
(2010) 11 MAD CK 0386
In the Madras High Court
Case No : Writ (C) No. 17194 of 1997

Poineer Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(5)
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 3(1)

Citation : (2011) 2 LLJ 250

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Advocate : Vivek Ratan and S.S. Nigam and V.R. Agarwal, for the Appellant;
C.S.C. and P.C. Jhingan, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Pratap Singh, J.—Heard learned Counsel for the Petitioner but none appears for the contesting Respondent even in the revised list.

2. It is pleaded that the Petitioner is a Public Limited Company registered under the Companies Act, 1956 and is engaged in the business of printing and publishing newspapers from Lucknow and Delhi and has its registered office at Lucknow. It is stated that the publishing business of newspaper from Varanasi was closed down on October 1, 1991 and services of all the employees were dispensed with in accordance with law. However, the State Government caused a reference dated March 31, 1992 u/s 10 of the Industrial Disputes Act, 1947 (here-in-after referred to as Central Act) read with Section 3(1) of the Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955 to the Labour Court, Varanasi citing it as an industrial dispute between 28 employees of the Petitioner and the Respondent No. 3 i.e. Pioneer Press Karamchari Sabha with regard to validity of termination of 21 employees and regularization of seven other employees whose names were

duly mentioned in the schedule to the order. The Labour Court registered it as Adjudication Case No. 145 of 1992. The Petitioner filed his written statement and took up a plea that reference was bad in as much as Pioneer Press Karamchari Sabha, Varanasi was not competent to espouse the industrial dispute on behalf of the employees and was not a registered trade union and also filed an application challenging the competence of the union and the validity of the reference. The Labour Court, after considering the objection of the Petitioner, found that the matter with respect to amendment of the reference with regard to parties was engaging the attention of the State Government, it gave them an opportunity to obtain an order. Subsequently, the State Government passed an order adding Samachar Patra Karamchari Union as the other union as party in the reference. It appears that the said amendment was made under the U.P. Industrial Disputes Act, 1947 (here-in-after referred to as State Act) and as such the Petitioner raised another objection that the amendment was invalid. The Court held vide order dated July 9, 1996 that the order of reference and the amendment was not maintainable and it provided an opportunity to the workmen to get a proper amendment under the Central Act. In pursuance thereof, a second amendment correcting the earlier mistakes was published on August 6, 1996. On the objection raised by the Petitioner that since the reference itself was held to be bad, it could not be cured by the amendment. This objection was heard in detail and vide order dated April 21, 1997 the Labour Court held that the reference and the amendment was valid and fixed date for hearing of the reference. The reference order dated March 31, 1992 as well as two amending orders dated January 11, 1994 and August 6, 1996 together with order dated April 21, 1997 are impugned in the present petition.

3. The only argument urged on behalf of the Petitioner is that once the original reference was held to be not maintainable, subsequent amendment could not validate the reference and in support thereof, he has relied upon the decision of the Apex Court in the case of *The State of Bihar Vs. D.N. Ganguly and Others*, , a Division Bench judgment of the Madras High Court in the case of *Workers employed in Thambi Motor Service Vs. Management of Thambi Motor Service and Another*, and another judgment of a single Judge of Punjab and Haryana High Court in the case of *District Motor Transport Workers' Union Vs. State of Haryana*, .

4. It is apparent from the record that the reference was made u/s 10 of the Central Act read with Section 3(1) of the Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955 and Pioneer Karamchari Sabha, Varanasi was impleaded as a representative for the workmen. The Labour Court found that as the Sabha was not a registered union, it could not espouse the cause, therefore it permitted the workmen to seek an amendment from the State Government. The State Government issued the first amendment order dated April 11, 1994 imp leading Samachar Patra Karamchari Union, a registered union as a party also but it appears by mistake the amendment was passed under the State Act and not

under the Central Act, and thus, vide order dated July 9, 1996 it found that the amendment was not valid but it gave further opportunity to the workmen to obtain a proper amendment under the Central Act. The State Government realizing its mistake, issued another amendment order dated August 6, 1996 under the Central Act and imp leded the Karamchari Union and after amendment, it went on to hold that the reference was valid. A perusal of Section 10(5) of the Central Act shows that the appropriate Government is entitled to add other parties to a pending dispute subject to the conditions mentioned in the said provisions and the Counsel for the Petitioner has failed to point out any bar under the Act to amend parties to a pending dispute.

5. In *State of Bihar v. D.N. Ganguly* (supra) case the facts were that two references made by the State Government with regard to status of employees were pending adjudication but on being approached by an another union, it cancelled the reference order and issued a new reference order combining the two sets of reference into one. The Hon'ble Supreme Court, after examining the provisions of the Act and the law on the issue, held that the Government after referring a dispute cannot cancel or rescind a reference, but in fact, the Apex Court has itself held in paragraph No. 10 that the State government has power to add parties to a pending dispute u/s 10(5) of the Central Act. In the present case, the facts are entirely different and therefore the ratio in its entirety will not apply. The Madras High Court in the case of *MPM, Nilgiris Motor Workers' Union v. Thambi Motor Service* (supra) was confronted with a case where earlier reference was only with regard to amount of retrenchment compensation to be paid to the workmen but by amendment the said reference was completely changed by questioning the very validity of the retrenchment itself. The Division Bench found that the appropriate Governments did not have any power to amend or modify a reference which has the effect of a new reference. The facts and the ratio are entirely alien to the present dispute. Before Punjab and Haryana High Court in the case of *District Motor Transport Workers' Union v. State of Haryana* (supra) the facts were that a reference was made to the effect as to whether the workmen should be granted dearness allowance as given to the employees of Punjab Roadways but by amendment the word "Punjab" was replaced by the word "Haryana". The Court after holding that the cardinal principle to determine is whether the amendment amounts to correction of a clerical error or introduction of fresh material and whether the relief claimed by the aggrieved parties in the original notification can be granted, found that the entire complex of the reference was changed as the rate of dearness allowance between the two States was entirely different. Thus, in the present case, this decision also would not help the Petitioner.

6. For the reasons above, this is not a fit case for interference under Article 226 of the Constitution of India.