

(1986) 03 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Ramlal	Vs	APPELLANT
Labour Court and Others		RESPONDENT

Date of Decision : 11-03-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1986) 2 LLJ 231

Hon'ble Judges : Sukhdev Singh Kang, J;Premchand Jain, J

Bench : Division Bench

Judgement

Sukhdev Singh Kang, J.—Two questions of law arise in this Letters Patent Appeal:

(a) 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 and 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? and

(b) whether the State Government have once declined to refer an industrial dispute for adjudication u/s 10(1)(c) is competent to change its mind and refer that very industrial dispute for adjudication?

2. A broad brush of factual backdrop will help in resolving the forensic controversy.

3. Ram Lal, appellant, was appointed as Land Evaluation Officer by the Punjab State Cooperative Land Mortgage. Bank Limited, Chandigarh (hereinafter called "the Bank"), on 9th November, 1968, on regular basis. In April, 1972, he was sent on deputation to the Bhatinda Primary Co-operative Land Mortgage Bank Limited at Bhatinda. The appellant became a member of the union of the employees of the bank. He was implicated in a case of corruption and was suspended on 11th August, 1972. He was also arraigned and tried by the learned Chief Judicial Magistrate, Bhatinda. There was no evidence against the petitioner

and he was discharged by the learned Magistrate on 8th February, 1973.. However, in the meantime, the Chairman of the Bank terminated the services of the appellant on 10th November, 1972, while he was still working at Bhatinda. The appellant sent a registered demand notice to the Chairman of the Bank on 15th November, 1972, against the order of termination of his services as required by the Industrial Disputes Act, 1947 (for short "the Act"). Since no action was taken on the demand notice, the Land Mortgage Bank Employees' Union sponsored the appellant's cause and the General Secretary of the Union wrote to the Conciliation Officer and requested that conciliation proceedings in the case be initiated as the employer had refused to accede to the demand of the workman. While the conciliation proceedings were going on, the appellant received a letter from the Labour Commissioner, Punjab, wherein the appellant was informed that since the demand notice was served on the Chairman of the Bank and it was not his employer the appellant's case cannot be considered under the Act. On a further representation by the appellant, he was informed that the Punjab Government was not the appropriate Government in respect of his case and cannot take any action in the matter. Thereafter, the appellant's case was referred to the Home Secretary of Chandigarh Administration, who, vide orders dated 23rd May, 1974, declined to refer the matter for adjudication to the Labour Court. Against this order the appellant filed C.W.P. No. 3835 of 1974, which was dismissed by a Division Bench in limine. The appellant filed a civil suit on 14th May, 1975, in the Court of Subordinate Judge, III Class, Bhatinda, seeking a declaration that the appellant continued to be in service of the bank and the order terminating his services were illegal and void. The learned Subordinate Judge held that the orders dated 10th November, 1972, terminating the services of the plaintiff was illegal, void and was not binding on the plaintiff. He, however, relying on a decision of the Apex Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, held that the plaintiffs suit was not maintainable against the bank, because it was neither a Department of the Government, nor was a statutory body whose employees have statutory status.

4. The Union espoused the petitioner's case with the State Government and the Labour Commissioner, Punjab, vide endorsement dated 25th May, 1978, referred the following industrial dispute for adjudication to the Labour Court u/s 10(1)(a) of the Act:

Whether the termination of services of Shri Ram Lal, workman, is justified and in order? If not, what relief/exact amount of compensation is he entitled to?

5. The appellant filed a statement of claim pleading that he had put in four years' service as Land Evaluation Officer in the respondent bank and was drawing Rs. 356 per month as wages on 10th November, 1972, when his services had been wrongfully terminated without any notice, charge-sheet, enquiry or

compensation. He claimed reinstatement with continuity of service and full back wages. The claim of the appellant-workman was resisted by the bank and the Bhatinda Primary Co-operative Land Mortgage Bank Ltd., Bhatinda, with whom the workman was working at the material time. In the written statement filed by the bank it was, inter alia, pleaded that the reference was illegal, mala fide, and was without jurisdiction and as such was not capable of adjudication. It was averred that Ram Lal, claimant, was an employee of the bank, which had no establishment in the State of Punjab. The claimant was employed at Chandigarh and his services were terminated by an order at Chandigarh and that the Chandigarh Administration was the only appropriate Government. The Punjab Government not being the appropriate Government had no jurisdiction to make an order of reference and the Labour Court had no jurisdiction to adjudicate thereupon. The claimant had invoked the jurisdiction of the Chandigarh Administration; the Conciliation Officer had sent a report of failure to the Government of the Union. Territory of Chandigarh and the same had refused to make a reference for adjudication of the dispute on the plea that the termination had been rightly made in accordance with the rules of the bank. The writ petition of the petitioner and a suit filed by him had been dismissed. Similar pleas were raised by respondent No. 2 also,

6. Both the respondents controverted the pleas of the workman on merits also. The Labour Court framed the following issues: -

- (1) Whether the reference is bad as per preliminary objection?
- (2) Whether the termination of services of the workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?
- (3) Relief.

