
(2004) 12 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Special (Writ) Appeal No. 1048 of 2000

Prakash Roadlines Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 12(4), 12(5)

Citation : (2005) 2 LLJ 989 : (2005) 2 RLW 787 : (2005) 2 WLC 205

Hon'ble Judges : Shiv Kumar Sharma, J; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Manoj Sharma and Yogesh Kumar Sharma, for the Appellant; P.S. Asopa and J.K. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—This special appeal is directed against the judgment dated 22nd August, 2000 passed by the learned Single Judge in S.B.C.W. Petition No. 3417/2000, whereby he dismissed the writ petition of the petitioner-appellant in limine.

2. The petitioner-appellant filed a writ petition before this Court with a prayer to quash and set aside the impugned Order dated 30.3.2000 (Annexure 7 with the writ petition) passed by respondent No. 1, whereby State Government made a reference to Labour Court, Udaipur u/s 10(1) of the Industrial Disputes Act, 1947 (in short the Act of 1947 hereinafter) for adjudication as to whether the termination of respondent No. 3 on 22.8.1997 by appellant was legal and justified. If not, then, for what relief the workman is entitled.

3. The petitioner-appellant pleaded in the writ petition that respondent No. 3 filed a complaint before the Assistant Labour Commissioner, Udaipur requesting therein to initiate conciliation proceedings and also challenged the alleged termination Order. The respondent No. 3 was initially appointed and working as Area Sales Manager. The petitioner filed reply to the complaint before the

Assistant Labour Commissioner, Udaipur. The Assistant Labour Commissioner initiated conciliation proceedings. However, no conciliation could be arrived at between the parties, hence he prepared the failure report and the same was sent to respondent No. 1 for taking appropriate action. It was also averred in the writ petition that the State Government vide its Order dated 4th December, 1999 declined to refer the aforesaid matter to the appropriate Labour Court for adjudication in accordance Section 12(4) and (5) of the Act of 1947. Thereafter, there was no change of circumstances so as to pass impugned Order Annexure 7 dated 30th March, 2000, whereby reference was made to the Labour Court.

4. The writ petition was heard by the learned Single Judge, who vide its Order dated 22nd August, 2000 dismissed the writ petition in limine. The learned Single Judge was of the view that the question whether respondent No. 3 was a workman, as defined in the Industrial Disputes Act, has to be adjudicated upon on the basis of facts and law applicable and therefore, it would be appropriate for the petitioner to raise that question before the Labour Court by filing his reply. Being aggrieved with the Order of the learned Single Judge, the present special appeal has been filed.

5. The special appeal was listed for admission on 2nd March, 2001 and Division Bench issued notice to show cause to the respondents as to why this special appeal be not heard and disposed of finally at the admission stage. Notice of stay application was also issued. Pending hearing and disposal of the appeal, it was directed that the Labour Court shall not pass any Order adverse to the interest of the appellant. After service of notice, the respondents appeared in the appeal. The respondent No. 3 Workman filed its reply to the special appeal, wherein it was mentioned that when initially, the government refused to refer the matter for adjudication to the appropriate Labour Court vide its Order dated 4.12.1999, the respondent No. 3 submitted a detailed representation dated 23.3.2000. After consideration of the representation, the government vide its Order dated 30th March, 2000 decided to refer the dispute to the appropriate Labour Court for adjudication.

