

(1993) 08 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4704 of 1989

Pritam Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(C)
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10

Citation : (1994) 106 PLR 359

Hon'ble Judges : Jai Singh Sekhon, J

Bench : Single Bench

Advocate : K.L. Arora, for the Appellant; Raman Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Sekhon, J.—C.W.P. No. 4704 of 1989, 3202 of 1991, 3203 of 1991, 3889 of 1991, 3888 of 1991, 3207 of 1991, 3960 of 1991 and 1763 of 1991 (except CWP No. 3205 of 1991 which is being delisted due to non-service of workman-respondent No. 4) shall be disposed of by a common judgment/order as the legal controversy involved therein is the same although the factual matrix is different. The legal controversy in all these writ petitions is as to whether the appropriate Government to refer an industrial dispute for adjudication u/s 10 of the Industrial Disputes Act is the State Government, within whose territorial jurisdiction the workman was working and orders of dismissal have been received; or the State Government within whose territorial jurisdiction the head office of the industrial undertaking is located and where the orders dismissing workman have been passed.

2. As the controversy is purely legal, the brief brief facts of each case will suffice. In CWP No. 4704 of 1989, Pritam Singh Workman was appointed on temporary basis as a Fertilizer Clerk on 12.6.1978 by the Managing Director of the Punjab Agro Industries Corporation, Chandigarh (hereinafter called as Corporation). His

services were regularised on 24.1.1979 but terminated vide order dated 24.2.1983 (Annexure P-1). Pritam Singh workman challenged the impugned order of termination in CWP No. 1399 of 1983 which was dismissed at the motion stage by the Division Bench of this Court on the ground that alternate and efficacious remedy under the Industrial Disputes Act was available to the petitioner-workman. He then served a demand notice under the provisions of the Industrial Disputes Act, on the Management on 24.6.1983 but his demands were not accepted. The dispute could not be resolved even before the Conciliation Officer. Thereafter he successfully sought a reference to the Labour Court, Chandigarh from the Chandigarh Administration on 8.1.1985. The reference reads as under:-

"Whether the services of Shri Pritam Singh were terminated illegally by the Management of Punjab Agro Industries Corporation? If so, to what effect and what relief he is entitled to?"

Before the Labour Court, the Corporation inter alia raised the preliminary objection regarding lack of jurisdiction of the Labour Court, Chandigarh. Both the parties led evidence. The Labour Court found on evidence that Pritam Singh workman was employed at the branch office of the Corporation at Tarantaran and Phagwara. His services were terminated while he was serving at Tarantaran. The retrenchment compensation was also paid there and thus, Chandigarh Administration is not competent to make reference u/s 10 of the Industrial Dispute Act, 1947. By placing reliance on the judgment of the Division Bench of this court in Ramlal Vs. Labour Court and Others, the reference was decided in favour of the management on the ground that it has not been made by the appropriate Government. Feeling aggrieved thereby, the workman has come up in this writ petition.

3. The remaining writ petitions (except CWP. No. 3205/1991) are preferred by the Punjab State Handloom and Textiles Corporation Ltd. Chandigarh, for short called Puntex and Punjab State Co-Operative Supply Marketing Federation Limited Chandigarh, for short Markfed, challenging the competency of the Home Secretary, Union Territory, Chandigarh for making a reference u/s 10 of the Industrial Disputes Act, 1947 at the stage where the Labour Court had not so far given any decision in this regard. In all those writ petitions, it is averred that the respondent-workmen are serving in different branches located in different cities in the State of Punjab and the letter of retrenchment, order of suspension or order of termination of services (as the case may be) was served upon the concerned workman at those places and thus, the relationship of master and servant was snapped at the place of the posting of the workman in different cities of the Punjab.

