon the Labour Court. But applying the well-known tests of Jurisdiction, a Court or Tribunal would have jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction."

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference u/s 10 of the Act."

13. Supreme Court in *Workmen of Shri Ranga Vilas Motors (P) Ltd. case* (supra) applied the principles laid down by Supreme Court in *Indian Cable Co. Ltd. case* (supra) which is evident from paragraph 14 of the reported decision.

14. In *Workmen of Shri Ranga Vilas Motors (P) Ltd. case* (supra) the second appellant before the Supreme Court Shri R. Mahalingam was engaged as a Foreman in the workshop of Sri Rangavilas Motors (P) Ltd., the first respondent. Mahalingam was transferred from Bangalore to Krishnagiri where the office of the company was located. Mahalingam entered into correspondence with the company alleging that according to the conditions of his employment he could not be transferred from Bangalore to Krishnagiri. Ultimately, the company framed charges against Mahalingam and removed him from service. Mahalingam complained in writing to the Assistant Commissioner of Labour who was functioning as the Conciliation Officer at Bangalore. Later on, one Salvaraj took part in the conciliation proceedings on the authority of the resolution passed by the General Body meeting of Krishnagiri Motors Workers Union among whose members 112 out of 170 were employees of the company. Selvaraj filed a statement of claims before the Conciliation Officer. The Conciliation Officer reported to the Government that the conciliation proceedings failed and

thereupon the State Government by its order in exercise of powers u/s 10 of the said Act referred the industrial disputes to the Labour Court, Bangalore for adjudication. One of the contentions of the company was that the reference was bad because it did not fall under any of the items enumerated in the Second Schedule of the said Act. The Labour Court overruled all the objections regarding jurisdiction raised by the company and made the award holding that both the transfer as well as the removal from service of Mahalingam were illegal and that he was entitled to overtime wages as well as increments. The matter went up to Supreme Court, before Supreme Court on behalf of the company, it was strongly urged that the State Government of Mysore was not appropriate Government to make the reference. It was contended that although the dispute started at Bangalore, the resolution sponsoring the dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. The Supreme Court arrived at a finding that there was a separate establishment at Bangalore and Mahalingam was working there and at Bangalore there were a number of other workmen working in the company. Supreme Court observed that it is true that the order of transfer was made in Krishnagiri at the Head Office, but the order was to operate on a workman working in Bangalore. Supreme Court held that the High Court was right in holding that the proper question to raise is: where did the dispute arise? Supreme Court held ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. Supreme Court held that there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. The relevant lines from paragraph 14 of the reported decision are set out herein below:

".....It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the Head Office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose."

15. Thus it is evident that the Supreme Court laid down the law that there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose.

16. Mr. Bhattacharya referred to and relied upon a Division Bench decision of Orissa High Court in *Hindustan Samachar v. State of Orissa*, 1979 Lab IC 106. In

this case the writ petitioner was a registered cooperative society having its Head Office at New Delhi within the territory jurisdiction of Delhi Government. One Prasanta Kumar Patnaik was appointed as the Probationary Journalist under the petitioner and was posted at Bhubaneswar. His services having been terminated, he raised an industrial dispute which was referred by the Government of Orissa for adjudication by the Labour Court u/s 10 of the said Act. The writ petitioner contended that it was a All India News Agency having its Head Quarter at New Delhi and though it had representatives in different places there was no other office to exercise control over its employees in any other State. It was contended that the conditions of service of the concerned workmen were directly controlled by the petitioner and that the cause of action for the dispute arose at Delhi. It was contended that the Government of Orissa was not the appropriate Government within the meaning of Section 2(a) of the said Act to refer the dispute to the Labour Court for adjudication. The learned Division Bench of Orissa High Court in Hindustan Samachar case (supra) held that the proper test to determine "appropriate Government" in relation to an industrial dispute is to see where the dispute substantially arose. It was held that if a workman is working in a separate establishment, the dispute can be taken to arise only at the place where the establishment exists. The mere fact that the Head Office exercises administrative control over the workman does not confer jurisdiction on the Government, within whose territorial jurisdiction the Head Office is located, to make a reference u/s 10 of the said Act. In this connection paragraph 5 of the reported decision is set out herein below:

