

(1958) 02 P&H CK 0004
In the Punjab And Haryana At Chandigarh

Punjab Distilling Industries, Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 27-02-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 19, 2, 9

Citation : (1958) 2 LLJ 109

Hon'ble Judges : Grover, J

Bench : Single Bench

Judgement

Grover, J.—This is a petition under Article 226 of the Constitution in which the question is whether the industrial tribunal can proceed to decide the dispute referred to it by the Punjab Government by notification dated 9 January 1957. It is alleged in the petition that respondent 3, the Distillery Mazdoor Union, put forward several demands on 1 December 1952, and by mutual agreement an arbitration board was constituted of which the Deputy Commissioner, Amritsar, was the chairman and Pandit Amar Nath Vidyalkar and S. Joginder Singh Chawla were the members. This board gave an award on 4 March 1953. According to this award the minimum wages of the labour were to be increased as set out in the award and the existing facilities as already provided by the company to the workers were to continue. The wages for the strike period were to be paid at the rate of 50 per cent only of the pay to the permanent workers. The increase in wages was to be effective from 26 December 1952. All other points mentioned in the notice of the workers were dropped. On 6 November 1953, the demands were repeated by the workers and were referred by the Government to the second industrial tribunal by a notification dated 25 February 1954 (reference No. 3 of 1954). During the pendency of the reference another dispute arose as to whether the wages should be paid to the workers affected by lockout in the distillery for the entire period of the lockout. This was also referred to the same tribunal by the Government on 20 March 1954 (reference No. 7 of

1954). The tribunal gave the awards in both the references in May 1955. Both the parties were dissatisfied with the awards and lodged appeals before the Labour Appellate Tribunal at Lucknow. These appeals were decided on 1 June 1956. The Appellate Tribunal, by mutual consent of the parties, confirmed the awards as modified to the extent mentioned in the order of the tribunal. After this the Mazdoor Union made demands once again by a notice dated 12 October 1956, and the aforesaid disputes were referred to the industrial tribunal by a notification dated 9 January 1957. The case of the petitioner-company is that the previous awards were still in operation and the disputes which had been dealt with in those awards could not again be referred to the tribunal in view of the provisions of Section 9 and other relevant provisions of the Industrial Disputes Act, 1947.

2. According to Section 19(3) of the Act an award is to remain in operation for a period of one year from the date on which it becomes enforceable. Sub-section (6) of Section 19 provides that notwithstanding the expiry of period of operation under Sub-section (3) the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. The contention raised on behalf of the petitioner-company is that the period specified in Sub-section (3) of Section 19 had not expired when the reference in question was made and, secondly, no notice had been given by the Mazdoor Union to terminate the award which of course could only be done on the expiry of the period prescribed by Sub-section (3). It is contended that if the disputes which have been referred now were covered by the previous awards, then there could be no valid reference and the tribunal was debarred from proceeding to adjudicate upon the disputes. There can be no doubt that in view of the decision in *British India Corporation v. Industrial Tribunal, Punjab* (1957) 13 FJR 352-reported elsewhere in this volume], if the disputes now referred were the subject-matter of the previous awards, the reference of the same disputes would be illegal. It is, therefore, necessary to decide whether any of the items of dispute which have been referred by the notification dated 9 January 1957, were in effect the subject-matter of the previous reference and awards. First of all, items 1 to 8 of the present reference may be considered. They relate to emoluments of permanent and daily workers including the question of annual increment and grades. It is apparent that items 4 to 8 involved details with regard to various types of employees whether they are semi-skilled, skilled, etc., or peons, clerks, typists, etc. In the previous award given in reference No. 3 of 1954 (vide annexure B) these matters were substantially covered by items 3 and 4. It is true that the aforesaid items at the previous stage were not stated in the same detailed manner as they have been set out at the subsequent stage, but what has to be seen is whether the previous disputes substantially covered the matter which has now been referred. In my opinion, items 3 and 4 of the previous award fully covered items 1 to 8 of the present reference. In the award itself the decision

was in the following terms:

In view of the present position of the company and the present salary including dearness allowance being paid, and the present cost of living, these demands are withdrawn by the workmen for the present.

Before the Labour Appellate Tribunal a settlement was arrived at between the parties and as a result thereof the Appellate Tribunal ordered that the appeal for the reopening of demands 2 to 7 and 9 to 17 stood dismissed subject to the legal rights open to both the parties as they may be considered advisable. The items which are now being considered were included in demands 2 to 7, and it has to be seen what is the effect of the legal rights of both the parties being left open. It is submitted on behalf of the respondents that the award given by the industrial tribunal did not decide anything about items 3 and 4, and the Appellate Tribunal also gave no decision and left the legal rights of the parties open. The argument is that the workers withdrew their demands relating to those items for the time being and that they were not debarred from raising them again whenever they desired. I find no force in the argument that the industrial tribunal on the previous occasion did not give any award with regard to items 3 and 4. The demands covered by these items were with-drawn by the workmen and this matter was incorporated in the award with the result that the salaries and allowances, etc., which were being paid at that time were accepted as binding for the time being on both the parties. I fail to see how the analogy or the principle which underlies the withdrawal of a certain relief or a suit will not apply to these proceedings. In *Burn & Co, v. their employees* 1957 I LLJ 228 while considering the provisions of Section 19(3) and Section 19(6) of the Act, their lordships of the Supreme Court have observed that although Section 11 Civil Procedure Code, is in terms inapplicable to industrial disputes, but the principle underlying it expressed in the maxim, "*interest reipublicae ut sit finis litium*," is founded on sound public policy and is of universal application, and there are good reasons why this principle should be applicable to decisions of industrial tribunals also. As a matter of fact, in the case before the Supreme Court the question was how far an adjudication lost its force when repudiated u/s 19(6) and their lordships observed as follows:

Now, if we are to hold that an adjudication loses its force when it is repudiated u/s 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour.

The language used in the order; of the Appellate Tribunal simply leaves the parties to their legal rights and that does not mean that it is open to the workers to reopen the matter even before the period prescribed by Section 19(3) has expired and without compliance with Section 19(6) of the Act. According to the

decision of the Supreme Court in Burn & Co. case after the period of one year has expired and if there has been a repudiation u/s 19(6) then also the award is liable to be modified only by change in circumstances. That stage has not yet arrived and even if there is any substantial change in circumstances it will not entitle the workers to have a fresh award from the tribunal at present.

3. Coming now to the other items, they may be disposed of In the following manner in the light of the observations made above :

(a) Item 9 of the present reference relates to additional increments to be given to workmen due to their past services. This item does not seem to be covered by any of the previous items referred and decided.

(b) Items 10, and 11 of the present reference relate to classification of workmen and fixing them in various grades and adding the increments after doing so. This again is a matter which was covered by the general item 3 which related to graded scales of pay and the regular annual increment. The matter of classification and fixing in various grades could have been raised and decided on the previous occasion and was, therefore, covered by that item.

(c) Item 12 relates to guarantee of additional benefits admissible to workmen under the existing arrangements. This matter was covered by item 9 at the previous stage. The tribunal gave an award with regard to item 9 and the same was not disturbed by the Appellate Tribunal. This item is, therefore, covered by the previous award.

(d) As regards item 13 of the present reference, it has not been shown to me that it was the subject-matter of adjudication at any previous stage.

(e) Item 14 of the present reference is whether the workmen who have put in more than three months' service should be made permanent and whether their past services should be made continuous. This was directly covered by item 2 of the previous award on which an adjudication was made by the tribunal, which was not disturbed by the Appellate Tribunal.

(f) Items 15 to 18 relate to provident fund. At the previous stage the question of provident fund was covered by item 13 which was:

All the workers should be made members of the provident fund scheme after completion of a year's service and the provident fund rules should be brought on the level of the Government scheme.

The decision of the industrial tribunal with regard to this was that the management agreed to allow the benefit of provident fund to all permanent workmen who completed five years' continuous service.

It is conceded by Mr. Mittal on behalf of the workers that item 16 of the present reference is directly covered by the decision previously given.

It is clear that item 17 of the present reference would also be covered.

So far as items 15 and 18 are concerned. they do not seem to be covered by the previous reference and adjudication.

(g) Items 19 and 20 are clearly not covered by any of the items at the previous stage.

(h) As regards item 21 of the present reference it is submitted by the learned Counsel for the company that the same was covered by the decision in reference No. 7, according to which the lockout was justified. In the award of the tribunal, dated 5 May 1955, it was held that the lockout which was declared on 22 December but lifted on 23 December was justified and that the workers were not entitled to any. wages for the period of the lockout. This was affirmed by the tribunal subject to legal rights of the parties being left open in future. Item 21 also relates to continuity of service. Section 2(eee) of the Act defines "continuous service" as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which . is not due to any fault on the part of the workmen. The decision in reference No. 7 may affect adjudication of this item, but it cannot be said that item 21 of the present reference was directly covered by the dispute decided by the industrial tribunal in the previous reference.

(i) It has not been shown how item 22 of the present reference is covered in any manner by the previous awards.

(j) As regards item 23 of the present reference, it is directly covered by item 6 decided in reference No. 3, and it is so conceded by Mr. Mittal who appears on behalf of the Mazdoor Union.

4. Mr. Anand Sarup on behalf of the State has referred to the reply filed by the State in which it is stated in Para. 11(c) that according to the allegation of the workers the company has made huge profits and the same has changed the circumstances since the date of the previous award. This can provide no escape from the provisions of Sections 19 (3) and (6), and if the Government considered that since the award has been made there has been a material change in the circumstances, it could take action u/s 19(4), which admittedly has not been done in the present case.

5. In the result, this petition is allowed to the extent that the respondents are directed not to proceed with the adjudication of items 1 to 8, 10, 11, 12, 14, 16, 17 and 23 out of the matters referred by the notification, dated 9 January 1957, In the circumstances of the case the parties will bear their own costs in this Court.