6. We have heard learned counsel for both the parties and perused the record.

7. The learned counsel for the appellant has made two-fold arguments. His first argument is that on the same facts and circumstances, the state Government after having declined to make the Order of reference vide its Order dated 4.12.1999, without any fresh material, passed the impugned Order dated 30th March, 2000. Therefore, the Order dated 30th March, 2000 is wholly without jurisdiction and deserves to be quashed. The next argument is that before passing the Order dated 30th March, 2000, no notice was given to the appellant. Learned counsel for the appellant has placed reliance on the judgment in *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*,

8. The learned counsels for respondent No. 1 as well as respondent No. 3 have opposed the contentions of the appellants. The learned counsel for the

respondent No. 3 submits that after passing of the Order dated 4.12.1999 (Annexure 6 with the writ petition), the respondent No. 3 filed a representation before the government on 23rd March, 2000. A copy of the representation dated 23.3.2000 has been placed on record alongwith the reply to the special appeal. No rejoinder has been filed by the appellant, meaning thereby, this fact has not been disputed by the appellant that representation dated 23rd March, 2000 was filed by the respondent No. 3 after Order dated 4.12.1999, refusing to refer the reference to the Labour Court. He submits that after consideration of the representation of respondent No. 3, the government passed the Order dated 30th March, 2000, whereby reference was made to Labour Court for adjudication as to whether the termination of respondent No. 3 was legal and justified. He further submits that u/s 10 and 12 of the Act of 1947, there is no requirement to give notice to the employer before making reference by the State Government. It was also not necessary to give an opportunity to the employer before passing the Order of reference dated 30th March, 2000. The learned counsel for the respondent No. 3 also submits that matter before Labour Court is almost at a final stage and Order could not be passed because of limited ex-parte stay Order dated 2nd March, 2001 passed by Division Bench. In support of contention, he has referred a judgment of the Hon'ble Supreme Court in the case of Sultan Singh Vs. State of Haryana and another,

9. So far as the judgment given in the case of The Secretary India Tea Association v. Ajit Kumar Barat and Ors. (supra), is concerned, the same is not applicable in the facts and circumstances of the present case.

10. So far as judgment of the Hon'ble Supreme Court in the case of Sultan Singh v. State of Haryana (supra), the question arose was as to whether the State should hear the employer before making a reference on a second representation u/s 10 of the Act of 1947 since it was rejected on an earlier occasion. The facts of that case were mentioned in para 2 of the judgment. The State Government rejected the application of the workman for reference u/s 10 of the Act vide Order dated 20th October, 1981. The workman again made a representation on March 25, 1982 and the Minister made a note on the representation directing to make a reference. However, since no communication was received by the workman, he wrote a letter to the Labour Commissioner and ultimately, a writ petition was filed. The Hon'ble Supreme Court held that it is not necessary to issue notice to the employer nor to consider his objections nor to hear him before making reference- Para 5 of the said judgment is quoted as under:-

"The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an administrative Order and so is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to the employer nor to consider his objections nor to hear him before making a reference. Accordingly, we are of the view that the High Court was wholly wrong in its conclusion that before making reference on second application, it was incumbent upon the State Government to

give notice to the employer and to give an opportunity to the employer and record reasons for making reference. The previous decision of that Court relied on in the case at hand was wrongly decided."

11. In the present case, the State Government earlier refused to make the reference for adjudication vide its Order dated 4th December, 1999 (Annexure 6 of the writ petition) but, on subsequent representation dated 23rd March, 2000 filed by respondent No. 3, the State Government referred the matter for adjudication to the Labour Court, vide its Order dated 30th March, 2000. As per judgment of the Hon''ble Supreme Court as quoted above, it is clear that there was no need to give any notice to the appellant employer nor there was any need to hear him before making a reference by the State Government. Therefore, present case is squarely covered by the ratio of the judgment of the Hon''ble Supreme Court as referred above. After passing of the Order dated 4.12.1999, there was a fresh representation dated 23rd March, 2000 therefore, fresh material was available before the State Government and as such, the Order dated 30th March, 2000 making reference to Labour Court for adjudication was rightly passed by the State Government. Therefore, in view of the above, there is no, merit in any of the submission of the appellants.

12. In view of the above, we do not see any infirmity in the Order dated 22nd August, 2000 passed by the learned Single Judge. Therefore, this special appeal has no merit and the same is hereby dismissed with no Order as to costs.