"The term "appropriate Government" is defined in Section 2(a) of the Industrial Disputes Act, 1947. The definition is not every helpful for determining the appropriate State Government. But Section 10(1) of the Act does contemplate that the Government in whose jurisdiction industrial dispute arises or is apprehended when it says that "where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing" make a reference. The proper test to determine "appropriate Government" in relation to an industrial dispute is to see where the dispute substantially arose. If a workman is working in a separate establishment, the dispute can be taken to arise only at the place where the establishment exists. The mere fact that the Head Office exercises administrative control over the workman does not confer jurisdiction on the Government, within whose territorial jurisdiction the Head Office is located, to make a reference u/s 10."

17. In paragraph 12 of the reported decision it was held that the fact that the final administrative control was vested in the Head Office at Delhi and that the order of termination of service was made by the Head Office will not make Delhi the place where the dispute arose. It was held that the nexus should be between the dispute and the territory of the State and the dispute arose within the limits of Government of Orissa consequent upon the termination of services of Prasanta Kumar Patnaik. It was held that the Government of Orissa is, therefore, the appropriate Government to refer the dispute u/s 10 of the said Act for

adjudication by the Labour Court.

18. Mr. Ashish Kumar Das, learned advocate for the State has drawn the attention of the Court to a single Bench decision of Madras High Court in *Executive Engineer, UPSEB Vs. Prescribed Authority/Assistant Labour Commissioner, Varanasi and Others*, in that case the second respondent Establishment was a joint venture company which undertook the work of dealing for extraction of oil from the earth. In that case the petitioner joined the service the Establishment and after completion of probation he was appointed as an Assistant driller. The service condition of the petitioner in that case was that he would be placed anywhere within India where the rig work was to be carried out by the Establishment. He worked in various places in India. He was promoted as a driller. The Establishment issued an order of de-hiring in exercise of the power conferred under clause of appointment order. An industrial dispute was raised at Chennai which ended in failure. Subsequently, Government of Chennai referred the dispute to the Central Government, Industrial Tribunal cum Labour Court, Chennai. The Establishment questioned the jurisdiction of the Tribunal on the ground that the Head Office of the Establishment was functioning at Delhi and they did not have any branch at Chennai. The Tribunal allowed the objection raised by the Establishment. The single Bench of Madras High Court, inter alia, held as follows:

"I am also satisfied that by applying the well-known test of jurisdiction, namely, that a Court or Tribunal would have jurisdiction if the parties reside within the jurisdiction or if the subject-matter of the dispute substantially arose within the jurisdiction part of cause of action has arisen at Chennai. It is demonstrated before me that the petitioner is residing at Chennai and the same is found in the records of the second respondent. In such a circumstance, the dispute can be filed either in the place of the petitioner or the 2nd respondent is residing or working or where the cause of action has arisen wholly or in part. Hence the impugned order of the first respondent rejecting the industrial dispute purely on grounds of jurisdiction is erroneous in law and liable to be set aside."

19. From the discussions made hereinabove and the decisions referred to hereinabove the following broad principles emerge.

1. Head office of a company may be located in one State but it may have a branch in another State. The branch may be under the control of the head office yet it is a separate branch engaged in an industry and is itself an industry being carried on by the company as a separate unit. [*Hindustan Aeronautics Ltd. case (supra)*].

2. If there is any disturbance of industrial peace at a branch office located in a different State where considerable number of workmen are working the appropriate Government concerned in the maintenance of industrial peace is the Government of that State where the branch is located. [*Hindustan Aeronautics Ltd. case (supra)*].

3. If the parties to an industrial dispute reside within a State or if the subject-matter of the industrial dispute substantially arises within the State then the Government of that State will be the appropriate Government to make a reference u/s 10 of the said Act. [Indian Cable Co. Ltd. (supra); Workmen of Shri Ranga Vilas Motors (P) Ltd. case (supra)].

