
(2001) 07 P&H CK 0097
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14895 of 2000

Ram Dhan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 25

Citation : (2001) 07 P&H CK 0097

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Mr. Mani Ram Verma, for the Appellant; Mr. Pardeep Bhandari, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution of India seeks the issuance of a writ of certiorari quashing the orders dated 7.1.2000 and 26.8.2000, Annexures P-2 and P-4, respectively, declining to refer the industrial dispute to the Labour Court. The petitioner also seeks a writ of mandamus directing the respondents to refer the matter to the Labour Court.

2. Mr. Mani Ram Verma, learned Counsel appearing for the petitioner submits that even if the retrenchment compensation has been paid to the workman-petitioner, he cannot be estopped from challenging the retrenchment. In support of his submission, learned Counsel has relied on a judgment of the Allahabad High Court (Single Bench) in the case of Brij Basi Udyog, Mathura v. State of V.P. and others 2000(2) SCT 168 (All) : 2000(1) R.S.J. 280.

3. Mr. Bhandari, on the other hand, has submitted that the retrenchment compensation has been paid to the workman-petitioner in accordance with law. Therefore, the reference of the dispute to the Labour Court will be an exercise in futility as even on the face of the evidence which would be adduced before the Labour Court, the conclusion would still remain the same, i.e. the workman-

petitioner has been retrenched in accordance with law.

4. I have considered the submissions made by the learned Counsel for the parties.

5. Whether or not the petitioner has been retrenched in accordance with law, is a mixed question of law and fact which could only be adjudicated on the basis of the evidence adduced by the parties. Although, the appropriate Government has to examine the case put forward by a workman to see that it is not frivolous in nature, it cannot while exercising that power embark upon the adjudication of the dispute itself. This is the function left by the legislature to the Labour Court and the Tribunal constituted under the Industrial Disputes Act or any other legislation. Mr. Mani Ram is quite correct in relying on the judgment of the Allahabad High Court. In that case, it was pleaded that several workers had accepted the retrenchment compensation and are estopped from raising the industrial dispute. In para 9 of the judgment aforesaid, it is observed as under :-

"The Supreme Court in *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, has observed that such objections are technical pleas and should not be entertained in an industrial adjudication. This is clear from the words apart from the fact that such technical pleas are not generally entertained. Twenty-eight out of thirty have not received retrenchment compensation. The Labour Court has exercised its discretion is not permitting the petitioner to raise this plea. There is no reason why petitioner should be permitted to do so. I do not think that I would be justified in permitting the petitioner to raise it."

6. It is well settled by now that the claim of the petitioner cannot be defeated by permitting the management to raise technical plea.

7. In view of the above, present petition is allowed. The impugned orders dated 7.1.2000 and 26.8.2000, Annexures P-2 and P-4, respectively, are hereby quashed and set aside. Respondent No. 1 is directed to refer the industrial dispute raised by the workman-petitioner to the appropriate Labour Court for adjudication. Let the reference be made within a period of two months from the receipt of the certified copy of this order. No costs.

8. Petition allowed.