4. Mr. K.L. Arora, learned counsel for the petitioner (in CWP No. 4704 of 1989) on the strength of the ratio of the decision of the Supreme Court in Lipton Limited and Another Vs. Their Employees, ; of the Full Bench of the Patna High Court in Paritosh Kumar v. State of Bihar 1984 LIC 254 of the Punjab and

Haryana High Court in *Little Sons & Co. v. Amar Nath* 1978 L I C 430 of the Kerala High Court in *JJ. Bechana Distributors Hyderabad v. State of Kerala* 1974 L I C 379 of the Punjab and Haryana High Court in *National Tobacco Co., Employees Union (Regd), Jullundur Vs. Manohar Singh and Another*, contended that the State where head office of the Corporation wherefrom the letter of termination of the services of the workman was issued, as well as the State where the situs of employment is located are appropriate-State Government to refer the disputes to Labour Court or Tribunal u/s 10 of the Act. Thus, the reference regarding industrial dispute made by the Chandigarh Administration at the instance of the worker is perfectly valid. This argument was further elaborated by Sarvshri Ashok Aggarwal and Surjit Singh counsel appearing for the respondent U.T. Chandigarh in all the writ petitions preferred by Puntex and Markfed. Shri Aggarwal also relied upon the latest judgment of this court in *Punjab Financial Corporation v. U.T. Chandigarh* (1990) 100 P.L.R. 327 in support of the proposition that the Chief Commissioner/Administrator of U.T. Chandigarh has the delegated powers of the President of India in the matter of making such reference.

5. Shri Raman Mahajan learned counsel for the Management in CWP 4704 of 1989 as well as Sarvshri Ramesh Chopra with Manjit Dhiman, learned counsel for the management in the remaining petitions on the other hand, maintained that the situs of the employment of the worker would play a crucial role in determining the appropriate government to make the reference u/s 10 of the Act as in Section 2(a)(ii) the appropriate Government has been defined to be the State Government in relation to any other industrial dispute that the one figuring in sub Section 2(a)(i). They have also relied upon plethora of the judgments of the Apex as well as the different High Courts in support thereof.

6. It is undisputed that the provisions of the Industrial Disputes Act are silent regarding territorial jurisdiction. There is no provisions under the Act dealing either with the cause of action or indicating factors which will confer jurisdiction on the appropriate Government to refer dispute u/s 10 of the Act. The provisions of this Act are also silent regarding the factors which will confer territorial jurisdiction upon the Tribunal or the Labour Court constituted thereunder except by necessary implication from the provisions of Section 2(a)(ii) of the Act that the appropriate State Government is competent to make reference to the Labour Court or the Tribunal in relation to any Industrial disputes other than figuring in clause (i) of this Section.

7. Thus the dominant factor to determine the controversy regarding the appropriate Government is the place where the industrial dispute has arisen between the workman and the Management.

8. It is well settled that the CPC has, in no terms, been made applicable to the proceedings under this Act, Consequently, the specific provisions of the Code pertaining to jurisdiction does not, in stricte sensu, govern the issue. However, the principles enshrined in Section 20 of the Code regarding territorial

jurisdiction of the Civil Courts in suits other than suits for compensation for wrongs to persons or to movable property can provide guidelines to the Courts in this regard. Section 19 of the CPC relates to suits for compensation for personal wrongs or to movable property and provides that such suit can be instituted within the local limits of the jurisdiction of the Court, where the wrong was done or within the jurisdiction of another court where a defendant resides or carries on business or works for gain etc. But the option has been left to the plaintiff for electing either of these two forums for filing the suit. Regarding institution of other suits, clause (c) of Section 20 confers territorial jurisdiction on the Court where the cause of action wholly or in part arises. While clause (a) of this section confers territorial jurisdiction where the defendant resides at the time of the commencement of the suit or carries on business for or personally work for gain. Clause (b) confers jurisdiction on the Court where any of the defendants resides or carries on business for gain etc. The explanation appended to this Section further provides that a Corporation shall be deemed to carry on business at its sole or principal office in India or also its subordinate office in respect of any cause of action arising at any such place. A conjoint reading of both the Sections 19 and 20 of the Code leaves no doubt that there may be concurrent jurisdiction of different courts to try a particular case, yet option has been left to the plaintiff to chose a particular forum.

