

**(1985) 07 SHI CK 0008**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 328 of 1985**

Ram Chand and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 25-07-1985

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 12(5), 25F

**Citation :** (1985) 14 ILR HP 451

**Hon'ble Judges :** P.D. Desai, C.J.; R.S. Thakur, J

**Bench :** Division Bench

**Advocate :** Prem Goel, for the Appellant; P.A. Sharma, Central Government Standing Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.D. Desai, C.J.—The Petitioners were employed as work-charged T. Mates in T.L.S.C. Sub-Divisions No. 1 and No. 2, Bilaspur, under the Beas Construction Board (hereinafter referred to as "the BCB"), when retrenchment notices dated February 24, 1982, were issued to them, along with seventy-three other workmen, on completion of the project work at Sir-hind, District Patiala. The notices were duly served. The period of notice, which was originally to expire on March 29, 1982, was later extended to March 31, 1982, and, accordingly, the actual retrenchment took place on and from the latter day. Three of the Petitioners, namely, Petitioners No. 4, 5 and 12, are stated to have received the retrenchment benefits. The remaining Petitioners, however, are stated to have refused to receive the retrenchment benefits. The President of the Beas-Sutlej Link Workers Union, Sundernagar (hereinafter referred to as "the Union") served a demand notice dated March 20, 1982, Annexure P-2, on Respondents No. 2 and 3, inter alia, complaining about the alleged unlawful retrenchment of the Petitioners in violation of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). In the said demand notice, the following demands were made:

1. That 24 workmen were working under the control of Executive Engineer, that he served retrenchment notice to some one, or some removed by verbal orders but without complying the provisions contained u/s 25-F and 25-G of the Act though they have worked continuously for more than one year. As the Executive Engineer, possesses no status of employer and various junior workmen than them were not retrenched.

2. That detail of appointment in first instance retrenchment and re-employment is mentioned in the Annexure-A attached herewith it.

3. That workmen SI. No. 1 to 16 have not been given revised pay scales admissible w.e.f. 1-1-1978 and annual increments along with arrears, but they were asked to go without clearing their dues. As their services were dispensed with without complying statutory provision of Section 25-F (a) and (b), so their services tantamounted to be continuous which Respondents have not counted towards the service which they rendered after re-employment.

4. That the Executive Engineer not counted the seniority of other workmen working under him in the same trade, but adopted the method of pick and choose for retrenchment.

5. That Respondents have failed to clear all their dues i.e. arrears of revised pay scale with effect from 1-1-1978, House rent allowance admissible from the date of their enjoyment, free medical allowance, special allowance (Conveyance allowance) Electricity concession etc. which are allowed from 1-4-1980.

The concerned Respondents were requested that "all grievances of workmen be settled before they be asked to go, and retrenchment, if necessary, be made in the light of Section 25-G by counting common seniority of all the T. Mates of the Division. The dispute was ultimately taken in conciliation by the Regional Labour Commissioner (Central) Chandigarh. In the course of the conciliation proceedings, vide Annexure P-4, the dispute was ultimately confined only to fourteen employees who are Petitioners No. 1, 4, 5, 6, 7, 10, 11, 13, 16, 17, 18, 19, 22 and 24 herein. The parties having failed to arrive at a settlement, a proposal for arbitration was made which was acceptable to the Union but not to the BCB. The Conciliation Officer thereupon submitted a failure report to the Central Government which is the appropriate Government for the purposes of the case. The Central Government, having considered the report, refused to refer the dispute for adjudication to a Tribunal. The decision was communicated to the parties vide its letter dated June 15, 1983, Annexure P-5. The reasons recorded in the said communication in support of the aforesaid decision are as follows:

1. The orders of retrenchment issued by the Executive Engineer, are not irregular as he has been delegated power to appoint workers.

2. That the Union never raised the issue of combined seniority of the two divisions earlier which would have affected the service conditions of the workers. However, as reported all the workers in the trade of Mate in Division No. 1 and 2

have been retrenched and no senior or juniors have been retained.

3. The management have informed that all the workmen concerned have been paid arrears on account of revised pay, HRA, Medical reimbursement etc. before retrenchment. The workmen at SI. No. 1 to 6 of the list have also been given pay-scale as the revised scale w.e. from 1-11-1978. The arrears due to them on account of revised pay and other dues have also been paid to them. In case of any grievance, remedy in such cases is available u/s 33-C(2) of the Industrial Disputes Act. Necessary retrenchment compensation which was offered to all the 24 workmen, has been received by 16 workmen and refused by other 8 workmen, Section 33(c)(1), 33(c)(2) of the Industrial Dispute Act.

4. The retrenchment notices were duly served on all the workmen concerned. These were received by some workmen on 25-2-1982 and some on 4-3-1982. Although the notice expired on 29-3-1982, but their extension upto 30-3-1982, did not make the notice illegal.

The Union by its letter dated January 30, 1984, Annexure P-6, requested the Central Government to reconsider its decision. The request was, however, rejected by letter dated May 14, 1984, Annexure P-7. Hence the present petition.

2. The question which arises for consideration against the aforesaid background is whether, on the facts and in the circumstances of the case, the impugned decision declining to refer the dispute to a Tribunal for adjudication on the grounds stated in Annexure P-5, is in accordance with law. Be it stated at this stage that since, in the course of the conciliation proceedings, the dispute was confined to fourteen Petitioners only, the relief, if any, to be granted herein, will be restricted only to those Petitioners.