4. Ordinarily, if there is a separate establishment and the workman is working in that establishment, the industrial dispute will arise at that place [Workman of Shri Ranga Vilas Motors (P) Ltd. case (supra)].

5. There should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. [Workmen of Shri Ranga Vilas Motors (P) Ltd, case (supra)].

20. It is evident from paragraphs-3, 4 and 5 of the writ application that annexures-P1, P2 and P3 of the writ application are the letters of appointment of the concerned workmen as Medical Sales Representative. It appears from annexure-P2 and P3 of the writ application that the company had Calcutta Sales Office at Calcutta. It is evident from paragraphs-8, 9 and 10 of the writ application that annexures-P4, P5, P6 of the writ application are orders of transfer transferring (1) Shri Bikash Bhusan Ghosh from Calcutta Sales Office, (2) Shri Pradip Kumar Mukherjee from Calcutta Sales Office and (3) Shri Shyama Charan Mallick from Calcutta Sales Office respectively. Therefore, it is evident that at Calcutta the company, at the material time, had Calcutta Sales Office where the concerned workmen were posted and working. It is evident from the order No. 25 dated 30.3.1999 (annexure- "P15" of the writ application) passed by the Tribunal that the concerned workmen were working as Medical Sales Representatives and posted at Calcutta for a long time. The termination notices were also served upon the concerned workmen at their Calcutta addresses. It is evident from the orders (annexure-"P11" of the writ application) of termination of services of the aforesaid workmen that their services were terminated by the company on the ground that the concerned workmen did not carry out the orders of transfer. All these documents were exhibited before the Tribunal: Therefore, following the principles laid down by Supreme Court in the above referred cases and the aforesaid decision of the Madras High Court and Orissa High Court referred to hereinabove this Court is of the view that the State of West Bengal is the "appropriate Government" as contemplated u/s 10 of the said Act and had/has competence, jurisdiction and authority to refer the industrial disputes to the Tribunal for adjudication.

21. Dr. Banerjee argued that it is a settled principle of law that individual disputes u/s 2A of the said Act is on a separate footing from an industrial dispute as defined u/s 2(k) of the said Act and as such clubbing of three individual disputes in a single order of reference is bad in law and as such the reference is not maintainable.

22. There is no doubt that the State Government was competent and has jurisdiction and authority to refer the industrial dispute regarding termination of services of (1) Shri Bikash Bhusan Ghosh, (2) Shri Pradip Kumar Mukherjee and (3) Shri Shyama Charan Mallick to the Tribunal u/s 2A of the said Act separately. Instead of referring the dispute separately the State Government by one reference had referred the matter to the Tribunal regarding termination of services of the said workmen. It is evident from the order No. 888-IR/IR/11L-11/95 dated 12.6.1997 (annexure- "P121 of the writ application) that the Government exercised the power u/s 10 read with Section 2A of the said Act. It is not a case that Government had no jurisdiction to refer the industrial dispute u/s 10 read with Section 2A of the said Act individually. A careful reading of annexure- "P12" of the writ application shows that though the industrial disputes regarding termination of service of (1) Shri Bikash Bhusan Ghosh, (2) Shri Pradip Kumar Mukherjee and (3) Shri Shyama Charan Mallick were referred to the Tribunal by a single order but the dispute referred to the Tribunal are industrial disputes separate from each other and each one is a dispute u/s 2A of the said Act. There was no inherent lack of jurisdiction of the State Government to refer those industrial disputes. At best It may be said that the reference made was Irregular but such irregularity did not go to the root of the matter and therefore the order of reference was neither null and void nor even voidable. The objection raised by the writ petitioner is trivial and on hyper-technical grounds which should not be entertained by this Court exercising writ jurisdiction.

