
(2008) 05 SHI CK 0020
In the High Court Of Himachal Pradesh

Phagu Pal and Others

APPELLANT

Vs

Birla Textile and Others

RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 22, 23

Citation : (2009) 1 LLJ 389

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Since the common questions of law and fact are involved in these petitions, the same are being disposed by a common judgment.

2. A challenge has been laid by the petitioners to the award dated January 17, 2006 passed in reference No. 129/2000 by the Presiding Judge, Himachal Pradesh Labour Court, Shimla.

3. The brief facts necessary for the adjudications of these petitions are that the "Kapra Mazdoor Lal Jhanda Union" (CITU), had submitted a Demand Charter to the Manager of the respondent-factory on January 31, 2000 raising as many as 15 demands. The Union had also served a notice on the management of the respondent-factory on June 10, 2000 under Sections 22 and 23 of the Industrial Disputes Act, 1947. It appears that the matter could not be resolved amicably" between the workmen and the management and consequently the State Government has made the following reference to the Labour Court:

Whether the demand raised by Kapra Mazdoor Lal Jhanda Union (CITU) (Unregistered) Birla Mills, Sai Road Baddi, District Solan, H.P. with the management of M/s. Birla Textile Mills, Sai Road Baddi District Solan, H.P. vide their demand charter dated June 10, 2000 read with the demand charter dated January 31, 2000 (copies enclosed) are genuine and justified. If yes, which of their demands should be accepted and from which date?

4. In sequel to the reference made by the State Government, the Union had filed its claim primarily contending therein that pursuant to the directions issued by the Hon'ble Supreme Court from time to time as many as 1841 workmen had joined their duties at Baddi and their terms and conditions of employment are required to be protected as per the directions issued by the Hon'ble Supreme Court in M.C. Mehta v. Union of India, AIR 1996 SC 2231 , more particularly, para 28(9) Clauses (a) and (b) thereof. The further case as set out by the Union before the Labour Court was that the workmen were entitled to variable dearness allowance on the - principle of 90% neutralization in accordance with Vaidya Lingam Award dated November 23, 1973 and the management could not make deductions from their wages. The management had contested the claim filed by the workmen primarily on the ground of maintainability of the reference and secondly on the ground that the Vaidya Lingam Award dated November 23, 1973 was applicable only to textile workers within the territorial jurisdiction of N.C.T. Delhi. The management had also pleaded that it was running into heavy losses and the workmen were being paid the same wages which they were getting at the time of closure of the factory at Delhi. The Labour Court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the reference is not maintainable in view of the preliminary objection raised by the respondents? OPR.

2. Whether the demand raised by the petitioners vide their demand charter dated January 31, 2000 is not justified? If so to what effect? OPP

3. Relief.

5. The Labour Court had answered the reference against the workmen.

6. Mr. T.C. Gupta, Sr. advocate with Mr. Rajesh Verma, advocate had strenuously argued that the award dated January 17,2006 is not sustainable in the eyes of law. He also contended that the Labour Court had misconstrued and mis-interpreted the evidence led by parties leading to grave miscarriage of justice.

7. Mr. R.K. Jain, senior advocate with Mr. Jagdish Thakur, advocate had supported the award dated January 17,2006. He had reiterated the stand which has been taken by the management before the Labour Court.

8. I have heard the learned Counsel for the parties and perused the record carefully.

9. The foundation of the demand charter dated January 31,2000 read in conjunction with notice dated June 10, 2000 is the directions issued by the Hon'ble Supreme Court in case M.C. Mehta v. Union of India and Ors. (supra). It will be apt at this stage to reproduce relevant extract of para 28 whereby directions were issued to the respondents. The relevant extract of Clauses (a) to (f) of sub-para (9) of para 28 reads thus:

28(9) The workmen employed in the above mentioned 168 industries shall be

entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location.

(d) The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from November 30, 1996 provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F (b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before December 31, 1996.

(f) The gratuity amount payable to any workmen shall be paid in addition.

10. The Hon'ble Supreme Court in M.C Mehta v. Union of India, (1997) 11 SCC 227 had modified direction No. 9 (d) to the following effect:

Any way, this is a matter which concerns the industries. Keeping in view all the facts and circumstances of this case, we are of the view that the interest of the workmen would be met if we substitute the words "one year's wages" in the last line of Direction 9(d) quoted above with "six years" wages." The net result would be that the workmen referred to in Direction 9(d) shall be paid in addition, six years' wages as additional] compensation in place of one year's wages as initially directed by us.

