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**(1992) 03 P&H CK 0109**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 14945 of 1990**

Punjab Financial Corporation

APPELLANT

Vs

The Union Territory and Others

RESPONDENT

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**Date of Decision : 26-03-1992**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 10(1)

**Citation : (1992) 102 PLR 130**

**Hon'ble Judges : H.S. Bedi, J**

**Bench : Single Bench**

**Advocate : S.S. Nijjar and Anand Chhibbar, for the Appellant; D.V. Sharma, for the Respondent**

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## **Judgement**

H.S. Bedi, J.—Respondent No. 1 was appointed as Junior Clerk with the petitioner-Corporation on 14th July, 1962 then Jalandhar. He was thereafter promoted as Senior Clerk, then as Assistant and finally as Assistant Accountant, and was transferred to Ludhiana on 6th April, 1980. On 8th September, 1981, he was transferred to Bhatinda where his services were terminated by order dated 10th May, 1982, in terms, of Regulation 19(2) (b) of the Punjab Financial Corporation (Staff Regulations) 1961, which are statutory in nature. A copy of the order which had been issued from Chandigarh and received by respondent No. 2 at Bhatinda has been appended as Annexure P-1 to the petition. Respondent No. 2 there after filed an appeal before the Board of Directors of the petitioner Corporation and the same was "rejected. on 11th April, 1983. Still feeling aggrieved, respondent No. 2 submitted a demand note Annexure P-2 to the petitioner claiming reinstatement. Conciliation proceedings having lasted, respondent No. 1 i e The Administrator, Union Territory, Chandigarh made a reference of the Industrial Dispute to the Labour Court at Chandigarh. The petitioner filed a detailed written statement in answer to the reference raising a number of objections, inter alia that the appropriate Government for making the reference u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter called the

Act) was the Punjab Government and not the Administrator of the Union Territory Administration as the service of respondent No. 2 had been terminated at Bhatinda; that respondent No. 2 did not fall within the definition of workman and that, in any case, the petitioner was not an industry so as to be amenable to the jurisdiction of the Labour Court. It was also urged that the provisions of the Act were not applicable to its employees as their service conditions were governed by the regulations framed under a special statute i.e. State Financial Corporation Act, 1951. The Labour Court vide its award dated 3rd September, 1990, Annexure P-4 to the petition, found in favour of the workman on the following four issues that had been framed by it :-

1. Whether the services of Harbans Singh were terminated illegally by the management ? If so, to what effect and to what relief is he entitled to? OPW.
2. Whether the Punjab Financial Corporation does not fall within the definition of an industry ? If so to what effect ? OPW.
3. Whether the reference has been made by the appropriate Government ? OPW.
4. Relief

and accordingly, held that the service of respondent No. 2 had been terminated illegally and, as such, he was entitled to be reinstated with continuity of service and full back wages. The award Annexure P-4 has been impugned before me by way of this petition.

2. The only argument raised by Mr. Nijjar, learned Sr. Advocate, appearing on behalf of the petitioner-Corporation, is that as the termination orders had been served on respondent No. 2 at Bhatinda, where he was then posted, the reference should have been :made by the Government of Punjab and not by the Administrator of the Union Territory Administration. For this, proposition, reliance has been placed by Mr. Nijjar on a Division Bench decision of this Court oreported as Ram Lal v. The Presiding Officer, Labour Court, Patiala 1986 (1) S. L. R. 633 in which the question of law posed was "Whether the "appropriate Government" to refer an industrial dispute for adjudication u/s 10 is the State Government, within whose territorial jurisdiction the workman was working anil orders of dismissal had been received; or the State Government within whose territorial jurisdiction the head office of/or the industrial undertaking is located and where the orders dismissing the workman have been passed ?" The answer was rendered in the fallowing words in para 13 of the judgment :-

"In the result, the answer to the first question is that the State Government within whose territorial limitation the industrial dispute arose and the orders of dismissal had been received and became operative, is the appropriate Government for referring the industrial dispute for adjudication."

3. Mr. D. V. Sharma, learned counsel for the respondent has, however, placed reliance on a number of other judgments all of which were considered by the Division Bench in Ram Lal's case (supra) and after considering this aspect of the

matter, the question was answered in the manner, indicated above In view of what has been stated above, it is to be held that the Administrator, Union Territory I Administration was not the appropriate Government in making the reference to the Labour Court.

4. Having held as above, the question which now arises to be determined is as to what should be done in the peculiar facts of the case as respondent No. 2 had, in fact, superannuated while the reference was pending before the Labour Court. Although the point of jurisdiction has been decided in favour of the management, yet I cannot persuade myself to relegate respondent No. 2 to his remedies under the Industrial Law, once again. It is to be noticed that the services of the respondent were terminated in the year 1982 and the matter was referred to the Labour Court for decision in the year 1985 and remained pending there till it was finally decided in the year 1990. It has also been pointed out that respondent No. 2 would now be in no position to go through the entire process before the appropriate Labour Court should a fresh reference be made. It is also pertinent that there is no allegation that the work and conduct. of respondent No. 2 was poor and not commendable or that he had been gainfully employed during this period of forced inactivity. As the matter had remained pending before the Labour Court for a very long time, I am of the view that the interest of respondent No. 2 cannot be made to suffer on that account. Keeping in view the above circumstances, I deem it appropriate that while allowing the writ petition in the manner indicated in the preceding paragraphs, yet the relief given to respondent No. 2 by the Labour Court should be retained in his favour as the power conferred by Article 226 of the Constitution must be exercised in a manner so as to do substantial justice. I am fortified in the view I have taken by the observations of the Supreme Court in D.P. Maheshwari Vs. Delhi Administration and Others, . where on different facts this" is what the Court had to say "Neither the jurisdiction of the High Court tinder Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issue avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice."

5. I am, therefore, of the view that substantial justice demands that the writ petition should be disposed off in the manner indicated above, but with no order as to costs.