23. Dr. Banerjee argued that the Tribunal in its award dated 10.10.2002 did not discuss the evidence produced by the Tribunal. Dr. Banerjee argued that there is no discussion of the evidence of the witnesses produced by the management in the award under challenge. The company before the Tribunal produced two witnesses namely, Shri Parijat Sinha (OPW 1) and Shri Jolly Joshep Mathews (OPW 2). From the award under the challenge it is evident that the Tribunal thoroughly considered the case of the company. The relevant lines from the award, in this respect, are set out herein below:

"(1) It is submitted on behalf of the company that those three workmen have no joined duty despite reminders by letter dated 31.3.03 (Ext. A, A/1 and A/2). It is also submitted that an employee holding a transferable post according to the stipulation in the appointment letter Ext. 1, 12 and 13, cannot claim any vested right to work on a particular place as the transfer order does not affect of their legal right. Transfer from one place to another is generally a condition of service and in an incident of service. Learned advocate for the company further strenuously contended that the Tribunal cannot interfere with the transfer order or posting which is made an administrative exigency. Reliance also placed upon the decision reported in 2000 ICLR Del 125, 2000 II CLR Delhi 319; 2000-LIR Delhi at page 18 and 2001 II LLN AP 889.

(2) I have carefully gone through the evidence adduced by the parties and the documents produced by them."

(3) I have considered the rival contention advanced on behalf of the parties.

(4) In this context, learned advocate appearing for the company had submitted that ext. A, A/1 and A/2 were served upon the employees directing them to report from duty at their respective place of posting failing which the company had no other alternative but to proceed against them in accordance with law. I am unable to accept the contention of the learned advocate for the company. These documents cannot be treated as show-cause notice but those are the reminder letters asking the three employees to report for duty within seven days of this letter. However, if we accept this letter as show-cause then it comes out that no sufficient time was given to those workmen to submit reply of the show-cause notice. Therefore, I hold that Ext. A, A/1 and A/2 are not the show-cause notices as submitted by the learned advocate appearing for the company.

(5) Learned advocate for the workmen also referred to a decision reported in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, which was also referred by the company in support of its case. Learned advocate appearing for the company submitted before me that the company is entitled to adduce fresh evidence to justify its action if so required.

(6) In the instant case, no such prayer was made by the employer for adducing fresh evidence in order to prove the legality and validity of the order of termination as preliminary issue. It is settled law that when there is no domestic enquiry or defective enquiry is admitted by the employer, the question must be decided as a preliminary issue. It appears from the order sheet that after disposal of the application on the point of maintainability of the reference and also jurisdiction point, the case was fixed for hearing on merit on 20.7.99. Therefore, the argument advanced on behalf of the employer cannot be accepted at this stage."

24. Thus it is evident that the Tribunal while passing the award thoroughly considered the case of the company sought to be made out before the Tribunal.

25. Dr. Banerjee argued that the Tribunal ought to have allowed the company to adduce fresh evidence to justify its actions. In support of this argument Dr. Banerjee referred to and relied upon three Supreme Court decisions in (1) *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, , (2) *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , and (3) *Karnataka State Road Transport Corporation v. Lakshmiddevamma (Smt) and Anr.* (2001) II CLR 640.

26. The company in paragraph 17 of the written statement submitted by it before the Tribunal stated, *inter alia*, as follows:

"The fact that no show cause notice was issued, has no substance as the letter issued to the individual opposite parties are in the nature of show cause. The company further states that when it is an admitted position that the concerned

opposition parties did not comply with the orders of transfer, no separate domestic enquiry was required to be held. In any event, the company has a right to adduce fresh evidence before a competent Court, justifying the terminating of service which arose as a result of the non-compliance on the part of the opposite parties of the reasonable and lawful orders of transfer."

27. Shri Jolly Joshep Mathews, OPW 2, the witness on behalf of the company in his evidence before the Tribunal stated, inter alia, as follows:

"I held no domestic enquiry before termination of those three persons as the same was not needed. At the time of termination of those persons no compensation was given to them as it did not arise at all. It was a case of punishment for non-compliance with the order of transfer by the above three persons."