11. In sequel to the directions issued by the Hon'ble Supreme Court on July 8, 1996, the] workmen were supposed to join their duties at Baddi. Since the workmen were not being permitted to join their duties at their new place of posting pursuant to order dated July 8, 1996, the workmen approached the Hon'ble Supreme Court again by way of Contempt Petition No. 532/1997 in I.A. No. 22 and 36 in W.P. (C) No. 4677/1985 praying for the following reliefs:

(i) payment of full back wages w.e.f.: December 1, 1996 along with 18% interest, (ii) to treat the workmen as in continuous employment for December 1, 1996, (iii) to direct the Industry to deem that the workmen have exercised option to shift in accordance with the order of this Hon'ble Court, (iv) to direct the Industry to give 1 year's wages as shifting bonus, (v) to direct the Industry

to ask the workmen to report at the selection sites after the factory is fully set up and; commenced production, with basic amenities for the workers and their families.

12. The Hon''ble Supreme Court formulated two points for consideration, which read thus:

(I) Whether the management was right in its submissions that the workmen, though given opportunity in various letters to give their option for reporting at Baddi, failed to exercise option and must be deemed to have been retrenched on November 30, 1996 in terms of the orders dated July 8, 1996 and December 30, 1996 of this Court?

(II) Whether the workmen were right in contending that the management had no right to seek options from the workmen even before the Industry was relocated and started functioning at Baddi ? These two points reflect the rival contentions and can be disposed of together.

13. Their Lordships of the Hon''ble Supreme Court after taking into consideration Clauses (a) and (b) of sub-para (9) of para 28 held that the terms and conditions of employment of the workmen could not be altered to their detriment. In other words, the employees were deemed to be in active employment right from the date of "closure" of the industry at Delhi and its "re-start" at the place of relocation and they had to be paid full wages with continuity in service for the said period in addition to one year's wages towards shifting bonus. It was also brought to the notice of the Hon''ble Supreme Court by Ms. Indira Jaisingh and Mr. D.K. Agarwal, Senior Advocates appearing on behalf of the workmen that the workmen should be paid the same wages as were being paid at Delhi since the minimum wages payable in Himachal Pradesh to the locals were less. The contention of the learned Counsel appearing on behalf of the management raised on the basis of Clauses (c), (d) and (e) that if the workmen did not exercise the option by December 31, 1996, they were deemed to be retrenched with effect from December 31, 1996 was repelled. This order was passed by the Hon''ble Supreme Court on December 18, 1998 *Mehta M.C. Vs. Union of India (UOI) and Others*,

14. The workmen were again constrained to approach the Hon''ble Supreme Court since they were not permitted to join their duties at the new place at Baddi for the simple reason that the factory had not become functional. When this fact was brought to the notice of the Hon''ble Supreme Court, their Lordships were pleased to issue necessary directions to facilitate the joining by the workmen at the new place i.e. Baddi vide order dated March 24, 1999 *Workman of M/s Birla Textiles Vs. Shri K.K. Birla and Others*,

15. It is in this backdrop that the present petition is to be adjudicated upon. The workmen had primarily relied upon as noticed above on Clauses (a) and (b) of sub-para (9) of para 28 of the judgment *M.C. Mehta v. Union of India*, AIR 1996 SC 2231 to substantiate their plea before the Labour Court that the terms and

conditions of their employment could not be altered to their detriment and they are to be treated in continuous employment at the new place of posting i.e. Baddi.

16. The union had produced three witnesses before the Labour Court in support of its pleas, more particularly, with regard to the payment of variable dearness allowance on the basis of Vaidya Lingam Award dated November 23, 1973 (Exhibit P-6). P.W.1 Rama Kant has placed on record copy of the award dated November 23, 1973. He has stated that he was authorized by the workmen to raise the Industrial Disputes for the redressal of the grievance of the members of the Union. He has stated before the Labour Court that when the workmen were working at Delhi, they were provided holidays during Holi, Diwali, Janamashtami which were stopped at Baddi. He has categorically stated that the workmen were getting the dearness allowance as per the Vaidya Lingam Award. However, he has stated that the Union was not registered, but they had taken steps for its registration in the months of August or September, 1999. He has further stated that he is the General Secretary of the Union since August 1999 and the members of the Union are paying Rs. 10/- per month as subscription. He has further stated that the Vaidya Lingam Award was not made applicable to the textile mills outside Delhi. He has also admitted that the other textile mills at Baddi are not paying dearness allowance.