Issue No. 1 was treated as a preliminary issue. After hearing the learned Counsel for the parties, the Labour Court held that the Punjab Government was the appropriate Government and had the jurisdiction to refer the industrial dispute for adjudication. However, relying upon the case of *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, that the workman having himself elected to choose his remedy before the civil court, he concluded, the reference was as such bad and quashed the same. Aggrieved, the appellant-workman filed Civil Writ Petition No. 2684 of 1980, against the order of the Labour Court. He, apart from the Presiding Officer, Labour Court, Patiala, impleaded the bank and the Bhatinda Primary Co-operative Land Mortgage Bank Ltd., Bhatinda, as respondents. The writ petition was contested by the respondents. The learned single Judge held that the Labour Court had wrongly held that it had no jurisdiction to adjudicate upon the industrial dispute, because the workman had elected to file a civil suit for the same relief. Learned counsel for the bank had also conceded before the learned single Judge that the finding of the Labour Court on this aspect of the case was liable to be set aside.

7. Learned counsel for the bank, however, pleaded before the learned single

Judge that the State of Punjab was not the appropriate Government to refer the dispute for arbitration. The cause of action relating to the termination of services of the writ petitioner had arisen at Chandigarh, where the headquarters of the bank are situated and where the orders of termination were passed. The primary bank at Bhatinda was not a branch of the bank; the workman continued to be under the administrative control of the bank when he was working on deputation with the primary bank at Bhatinda. These submissions found favour with the learned single Judge and he held that the Bhatinda Co-operative Land Mortgage Bank, Bhatinda, was an independent entity and it was not a branch of the bank; the workman was on deputation with the primary bank. The relationship between the State bank and the workman came to an end when the latter's services were terminated at Chandigarh. As a result, the deputation of the petitioner with the primary bank at Bhatinda automatically came to an end. The order terminating the services of the petitioner at Chandigarh was a complete action in itself. It was further held that the fact that the order terminating the services of the petitioner was served on the workman at Bhatinda could not be taken as a circumstance to infer that the cause of action arose substantially at Bhatinda and not at Chandigarh. That the cause of action in the dispute relating to the termination of the services of the petitioner by the bank exclusively arose at Chandigarh and that it did not arise at Bhatinda. In this view of the matter, the appropriate Government in terms of Section 10 of the Act was the Union Territory of Chandigarh and not the State Government of Punjab. Learned Judge also held that the proceedings relating to the first demand notice served by the petitioner on the bank were referred to the Chandigarh Union Territory Administration. The workman participated in those proceedings and ultimately failed to get a reference made u/s 10 of the Act. He was debarred from approaching the State of Punjab as the appropriate Government even if it be assumed that the cause of action arose both at Chandigarh and Bhatinda.

8. It is established on the record that the primary bank at Bhatinda was a member of the State bank. Under the service rules framed by the State bank, it is obligatory on its members, the primary banks, to take the employees of the bank on deputation. The workman was deputed to serve with the primary bank at Bhatinda; certain incidents took place on the basis of which a criminal case was registered against the workman and he was tried and was discharged by the Criminal Court at Bhatinda. The order of termination of the services of workman, though passed at Chandigarh, was served at Bhatinda. The order became effective and operated at Bhatinda, where the workman was at the material time working and earning his wages. The relationship of master and servant snapped at Bhatinda. No doubt, the primary bank at Bhatinda is not a branch office of the bank, but it is its constituent none the less. For that reason the workman's services were lent to it. The object in enacting the Act was to bring about speedy resolution of industrial disputes, so that industrial peace and harmony prevailed and the forces of labour and capital co-operated to produce and engender goods and services and thereby contributing to the prosperity of the nation. The

prevalence of harmony and tranquillity in the areas where the industrial activity is carried on and workmen are employed is not only a need of the employer and the employees, but the society itself has a stake in it. For these reasons the provisions of the Act have to be interpreted liberally and an interpretation which comports with the objects of the Act has to be adopted. The industrial dispute definitely arose at Bhatinda, where the workman was working and where the orders of termination became effective.