9. The III proviso appended to Section 10 of the Act, however, empowers the Central Government to refer those disputes where it is appropriate Government to any Tribunal or Labour Court, as the case maybe constituted by the State Government. This proviso by necessary implication indicates that the State Government has the jurisdiction to refer such dispute to the Labour Court, or Industrial Tribunal constituted by such State Government and not constituted by other State Government.

10. The concept of concurrent jurisdiction on different State as appropriate State Government for referring the dispute between the workers and he Management u/s 10 of the Act was elaborately delved upon by Justice S.S. Sandhawalia, the then Chief Justice of the Patna High Court in Prithosh Kumar's case (supra). The Seamed Chief Justice after referring to the observations of the Bombay High Court in Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others, which were affirmed by the final court in Indian Cable Company Ltd."s case 1962 L L J 409 and later in Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, besides referring to the observations of the Apex Court in Hindustan Aeronautics Ltd. Vs. The Workmen and Others, and in Lipton Limited and Another Vs. Their Employees, observed in para 21 of the judgment as under:-

" Lastly, in line with the tenor of the aforesaid contentions, Mr. Prasad took up the stand that the jurisdiction under the Act must exclusively lie within one state and there cannot be any concurrent jurisdiction in different States, I am unable to accede to this extreme stand. The concept of concurrent jurisdiction far from

being alien is well recognised and sanctified by the law under the code as also under other jurisdiction. I am firmly of the view that as in the civil jurisdiction so under this Act there may well be cases of concurrent jurisdiction where parties may fairly have the option to choose the forum. This indeed seems to follow by the repeated observations in *Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others*, and its affirmance by the final court in *Indian Cable Co.'s case* (1962) 1 L.L.J. 409 S.C. (supra) and later in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, that larger considerations governing the civil jurisdiction are equally attracted under the Act. If that be so, then their inevitable corollary of concurrent jurisdiction would, in my view, be equally applicable. It is well to remember that in *Lalbhai Tricumlal Mills Ltd.'s case* (supra) the contention was considered plausible and debatable but was left open. By necessary implication it seems to be now answered in favour of the view for concurrent jurisdiction in *Hindustan Aeronautics Ltd. Vs. The Workmen and Others*, . Therein admittedly the Divisional Office of M/s. Hindustan Aeronautics Ltd., was at Bangalore which controlled its operations at the Barrackpore Branch in West Bengal. Even though it was factually held that Barrackpore Branch was under the control of the Divisional Office at Bangalore yet the Industrial Tribunal in West Bengal was held to have jurisdiction despite strenuous objection being raised thereto. A refreshing consideration was also noticed that in such case if there was any disturbance of industrial peace consequent on the dispute it would arise at Barrackpore and, therefore, the concerned Government of West Bengal was the appropriate Govt. Consequently it was held that the industrial dispute arose at Barrackpore and the Reference by the West Bengal Government was valid and legal. This judgment, therefore, gives significant importance to the situs of employment where the industrial dispute and the consequential disturbance arise, it calls for a pointed notice that in *Hindustan Aeronautics's case* (supra) the earlier case of *Lipton Limited and Another Vs. Their Employees*, was expressly relied upon by the management but was distinguished. In the latter case it had been held that the place where the office of the industry was located would have jurisdiction even though the workman was not employed within the State where such office was located. However, this case is no warrant for the canvassed proposition that either there can be no concurrent jurisdiction or that the place or the situs of employment of a workman would be denuded of such jurisdiction, indeed, *Hindustan Aeronautics' case* (supra) gives a correct clue to the answer to this question. The Bench did not in any way differ from the ratio of *Lipton's case* (supra) yet it obviously held that though the Divisional Office at Bangalore would plainly have jurisdiction because it controlled the workmen at Barrackpore who were employed beyond the State of Karnataka, still it was held that the State of West Bengal, which had jurisdiction over the situs of employment, would also have jurisdiction to take cognizance of the industrial dispute. Consequently *Hindustan Aeronautics' case* (supra) appears to me to be warrant for the proposition that there may be concurrent jurisdiction despite the ratio of *Lipton's case* (supra) which is confined to the point that the Tribunal at the head office would have

such jurisdiction but not for the converse that the situs of employment would not also have the same."