17. P.W.2, Sh. Ram Vilas and P.W.3 had supported the version of P. W. 1. They had stated that after 1996, the dearness allowance was not being paid to the workmen and the same is required to be paid as per the Vaidya Lingam Award.

18. The management has produced four witnesses. R.W.1 Sh. K.M. Rathi has also filed his affidavit Exhibit R.W.1/A supporting the contents of the reply. He has stated that the factory was running in losses. R.W.2 Sh. Vibhor Gupta has tendered his affidavit Exhibit R.W.2/A. He has admitted in his cross-examination that the workmen working at Delhi had joined at Baddi. R.W.3 Sh. K.K. Sharma has tendered his affidavit Exhibit R.W.3/A. He has supported the stand of the management taken before the Labour Court in its reply. R.W.4 Sh. A.K. Sinha is the most material witness, who was working as a Senior Manager (P&A) and has tendered his affidavit Exhibit R.W.4/A. He has admitted that the workmen were getting the dearness allowance as per the consumer price index at Delhi recommended by the Vaidya Lingam in the form of Award and the mill was shifted to Baddi as per the directions of the Hon'ble Supreme Court on the same terms and conditions as applicable to the workers in Delhi. He has further admitted that the workmen are getting Rs. 1224/- per month less due to non-payment of dearness allowance.

19. The learned Counsel appearing on behalf of the Union had restricted his arguments only to demands No. 1, 2 and 10 before the Labour Court. The Labour Court came to the conclusion that since Vaidya Lingam Award was applicable to the textile workers at Delhi, it could not be made applicable to the workers employed at Baddi in Himachal Pradesh. The Labour Court had not discussed the

evidence at all before coming to an abrupt conclusion that the workers were not entitled to dearness allowance at Baddi. The Labour Court should have discussed the evidence led by the workmen as well as by the management and thereafter a specific finding was to be recorded. The Labour Court had missed a very vital aspect in the matter i.e. the directions issued by the Hon''ble Supreme Court on July 8, 1996 in *M.C. Mehta v. Union of India and Ors.* (supra) whereby there ought to have been continuity in the employment of the workmen at the new place of posting and their terms and conditions of employment could not be altered to their detriment. If the workmen were getting the dearness allowance on the basis of the Vaidya Lingam Award dated November 23, 1973 which has become the integral part of the terms and conditions, the same could not be denied by the management. P.W.I has placed on record copy of award of Vaidya Lingam dated November 23, 1973. P.W.I Sh. Rama Kant has stated that the workmen were getting the dearness allowance at Delhi and this version has been duly supported by P.W.2 and P.W.3 respectively. The representative of the management R.W.4 Sh. A.K. Sinha, Senior Manager (P&A) in categorical terms had admitted that the workmen were getting the dearness allowance as per the award of the Vaidya Lingam dated November 23, 1973 and presently the workmen are getting less pay amounting to Rs. 1224/- per month. He has also admitted that the workmen were entitled to protection of the terms and conditions of their employment as applicable in Delhi at the new place of posting i.e. Baddi. The emphasis of the directions issued by the Hon''ble Supreme Court in Clause (a) of sub-para (9) of para 28 was that the workmen shall have continuity of employment at the new town and place where the industry was to be shifted and the terms and conditions of their employment could not be altered to their detriment. To get the variable dearness allowance as per the Vaidya Lingam Award was the integral part of the terms and conditions of employment of the workmen as discussed hereinabove.