28. Therefore, the company before the Tribunal admitted that the services of the concerned workmen were terminated as punishment for non-compliance with the orders of transfer by the concerned workmen. The company before the Tribunal admitted that before the termination of services of the concerned workmen as punishment no domestic enquiry was held. It is now well settled that termination, of services as punishment is not a termination simpliciter but is a dismissal from service.

29. Mr. Bikash Ranjan Bhattacharya, learned senior advocate for the workmen referred to and relied upon the decisions of Supreme Court in (1) Workmen of The Food Corporation of India Vs. Food Corporation of India, , (2) D.K. Yadav Vs. J.M.A. Industries Ltd., , (3) Shambhu Nath Goyal Vs. Bank of Baroda and Others, .

30. It is not necessary to discuss about the decision of Supreme Court in (a) Delhi Cloth and General Mills Co. Ltd. case (supra), (b) The Workmen of Firestone Tyre & Rubber Co. of India case (supra) and (c) Shambhu Nath Goyal case (supra) separately because all these cases have been considered by a Bench of five Judges of Supreme Court in Karnataka State Road Transport Corporation case (supra).

31. The right of the management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such Tribunal or Court is not a statutory right. This is a procedure laid down by Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workmen. In this connection reference may be made to Karnataka State Road Transport Corporation case (supra) wherein the five Judges Bench of Supreme Court observed as follows:

"Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such Tribunal or Court is not a statutory right. This is actually a procedure laid

down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman."

32. A Bench of two Judges of Supreme Court referred Karnataka State Road Transport Corporation case (supra) to a Bench of five Judges In the following order:

"In view of the conflict of decisions of this Court in Shambhu Nath Goyal Vs. Bank of Baroda and Others, , Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, , we are referring this matter to a larger Bench which has to be a Bench of more than three Judges, Mr. Rao, learned counsel appearing for the respondents, states that there is no conflict in the decisions. According to us, that submission is not correct. Hence, we are referring this to a larger Bench."

33. In Shambhu Nath Goyal case (supra) Supreme Court held:

"The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either u/s 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim of written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it."

34. After considering the above quoted decision of Supreme Court the Bench of five Judges of Supreme Court in Karnataka State Road Transport Corporation case (supra) held that the aforesaid decision in Shambhu Nath Goyal case (supra) was rendered by the Court while deciding the stage at which the management is entitled to seek permission to adduce evidence in justification of its decision taken on the basis domestic enquiry. The relevant lines from Karnataka State Road Transport Corporation case (supra) read as follows:

"This decision was rendered by the Court while deciding the stage at which the management is entitled to seek permission to adduce evidence in justification of its decision taken on the basis of a domestic enquiry."

35. In Karnataka State Road Transport Corporation case (supra) it was held that the decision of Supreme Court in Rajendra Jha v. Presiding Officer, Labour Court (supra) was considering a similar question and the Bench of five Judges of Supreme Court found that the Court did not lay down any law contrary to the judgment in Shambhu Nath Goyal case (supra).

36. In Karnataka State Road Transport Corporation case (supra) Supreme Court observed that in all the judgments, on this question. Supreme Court agreed on the conferment of the right of the management to have an opportunity to prove its case and determination by the Tribunal on merits but there seems to be some differences opinion in regard to the timings of making an application by the management to have the opportunity to prove its case. While some judgments of

Supreme Court hold that such a right can be availed by the management at any stage of the proceedings right up to the stage of pronouncement of the order on the original application filed either u/s 10 or Section 33(2)(b) of the said Act, some other judgments hold that the said right can be invoked only at the threshold.

37. From Karnataka State Road Transport Corporation case (supra) it is very much clear that Supreme Court clearly laid down that when the Tribunal/Labour Court is called upon to decide the validity of the domestic enquiry then the same has to be tried as a preliminary issue and thereafter if necessary the management is to be given an option to adduce fresh evidence.

38. In Shambhu Nath Goyal case (supra) Supreme Court in paragraph 16 of the reported decision laid down the principle as follows:

"16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage is the application which may be filed by the management during the pendency of this application made before the Labour Court or Industrial Tribunal seeking its permission u/s 33 of the Industrial Disputes Act, 1947 to take a certain in action or grant approval of the action taken it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for the purpose without any unreasonable delay. But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do."

