
(1993) 05 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2718 of 1992

Om Prakash

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 06-05-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1994) 1 LLJ 533 : (1993) 104 PLR 500

Hon'ble Judges : V.K. Jhanji, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : Suderdhan Goel, for the Appellant; L.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner claimed to be a workman in the employment of Messrs Rawalwasia Ispat Udyog Private Limited respondent No. 2. He sent a demand notice dated July 23, 1988, challenging alleged illegal termination of his service and seeking reference to the Labour Court. The Government declined to make a reference. The petitioner filed C.W.P. No. 2949 of 1989, which was disposed of by order dated April 11, 1991, with the direction that the petitioner may be allowed to lead evidence before the Labour-cum-Conciliation Officer, Hisar, to show that he was an employee of respondent No. 2. The petitioner had been making repeated representations from time to time. He had also produced evidence before the Labour-cum-Conciliation Officer. The demand for reference was turned down by order dated September 18, 1991, Annexure P-1 and again by order dated December 26, 1991 Annexure P-2. The petitioner has assailed both the orders Annexure P-1 and P-2 declining a reference to the Labour Court.

2. In the written statement filed on behalf of respondent No.2, it has been stated that the petitioner was never employed by respondent No.2 at any point of time and, therefore, there was no question of removing him from service of respondent No. 2. It was admitted that the petitioner had appeared before the Labour-cum- Conciliation Officer and had adduced evidence to prima facie show

that he was a workman in the respondent No. 2 company. It appears that the petitioner boldly relied on two pieces of evidence before the Labour-cum-Conciliation Officer. Firstly, he relied on statement of one Jai Kumar, Manager of respondent No. 2 in the year 1988, in a criminal case F.I.R. No. 223 dated July 6, 1988 u/s 457/380 of the Indian Penal Code, Police Station Sadar. It further appears that the present petitioner and another person Surinder Kumar had been charged with theft of certain articles from the premises of respondent No. 2. They were prosecuted and the aforesaid Jai Kumar had appeared as a prosecution witness in connection with that trial. In cross-examination, Jai Kumar admitted that Om Prakash was employed in the mill, implying respondent No. 2. The second piece of evidence relied on by the petitioner was a copy of entry 2 from the account books maintained in the office of respondent No. 2 dated April 1, 1988. Against Serial Entry No. 19 one Om Prakash was stated to have been paid Rs. 700/- as wages for one month. The stand of respondent No. 2 in the 3 written statement is that the statement of Jai Kumar had not been properly construed and entry from the statement of account was apparently false and fabricated. Respondent No. 2 sought to support the order declining reference 2 on the dispute having been raised by the petitioner.

3. Something could possibly be said in support of the order of the appropriate Government declining the reference if there was not an iota of evidence to show that the petitioner was employed as a workman with respondent No. 2. This is, in fact, not so. Two pieces of evidence relied on by the petitioner have been referred to above. The Management has its own version with regards to these pieces of evidence, but the matter can be "satisfactorily decided only when both the parties are given full opportunity to lead such evidence on the question as they may be advised. It is settled law that the function of the appropriate Government u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") is only administrative function and not a judicial or a quasi judicial one. Where there is prima facie evidence to show that there was a relationship of employer and workman, it is not open to the Government to adjudicate the dispute itself. Reference be made to *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*,

4. As the Government has persistently declined to make a reference u/s 10(1) of the Act we think that we should direct the Government to make such a reference. Such a course was adopted by the apex Court in the following cases:

- (1) *Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another,)*
- (2) *Ram Avtar Sharma and Others Vs. State of Haryana and Another,)*
- (3) *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another,)*
- (4) *Nirmal Singh Vs. State of Punjab and Others,)*

We accordingly allow the writ petition and direct the State Government to make

a reference u/s 10(1) of the Act to the appropriate Court for adjudication of the dispute raised by the petitioner.