20. The matter can be viewed from another angle. True it may be that the Vaidya Lingam Award was made applicable to the workmen working within the territorial jurisdiction of NCT Delhi, however, it was never visualized at that time that the workmen who were working in Delhi were to be relocated. Since the industries were relocated outside the territorial jurisdiction of NCT Delhi, their terms and conditions of employment had been protected by the Hon''ble Supreme Court. The recommendations made in the award dated November 23, 1973 for the release of variable dearness allowance will be deemed to be ipso facto applicable to the workmen who were initially working in Delhi and thereafter posted at Baddi. The workmen could not be put to disadvantageous position as has been held by the Labour Court only on the ground that the Vaidya Lingam Award was only applicable to the textile workers at Delhi. Whatever wages were being paid to the workmen at Delhi, were to be paid to them when they were relocated and joined their duties at Baddi. It is evident from the judgments/orders reproduced hereinabove that the management had also tried to defeat the legal rights of the workmen by coercing them to give their option. Their Lordships of the Hon''ble

Supreme Court while repelling the contention of the management by harmoniously construing Clauses (a) and (b) of sub-para (9) of para 28 have held in M.C. Mehta Vs. Union of India (UOI) and Others, that the management was to ensure that the workers join their new place of posting and their salaries/wages are protected. The management had not facilitated the process of joining of the workmen as noticed by the Hon''ble Supreme Court in case Workmen of Birla Textiles v. K.K. Birla and Ors. (supra), dated March 24, 1999.

21. Since this Court has held that the petitioners are entitled to get variable dearness allowance, which they were getting at Delhi at a new place of posting i.e. Baddi, a fortiori, they are also entitled to same number of holidays/paid holidays. The respondents could not make deductions from the wages of the petitioners by invoking Section 9 of the Payment of Wages Act, 1936. This will amount to changing the terms and conditions of the workmen which have been specifically protected by the Hon''ble Supreme Court. The petitioners are also entitled to same number of holidays of Janamasthmi, Holi etc. which they were getting at Delhi. The Labour Court had not taken into consideration the judgment of the Hon''ble Supreme Court whereby the terms and conditions of the workmen are to be protected qua paid holidays. It is declared that the petitioners' wages could not be deducted of paid holidays by the management.

22. The Labour Court besides dismissing the case of the workmen on merits had also held that the reference was not maintainable since the same was neither espoused by the registered Trade Union nor the Union had been duly authorized by the workers. Suffice it to say that the demand of all the workmen in fact was for the implementation of the judgments/orders passed by the Hon''ble Supreme Court from time to time, more particularly Clause (a) of sub para (9) of para 28 dated July 8, 1996 read with other orders as noticed hereinabove.

23. It is settled law by now that it is not necessary that for espousal of the grievance of the members by the Union, it should be registered. Their Lordships of the Hon''ble Supreme Court have held in Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others, that cause of workmen can be taken up by unregistered association of workmen. Their Lordships have held as under:

Then it was urged that the association which sponsored the case of respondents 3 to 5 was an unregistered body and that made the reference invalid. Both the Courts have held, and rightly, that it is not necessary that a registered body should sponsor a workman's case to make it an industrial dispute. Once it is shown that a body of workmen, either acting through their union or otherwise had sponsored a workman's case it becomes an industrial dispute.

24. Their Lordships of the Hon''ble Supreme Court have held in State of Bihar Vs. Kripa Shankar Jaiswal, that for a dispute to constitute an industrial dispute it is not a pre-requisite that it should be sponsored by a recognized union and that all the workmen of an industrial establishment should be parties to it. Their Lordships have held as under:

It would be an erroneous view if it were said that for a dispute to constitute an industrial dispute it is a requisite condition that it should be sponsored by a recognised union or that all the workmen of an industrial establishment should be parties to it. A dispute becomes an industrial dispute even where it is sponsored by a union which is not registered as in the instant case or where the dispute raised is by some only of the workmen because in either case the matter falls within Section 18(3)(a) & (d) of the Act. See also *Newspapers Ltd., Allahabad v. State Industrial Tribunal, Uttar Pradesh* (supra). The settlement of March 18, 1954, arrived at during the conciliation proceedings was signed by the Central Secretary and members of the executive committee of the Union though it was unregistered at the time. We cannot therefore give our accord to the decision that the settlement of March 18, 1954, was not a settlement binding between the parties.