39. The Bench of five Judges of Supreme Court in Karnataka State Road Transport Corporation case (supra) considered above quoted principle laid down by Supreme Court in Shambhu Nath Goyal case (supra) and observed:

"We are of the opinion that the directions issued by this Court in Shambhu Nath

Goyal's case (1984)64 FJR 37, need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic inquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/ Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal's case is just and fair."

40. It was further held:

"It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the filed for nearly 18 years, in our opinion the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal's case, (1984)64 FJR 37, is the correct law on the point."

41. In the present writ proceeding the company in its written statement clearly admitted that no disciplinary enquiry was held against the concerned workmen before they were dismissed from their services. Supreme Court in Delhi Cloth and General Mills Co. Ltd. case (supra) laid down:

"If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it."

42. In the present writ proceeding the company in paragraph 32 of its written statement, submitted before the Tribunal, made the following statements.

"That the company submits that the hearing of the case may be taken in two stages, viz. (1) the point of legal/jurisdictional objections be tried and determined first and if the case still survives, (ii) then the matter may be called upon to be heard on merits and the parties may be permitted to cite additional evidence in support of the case."

43. Paragraph 32 of the written statement submitted before the company has

two parts. Pursuant to the aforesaid statements made by the company the preliminary objection raised by the company in the first part of paragraph 32 was taken up for hearing as preliminary issues and the Tribunal by order No. 25 dated 30.3.1999 (annexure P 15 of the writ application) decided the issues against the company and in favour of the workmen. That order No. 25 dated 30.3.1999 has also been challenged in the present writ proceeding. It is evident from the second part of paragraph 32 that the company wanted that after determination of the preliminary issues raised by the company the matter may be called upon to be heard on merits, and the parties may be permitted to cite additional evidence in support of the case. On 30.3.1999 by order No. 25 the Tribunal decided the preliminary issues. Thereafter the witnesses namely Shri Parijat Sinha (OPW 1) and Shri Jolly Johsep Mathews (OPW 2), the witnesses for the company were examined in the year 2001-2002. Therefore, the company had enough opportunity to straightaway adduce evidence before the Tribunal justifying its action. If the company chose not to do then except the company no one else was responsible.

44. It is evident from the written statement submitted by the company before the Tribunal that the company never sought permission to adduce evidence in justification of its decision taken on the basis of a domestic enquiry. As the concerned workmen were dismissed from the service admittedly not on the basis of domestic enquiry, therefore, question of adducing evidence by the company in justification of its decision taken on the basis of domestic enquiry did not and could not arise at all. The company, as laid down by Supreme Court in Delhi Cloth and General Mills Co. Ltd. case (supra), was entitled to straightway adduce evidence before the Tribunal justifying its action as no domestic enquiry had been held by the management. The company chose not to do so. The OPW 2 (the witness of the company) Shri Jolly Joshep Mathews in his evidence before the Tribunal clearly admitted before the Tribunal that no domestic enquiry was held and the services of the concerned workmen were terminated as punishment.

45. The company had the opportunity to justify its action. The company produced two witnesses and examined them before the Tribunal. If the company had failed to adduce evidence before the Tribunal justifying its action then except the company no one else was responsible. At that belated stage the company could not ask to adduce further fresh evidence before the Tribunal justifying its action. The Tribunal rightly rejected the prayer of the learned advocate for the company. Under the circumstances, this Court is of the opinion that no case has been made out to interfere with the award passed by the Tribunal.

46. In view of the discussions made hereinabove, this Court is of the view that the writ petition has no merit. The writ petition is dismissed. Interim order, if there be any, is vacated. No order as to costs.

Xerox certified copy, if applied for, be made available to the parties as expeditiously as possible.

After delivery of the judgment, the learned advocate for the petitioner prays for stay of operation of the order. The prayer is considered and the same is rejected.