11. The learned Chief Justice also referred to the observations of the Kerala High Court in *Emerald Valley Estates v. Secretary for Kerala Estates & Staffs' Union* South India 1979 L IC 86 to the effect that there may be cases where part of the cause of action arose in two or more states. In such cases two or more states may have concurrent jurisdiction. When the question regarding the territorial jurisdiction crops up, what is to be asked and answered is whether cause of action substantially arose in the State, the Government of which referred the dispute for adjudication. The passing observations of the Kerala High Court in *J. and J. Dechane Distributors Vs. State of Kerala and Others*, to the effect that startling results would follow if there was concurrent jurisdiction in different Governments to make a reference to the Industrial Tribunal, was held to be merely obiter dicta. In the ultimate analysis after relying upon the judgment of the Apex Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, observed that the nexus should be between the industrial dispute and the territory of the State and not necessarily between the industry and the State concerned. The learned Chief Justice concluded in para 24 of the judgment that in the face of the discordant precedents on the point that herein perhaps two view are possible and in such like contingency the beneficent welfare legislation like the Industrial Disputes Act should be interpreted in the light of the illuminating observations in *Moti Ram and Others Vs. State of Madhya Pradesh*,

"Where doubts arise the Gandhian tailsman becomes a tool of interpretation. Whenever you are in doubt apply the following test. Recall the face of the poorest and the weakest man whom you may have seen and ask yourself, if the step you contemplate is going to be of any use to him, Law, at the service of life must respond interpretatively to raw realities and make for liberties."

Ultimately the learned Judge in the wake of the above principle observed that:-

"The raw reality which is to be faced is whether the situs of the employment of a poor workman should determine the jurisdiction or exclusively the registered head office or the distinct business establishments of the employer industry."

It was further observed that :-

"any stringent construction to the contrary would force the workman, whose services have been terminated to seek redress at a remote head office of the industry even with regard to the dispute arising right at his doorsteps on the place of work."

In that case the employer industry was located at Calcutta and the workman was actually employed at Patna. Under these circumstances it was observed by the learned Judge that the tilt must necessarily be in favour of the workman on the firm foundation of the situs of employment rather than on the technicalities of

the registered office of the industry which may well even be a multinational company. In para 25 of the judgment ultimately both on principle and precedents, it was held that the situs of the employment of the workman would determine, the territorial jurisdiction of the Tribunal in case of industrial disputes arising from the termination of such employment and overruled the earlier Division Bench Judgment in Bihar Sales Representative Union's case C.W.J. Case No. 933 of 1969 decided on 24.10.1972.

12. The ratio of the decision of the Apex Court in Lipton Limited and Another Vs. Their Employees, that the Industrial Tribunal Delhi had the jurisdiction over all the workmen of the Delhi office whether they worked in Delhi or not, regarding the increase in the pay scales of the workmen is not applicable to the facts in the present writ petitions as in that case all the employees of the Delhi Office of Lipton India Limited whether working within the said territory or outside would be entitled to the uniform increase in wages even if only the workers resided in Delhi Territory had been given this relief by the Tribunal having jurisdiction in Delhi territory being employees of the same establishment. The judgment of the Apex Court in M/s Lipton India Limited (supra) was expressly distinguished on facts by the Apex Court in Hindustan Aeronautics Ltd. Vs. The Workmen and Others, . It was further held that though the Divisional Office at Bangalore would clearly have jurisdiction because it controlled the workmen at Barrackpore in the State of West Bengal i.e. outside the State of Karnataka but the State of West Bengal would be the appropriate Government to refer the case u/s 10 of the Act to the Labour Court or Tribunal as the situs of employment of workmen was located in its territory.