9. Much guidance can be had from the provisions of the Act in determining as to which Government is the appropriate Government. Inevitably those well-known tests have to be adopted which are employed for determining the jurisdiction of the civil court. One of the principles is as to where the dispute substantially arose. This was the view enunciated by Chagla, C.J., in *Lalbhai Tricumlal Mills Ltd. v. D.M. Vin.* 1956 I L.L.J. 557 . It was approved by the final Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others,* . Within this jurisdiction, we have a Division Bench of this Court in *Little Sons & Co. v. Amar Natk* [1977] 51 F.J.R. 142, wherein the legal position emerging from the construction of Section 10 of the Act has been succinctly brought out, It has been 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 of necessity be made by the State within the territory of which the head office of the employer-company is situate.

10. The object of the Act is to ensure fair terms to the workman and to prevent disputes between the employer and the employee so that production might not be adversely affected and the larger interests of the public might not suffer. Its provisions 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. Any construction to the contrary will frustrate the object of the Act. The term "appropriate Government" is defined in Section 2(a). It is significant that this definition does not attach any importance to the place where the controlling office of the industry is situate. On the other hand, the words "in relation to" denote that wherever a dispute between the industry and its workmen arises, the Government having jurisdiction over that area would be competent to make a reference. It is not necessary that the head office or the controlling office of the industry should be present in that area. All that is required is that a part of the industry should exist there."

11. An earlier decision of the learned single judge in *National Tobacco Co. Employees' Union (Regd.) v. Manohar Singh* [1968] 35 F.J.R. 94, taking a contrary view was overruled.

12. Mr. I.S. Sidhu, learned Counsel for the respondents, had vainly tried to argue on the basis of certain observations in *Lipton Limited and Another Vs. Their Employees*, that since the head office of the Bank was in Chandigarh and its business was being managed therefrom, the Government of the Union Territory, Chandigarh, was the appropriate Government. We are not impressed with this argument. This plea was specifically raised before the Division Bench in *Little Sons & Co. 's case (supra)* and was negatived after noticing the ratio of the decision in the *Lipton Ltd.'s case (supra)*, relied upon by Mr. Sidhu. Their Lordships observed that the decision in that case did not serve as an authority for the proposition that the reference of the dispute must be necessity be made by the State, within the territory of which the head office of the company was situated. The main point to be noticed was that the dispute had in fact between raised at Delhi by the Union which represented the workers. This very view has been taken by a Full Bench of the Patna High Court in *Paritosh Kumar Pal v. State of Bihar* [1984] Lab. I.C. 1254. It was held that it was the situs of the industrial dispute which determines the jurisdiction of the appropriate Government and the Labour Court.

13. Mr. I.S. Sidhu, learned Counsel for the respondents, then argued that he wanted to support the judgment under appeal on another ground. He contended that at first the demand was made to the Punjab Government for reference of the dispute for adjudication u/s 10 of the Act and the same was declined. Thereafter, the workman approached the Chandigarh Union Territory Administration with the same demand. The case, of the workman was considered by the appropriate authority and it was decided not to refer the dispute for adjudication because the order of termination was in accordance with the rules of the Bank. Since the appropriate Government of the State of Punjab and the Union Territory of Chandigarh had considered the merits of the case of the workman and refused to refer the dispute for adjudication, it was not competent for the workman to take this issue over again and the State of Punjab had no jurisdiction to refer the matter to the Labour Court for adjudication. This argument has not commended itself to us, because it runs counter to the settled legal position which has culminated in a later decision of the final Court in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, It was held therein (at page 5):

...The Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. Nor is it necessary that the Government must have some fresh material made available to it subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference....

Similarly, because the Union Territory Administration had been seized of the matter at one stage and the petitioner had participated in certain proceedings held at Chandigarh, he was not debarred from approaching the State of Punjab for a fresh reference. The proceedings u/s 10 before the appropriate Government

are administrative in nature, they are not even quasi-judicial proceedings. Even in the Avon Services" case (supra) the workman had first applied for a reference of his dispute and his prayer having been declined, and when at his instance a second reference was made by the State Government, the same was held to be legal, valid and in order.

14. 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. The answer to question No. 2 also is in the affirmative. The appropriate Government is competent to refer the industrial dispute for adjudication even if it had refused to do so at an earlier occasion.

15. Consequently, the appeal is allowed, the judgments of the learned single Judge and the Labour Court are quashed and the matter is remitted to the Labour Court for a fresh decision on merits. The parties through their learned Counsel are directed to appear before the Labour Court on 14th April, 1986. The respondent shall pay costs to the appellant which are quantified at Rs. 500.