
(1997) 03 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : C.W.P. No"s. 52 to 54 of 1997

Pamwi Tissues and Another	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 26-03-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 17A

Citation : (1998) 2 LLJ 138 : (1997) 3 ShimLC 407

Hon'ble Judges : M. Srinivasan, C.J.;L.S. Panta, J

Bench : Division Bench

Advocate : Ramakant Sharma, for the Appellant; Indar Singh, For Respondent
Nos. 1 and 4 and Shrawan Dogra, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—In these three writ petition the common question is whether the award passed by the Presiding Officer, Labour Court, Shimla is liable to be interfered with on account of its suffering from any error on the face of the record. The learned Counsel for the petitioners urges three contentions. The first contention is that the Labour Court in the last paragraph of the award commanded the petitioners herein to reinstate the workers forthwith on the presentation of the copy of the order by them before it with all back wages and consequential benefits and other advantageous payments which may have accrued to them till that date. The learned Counsel submits that this direction or command as it is expressed by the Labour Court is wholly illegal as it runs counter to the specific provisions of Sections 17 and 17-A of the Industrial Disputes Act. There is no doubt whatever that the direction given by the Labour Court is erroneous as it is against the provisions of Sections 17 and 17-A of the Industrial Disputes Act probably , the Labour Court was over enthusiastic in that matter and gave such direction thinking that once its order is presented before some person that will have to be immediately and implicitly obeyed forgetting for a moment that it is only a creature of Industrial. Disputes Act governed by the

provisions thereof. Section 17-A provides that an award shall become enforceable on the expiry of thirty days from the date of its publication u/s 17. Section 17 provides for publication of award within a period of thirty days from the date of its receipt by the appropriate Government in such a manner as the appropriate Government thinks fit. Sub-section (2) of Section 17 reads that the award so published shall be final and shall not be called in question by any Court in any manner whatsoever. Thus, it is clear that till the award is published in the manner contemplated by Section 17, it cannot be enforced. This aspect of the matter has been taken note of by the Labour Court itself in penultimate sentence of its award. He has observed: "Let a copy of this award be sent to the appropriate Government for its publication". As he himself recognised the necessity of publication of the award passed by him the direction given earlier in the last paragraph is unsustainable. We are sure that the concerned authorities in the appropriate Government will take necessary steps for publishing the award u/s 17 of the Act.

2. The second contention of the Learned counsel for the petitioners is that the Labour Court has come to the conclusion that the domestic inquiry is vitiated and the findings arrived at by the Inquiry Officer in the said inquiry are also unwarranted. According to the learned Counsel for the petitioners once the Labour Court has come to such a conclusion it ought to have given an opportunity to the petitioner to adduce evidence before the Labour Court in support of the order of dismissal passed against the Workers. We do not find any substance in this contention for the simple reason that the petitioners herein had sufficient opportunity to adduce evidence before the Labour Court. In fact the petitioners had examined a witness on their behalf as R WI. There is no explanation as to why the petitioners did not choose to examine other witnesses if they had thought necessary to do so to support the order of dismissal passed against the workers.

3. Section 11-A of the Industrial Disputes Act enables the Labour Court to set aside the order of dismissal and direct reinstatement on such terms and conditions if any, as it thinks fit, or given such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Proviso to the Section reads that in any proceeding under this Section the Labour Court shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

4. In this case it is seen that the original record of the inquiry proceedings were brought before the Labour Court and that was perused by the Labour Court before giving any finding in the matter. In paragraph 15, the Labour Court has referred to the evaluation of the record of the inquiry proceedings. Labour Court has also referred to the evidence recorded in the domestic inquiry and considered the question whether the misconduct alleged against the workers had been made out by such evidence. It is pointed out by the Labour Court that there

was absolutely no evidence on the part of the management to prove the alleged misconduct. It is sufficient to refer to the following passage in the award of the Labour Court:

" All these witnesses admitted thereunder before the Inquiry Officer in the cross examination that the petitioners had no altercation, dispute or rioting either with the management or the workers of the respondent company. All the three witnesses have admitted it unequivocally thereunder in the said proceedings. So much so that the respondent company further admitted while adducing its evidence in this Court too, RW1 Shri R.K. Saini was examined by the company who admitted in the cross examination that there was no charge against the petitioners regarding the beating or misbehaviour with the co-workers or officers of the company outside the gate of the factory. "

5. The workers are said to have violated the provisions of Sub-clauses 15, 26 and 50 of Clause 30 of the Standing Orders. The said sub-clauses are in the following terms:

"(15) Drunkenness, fighting, riotous or disorderly behaviour or conduct endangering the life, or safety of any person, or any other act subversive of discipline, whether committed inside the factory premises or in the workers colony provided by the Management. Any act of sabotage of plant, machinery or any property of the Company.

(26) Threatening, assaulting, intimidating or misbehaving with any officer, workman or any other employee of the establishment, whether inside or outside the factory premises, or incitement to or abetment of any of these acts.

(50) Any other act, subversive of discipline or which is otherwise a misconduct or which adversely affect the reputation of the establishment. "

6. A perusal of the award of the Labour Court as well as the report of the Inquiry Officer which has been placed before us as Annexure PE shows that none of the ingredient of the said sub clauses has been proved by any evidence in the domestic inquiry. It is the case of total absence of evidence on the part of the management to prove the alleged misconduct of the workers.

7. In such circumstances, the Labour Court was justified in setting aside the findings arrived at by the Inquiry Officer and also holding that the entire inquiry was vitiated. Consequently, the award does not suffer from any defect as contended by the learned Counsel for the petitioners.

8. The third contention urged by the learned Counsel for the petitioners is that there was no justification for the Labour Court to direct reinstatement with all back wages, consequential benefits and other advantageous payments to the workers. According to the learned Counsel, the Labour Court ought to have applied its mind and considered whether the payment of back wages and other consequential benefits should be directed in the present case. There is no merit in this contention. If the Labour Court had come to the conclusion that the

punishment awarded to the workers was disproportionate to the misconduct proved in the inquiry then the question of considering the award of back wages would have arisen. Once the Labour Court comes to the conclusion that the entire inquiry is vitiated and the order of dismissal is wholly unsustainable then the workers are entitled to backwages and other consequential benefits as well as other advantageous payments. We do not find any error in the direction given by the Labour Court in this regard.

9. The last contention urged by the learned Counsel for the petitioners is that the direction to the petitioners to pay interest at the rate of 12% per annum from the date of award is unsustainable. As we have pointed out already, the award becomes enforceable from the date of its publication. In the circumstances we set aside that part of the award and substitute the following direction in its place. The petitioners are liable to pay interest at the rate of 12% per annum from the date of dismissal of the workers, if it fails to pay the entire amount due to the workers as per the award within thirty days from the date of its publication.

10. In the result, the writ petition fails and it is dismissed C.M.Ps. are also dismissed. Interim stay vacated.