13. In Little Sons & Company v. Amar Nath and Ors. 1978 L I C 430 the Division Bench of this court observed that for determining the appropriate Government competent to make a reference of the dispute due regard has to be paid to the place where a dispute arises and it cannot be said that the reference of the dispute must necessarily be made by the State within the territory of which the head office of the employer company is situated especially when the object of the Act is to ensure fair terms to the workmen and to prevent disputes between employers and employees so that production might not be adversely affected and the larger interests of the public might not suffer. It was further observed that the provisions of the Act have to be interpreted in a manner which advances the object of the legislature. The Legislature has cast a duty on the appropriate Government to procure industrial peace by creating machinery for easy and early settlement of industrial disputes. Labour unrest may create serious law and order problems for a State and such problems can be effectively solved by the State within the geographical limits of which they arise and any construction to the contrary will frustrate the object of the Act. Reference was also made to the term "appropriate Government" as defined in Section 2(a) of the Act which attaches no importance to the place where the controlling office of the industry is situated but on the other hand the "words in relation to" denote the place wherever a dispute between the industry and its workmen arises and the Government

having jurisdiction over that area would be competent to make a reference. The Division Bench while, distinguishing judgment of the Apex Court in *Lipton Limited and Another Vs. Their Employees*, in para 10 of the judgment observed as under:-

"The aforementioned observations, however, do not serve as an authority for the proposition that the reference of the dispute must of necessarily be made by the State within the territory of which the head office of the Company was situate. The important point to be noticed is that the dispute had in fact been raised at Delhi by the Union which represented the workers."

Thus the ratio of this case is also of no help for concluding that the State within the territorial jurisdiction of which head office is located, is the appropriate Government u/s 10 of the Act for making a reference. The judgment of the Single Judge of the Punjab and Haryana High Court in *National Tobacco Co., Employees Union (Regd), Jullundur Vs. Manohar Singh and Another*, was overruled by holding that the view taken there in about the head office of the company would determine the jurisdiction of the State in making reference to the Tribunal was not correct. Again the Division Bench of this High Court in *Ramlal Vs. Labour Court and Others*, after elaborate discussion and relying upon the view of Chagla Chief Justice in *Lalbai Tricumlal Mills Ltd. v. D.M. Vin* (1956 I.L.L.J. 557) which was approved by the Final Court in *Rangavilas Motors case* (Supra) as well as of the Division Bench of this Court in *M/s Little Sons & Company's case* (supra) and *Paritosh Kumar Pal's case* (case) concluded that the situs of the Industrial dispute would determine the appropriate Government and the Labour Court. It cannot be said by any stretch of imagination that Division Bench of this Court in *Ramlal's case* (supra) had kept open the controversy of concurrent jurisdiction of the State where the Head Office of the Company is located.

14. Consequently in view of the law laid down by the Apex Court as well by the two Division Benches of this Court referred to above there is no escape but to conclude that the situs of the employment where the worker was employed and the order of dismissal of his service, suspension or retrenchment was received would determine the appropriate Government competent to make reference u/s 10 and not head office of the company from where said order was issued.

15. In all the cases in hand admittedly the workmen were employed at different places in the State of Punjab. The order of termination of service was issued by the Managing Director of the Punjab Agro Industries Corporation in CWP No. 4704/89 at Chandigarh while by the competent authority of the Puntex and Markfed having their head office at Chandigarh but these were served upon the respective workmen in different places in Punjab where they were employed. Consequently keeping in view the larger interest of the workmen governed by the Act, the stray acts of the workmen electing to got the dispute referred u/s 10 from Union Territory Chandigarh where the Head offices of the companies are located would be of no consequence to hold that the Chandigarh Administration

was the appropriate government in this connection.

16. Consequently there being no merit in CWP No. 4704 of 1989 preferred by the workman against the award of the Labour Court Chandigarh which is ordered to be dismissed. The remaining Writ Petition preferred by the Management are accepted and the order of Chandigarh Administration making reference u/s 10 of the Act as well as the resultant proceedings arising therefrom are quashed. However all the workmen in all these Writ Petitions shall be at liberty to seek reference of the dispute from the Punjab State Government u/s 10 of the Act to the appropriate Labour Court. Due to genuine mistake regarding the jurisdiction reference in the wrong forum would be of no consequence to disentitle them from claiming fresh reference for the same dispute from the appropriate Government. In view of the peculiar circumstances of the case, the parties are left to bear their own costs.