3. In *P.C. Thapliyal v. Union of India and Ors.*, Civil Writ Petition No. 417 of 1983, decided on April 20, 1985, one of us (Chief Justice) had an occasion to consider the perspective of the statutory power of the appropriate government in connection with the reference of an industrial dispute for adjudication u/s 10(1) read with Section 12(5) of the Act. In the course of the said decision, this Court, inter alia, referred to the decisions of the Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, and the *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, In light of the principles enunciated in those decisions, this Court define the scope of the power, authority and jurisdiction of the appropriate government in that regard in the following terms :

The perspective of the statutory power to make a reference is thus clearly denned by the pronouncement of the highest Court in the above-cited decisions. In arriving at a decision whether or not to refer an industrial dispute for adjudication u/s 10(1) read with Section 12(5) of the Act, the appropriate Government exercises a discretionary power or jurisdiction which operates in a very limited field. The appropriate Government may examine the merits of the dispute, *prima facie*, to ascertain whether the claim made is either perverse or

frivolous or belated. If so satisfied, the appropriate Government may refuse to make a reference. When, however, the appropriate Government applies its mind to the materials on record for the purposes of a prima facie examination of the merits of the dispute to form an opinion whether or not the dispute calls for an adjudication, it has to be appreciated as a rule that: (a) if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on those questions and (b) similarly, on disputed questions of fact also, the appropriate Government cannot purport to reach final conclusions. Those matters fall appropriately within the jurisdiction of the Industrial Tribunal and the appropriate Government should be very slow to attempt an examination of the demand from those angles and should not arrive at a final adjudication of the demand itself on that basis and decline a reference on that ground. Any attempt on the part of the appropriate Government in that direction would not only rob the employees of an opportunity to place evidence before the Industrial Tribunal and to substantiate the reasonableness of the demand but also amounts to the usurpation of the powers conferred upon the Industrial Tribunal for adjudication of valid disputes. The Courts must be vigilant and should not permit the appropriate Government to do so, lest the provisions of Section 10 read with Section 12 of the Act are rendered nugatory.

4. Be it stated that since after the above decision was rendered by this Court, the Supreme Court has enunciated the same principles once again in *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, , in so far as the decision making power of the appropriate Government u/s 10(1) read with Section 12(5) is concerned.

5. Now, against the aforesaid legal backdrop and the factual background of the present case, the impugned decision of the Central Government declining to make a reference on the grounds stated in Annexure P-5 cannot but be regarded as in excess of its power, authority and jurisdiction. The main dispute between the concerned Petitioners and the BCB herein related to the retrenchment. The challenge to the retrenchment was on a two-fold ground: first, that the competent authority, had not ordered the retrenchment and, secondly, that the retrenchment was not in accordance with the provisions of Sections 25-F and 25-G of the Act. There was also a dispute concerning the payment of salary/arrears of salary/allowances. These disputes are adequately and articulately reflected in the notice of demand, Annexure P-5. The reasons, as set out in Annexure P-6, on the basis of which the reference of the dispute for adjudication to a Tribunal was declined go to show that the Central Government has virtually decided the dispute on merits instead of examining the case, prima facie, to ascertain whether the claim is either perverse or frivolous." Indeed the legality and the validity of the retrenchment, which depends upon the determination of mixed questions of law and fact, has been apparently finally determined by the Central Government thus depriving the concerned Petitioners of an opportunity to agitate those questions before a Tribunal and to lead evidence thereon in the course of a duly constituted adjudication. As regards

the other demands, namely, the demands relating to arrears of pay/allowances, it is significant to note that the Central Government does appear to have found that there was no basis whatever for a dispute in that regard. This is apparent from the fact that in para 3, sub-para (iii) of Annexure P-5, it has been stated that if there are any grievances concerning those matters, remedy u/s 33-C(2) of the Act was available to the concerned Petitioners. It is thus apparent that in declining to refer the dispute for adjudication to an Industrial Tribunal, the Central Government has clearly exceeded its jurisdiction.

6. For the foregoing reasons, the writ petition succeeds and it is allowed. The impugned decisions, Annexures P-5 and P-7, are quashed and set aside. A writ of mandamus will issue to the first Respondent (Union of India) to reconsider the question relating to the making of a reference u/s 10(1) read with Section 12(5) of the Act in accordance with law and in light of the observations made in the course of this judgment. The first Respondent will arrive at an appropriate decision in the matter within a period of six weeks from the date of the supply of a certified copy of this judgment on payment of urgent charges upon an application made in that regard.

7. Rule made absolute accordingly. The Petitioners are entitled to their costs of the petition which are quantified at Rs. 350/-. Respondents No. 2 and 3 will deposit the costs in the Registry of this Court within a period of four weeks from today. Upon deposit being made accordingly, the Petitioners will be at liberty to withdraw the amount.

8. Before parting with the matter, the Court would like to observe that the Petitioners, other than those in respect of whom the dispute survives, will be entitled to receive from Respondent No. 2 and 3 all their legal dues to which they are entitled in accordance with law, if they have not been released so far. Those Petitioners will be at liberty to approach Respondent No. 3 in that regard whereupon the said Respondent will release to them within a period of four weeks all their dues, if any, determined in accordance with law.