25. Similarly, their Lordships of the Hon'ble Supreme Court in *The Management of Pradip Lamp Works, Patna City Vs. The Workmen of the Pradip Lamp Works, Patna and Another*, have held that dispute relating to the dismissal of 10 workmen espoused by union which was not registered but in which substantial number of workmen are members were held to be an industrial dispute. Their Lordships have held as under at p. 510 of LLJ:

8. There is, thus clear evidence of these cases having been espoused by the new union or, being yet unregistered, by a substantial number of workmen. The fact that these cases were not taken up by the recognized union does not mean that they were not industrial disputes. There are decisions of this Court which have laid down that espousal of a dispute before a reference is made even by a minority union, having a membership of substantial number of workmen, is sufficient to make such a dispute an industrial dispute. (See *Workmen of Indian Express v. Management* (Civil Appeal No. 1733/1967, dated November 26, 1968).) It is, therefore, impossible to say that these disputes were individual and not industrial disputes and that for that reason the impugned reference was incompetent.

26. In *Chairman, State Bank of India and Another Vs. All Orissa State Bank Officers Association and Others*, , their Lordships of the Hon'ble Supreme Court have held that unregistered union is not a superfluous entity and it is entitled to meet and discuss with the management/employer about grievances of any individual member in domestic or departmental inquiry and proceedings before Conciliation Officer or Labour Court or Industrial Tribunal. Their Lordships have held as under at p. 566 of LLJ:

14. With growth of industrialization in the country and progress made in the field of trade union activities, the necessity for having multiple unions in an industry has been felt very often. Taking note of this position, power has been vested in the management to recognize one of the trade unions for the purpose of having discussions and negotiations in labour related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employee in an

industry. To avoid arbitrariness, bias and favouritism in the matter of recognition of a trade union, rules have been framed laying down the procedure for ascertaining which of the trade unions command support of majority of workmen/employees such procedure is for the benefit of the workmen/employees as well as the management/employer since collective bargaining with a trade union having the support of majority of workmen will help in maintaining industrial peace and will help smooth functioning of the establishment. Taking note of the possibility of multiple trade unions coming into existence in the industry, provisions have been made in the rules conceding certain rights to non-recognized unions. Though such non-recognized unions may not have the right to participate in the process of collective bargaining with the management/employer over issues concerning the workmen in general, they have the right to meet and discuss with the employer or any person appointed by him on issues relating to grievances of any individual member regarding his service conditions and to appear on behalf of their members in any domestic or departmental enquiry held by the employer or before the conciliation officer or Labour Court or Industrial Tribunal. In essence the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and settlement if any arrived at as a result of such discussion/negotiations is binding on all workman/employees whereas a non-recognized union cannot claim such a right but it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent an individual member in domestic inquiry or departmental inquiry and proceedings before the conciliation officer and adjudicator. The very fact that certain rights are vested in a non-recognised union shows that the Trade Union Act and the rules framed thereunder acknowledge the existence of a non-recognised union. Such a union is not superfluous entity and it has a relevance in specific matters relating to administration of the establishment. It follows, therefore, that the management/employer cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. It is relevant to note here that the right of the citizens of this country to form an association or union is recognized under the Constitution in Article 19(1)(c). It is also to be kept in mind that for the sake of industrial peace and proper administration of the industry, it is necessary for the management to seek co-operation of the entire work force. The management by its conduct should not give an impression as if it favours a certain sections of its employees to the exclusion of others which, to say the least, will not be conducive to industrial peace and smooth management. Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen, it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members, is for the management or its representative at the spot to decide. At the cost of repetition,

we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in a manner which helps in uniting its workmen/ employees and not give an impression of a divisive force, out to create differences and distrust amongst workmen and employees. Judged in this light the contents of paragraph 2 of the staff circular No. 91/1987 clearly give an impression that the management has decided at the threshold before being aware of the nature of the dispute raised that its representatives should have no discussion at all with office bearers of the non-recognized association. Such a circular is not only contrary to the express provision in Rule 24 but also runs counter to the scheme of the Trade Union Act and the rules.

27. Mr. R.K. Jain, Senior Advocate had relied upon Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, to substantiate his plea that the reference made by the union in the present form was illegal. In this case the dispute of the workman was initially espoused by an office bearer and subsequently the workman had asked for change in the representative of his choice on the ground that he has lost faith in the office bearer of the Union. This is not the position in the present case.

28. Similarly, the case of J.L. Toppo Vs. Tata Locomotive and Engineering Company Ltd., is not applicable in the present facts of the case. In this case the matter was espoused by the Union and the Patna High; Court held that the individual workman was not a party to the industrial dispute independently. In the present case, the case of the workmen was espoused by the Union before the Labour Court and it is only in the writ that the individual workman has approached this Court by assailing the impugned award individually.

29. Mr. Jain had also referred to K.C.P. Limited Vs. Presiding Officer and Others, . In this case the dispute was with regard to the binding nature of the settlement entered into between the employer and Trade Union and the Hon"ble Supreme Court has held that it was binding on the dissenting members of the Trade Union.

30. Deepak Industries Limited and Another Vs. State of West Bengal and Others, is also distinguishable on the facts. In this case at the time when the reference was made, 173 workmen were not the members of the Union. However, in the present case, the petitioners including other workmen were the members of the Union and had raised the demand with the management on March 31, 2000. Since 174 workmen in Deepak Industries case were not the members, they could not authorize the Union to espouse their case as rightly held by Hon"ble Calcutta High Court.

31. In Workmen of Indian Express (P) Ltd. Vs. The Management, cited by Mr. Jain, the Apex Court has held that when two working journalists had raised a dispute in regard to their designation and such dispute was espoused by a union of working journalists in which 25% of the working journalists of the

establishment in question were members along with other working journalists of other newspaper establishment, it was held that it had necessary representative capacity to espouse the cause of the two concerned employees and the reference in regard to such dispute made at the instance of such union was held valid. Mr. Jain cannot take any support from this judgment.

32. In the present case P.W.1 Sh. Rama Kant has stated that he is the General Secretary of the Union and the members are paying subscription regularly on monthly basis. It was not necessary that the Union should have been registered for the espousal of the grievance of the workers as held by the Hon''ble Supreme Court. The Labour Court has non-suited the Union on a very hyper technical view that neither the Trade Union was registered nor authorized by the workers. In fact, the workmen had been seeking the enforcement of the judgment/directions of the Hon''ble Supreme Court for protecting the terms and conditions of their employment. The Labour Court ought to have taken note of the judgments and directions issued by the Hon''ble Supreme Court. The case of the petitioner was initially espoused by the Union before the Hon''ble Supreme Court as well as before the Labour Court but the present petition has been filed by an individual workmen against the impugned award. The petitioners are to be treated as aggrieved parties and they have the necessary locus standi to challenge the validity of the award. The Labour Court has denied the wages and other privileges which they were getting at their old place of posting i.e. Delhi vide award dated January 17, 2006 ignoring the mandatory directions issued by the Hon''ble Supreme Court.

33. The management, if was aggrieved in any manner by the reference made by the State Government, should have challenged the same by way of appropriate proceedings. The management admittedly has not assailed the reference made by the State Government and thus it was not open for it to assail the same before the Labour Court in the present form.

34. The petitioners are not precluded from assailing the award dated January 17, 2006 by way of present writ petitions even though the Union had assailed the same before the Hon''ble Apex Court by way of SLP which was permitted to be withdrawn. There was no decision of the Hon''ble Supreme Court on the merits and since the petition was withdrawn, the present petitions are maintainable against the award. The management had taken a specific stand before the Labour Court that for getting the dearness allowance, the workmen had approached the Hon''ble Supreme Court by way of contempt petition. The copy of the order passed by the Hon''ble Supreme Court was not placed on record by the management, though a specific plea was taken in the reply. The contempt jurisdiction and the jurisdiction exercised by the Labour Courts/Industrial Tribunals under the industrial laws is different. In contempt jurisdiction the role of the petitioner is only of an informer and in the industrial dispute the workman/individual or through Union can espouse his cases effectively for protecting his rights in the manner envisaged under law.

35. Consequently, in view of the observations made hereinabove, the writ petitions are allowed. The impugned award dated January 17, 2006 is quashed and set aside. It is declared that the workmen/petitioners are entitled to protection of the terms and conditions of their employment as per the judgment of the Hon''ble Supreme Court rendered in M.C. Mehta v. Union of India and Ors. (supra), more particularly, sub-para (9) of para 28 after their joining at the new place of posting at Baddi. It is clarified that the workmen will be entitled to all the allowances including the variable/changeable dearness allowance, paid holidays and protection of other terms and conditions of their employment by which they were regulated at Delhi at the new place of posting i.e. at Baddi.

36. There shall be no order as to costs.