
(1993) 11 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5120 of 1989

Saraswati Industrial Syndicate Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-11-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1994) 2 LLJ 992 : (1993) 105 PLR 747

Hon'ble Judges : Jawaharlal Gupta, J

Bench : Single Bench

Advocate : Pawan Mutneja, for the Appellant; R.P. Bali, for the Respondent

Final Decision : Allowed

Judgement

Jawaharlal Gupta, J.—These four civil writ petitions Nos. 5120, 359 to 361 of 1989 are directed against the action of the State Government in making a reference regarding the validity of the termination of the services of the respondent-workman to the Labour Court. The short question raised in these petitions is can the Government make a reference to the Labour Court without hearing the management after it has declined to make a reference on an earlier occasion? A few facts as stated in Civil Writ Petition No. 5120 of, 1989 may be noticed.

2. The Saraswati Industrial Syndicate, Yamuna Nagar, is the petitioner. It terminated the services of respondent No. 2 vide order dated November 7, 1978. The workman challenged this order. He served a notice of demand dated November 7, 1979 u/s 2A of the Act, The matter was considered by the Conciliation Officer. The Government vide its order dated January 11. 1980 declined to make a reference. Aggrieved by the order of the Government, the workman filed Civil writ Petition No. 3216 of 1987. (p-3) The Division Bench vide its order dated September, 17, 1987 dismissed the writ petition. Undaunted, the workman served a fresh notice of demand in February 4, 1988. This notice was slated to be in continuation of the earlier notice dated November 7, 1979. The

petitioner as well as the workman appeared before the Conciliation Officer. The management filed its written comment on February 16, 1988. The State Government considered the matter. Vide order dated May 10, 1988, the Government declined to make a reference. A copy of this order has been produced on record as Annexure p-6. The petitioner avers that despite the above facts, the Government "by an ex parte order without affording any opportunity of hearing to the petitioner management referred the earlier demand notice dated November 7, 1979 for adjudication to the Labour Court - respondent. This reference has been made on January 31, 1989 which is after about eight months from the date when the State Government had earlier rejected the demand notice for reference vide Annexure P-6"". A copy of this order has been produced as Annexure P - 7 with the writ petition. It has been challenged as being totally arbitrary, illegal and violative of the principles of natural justice.

3. Separate written statements have been filed on behalf of the State Government and the workman. It has been inter alia averred that the State Government exercises administrative functions u/s 10 of the Industrial Disputes Act, 1947 and it has the jurisdiction and power to review its earlier orders. It has also been averred that it is not required that "there must be some fresh ground or material or record justifying review by the Government on a previous (P-4) refusal of reference." The respondents maintain that the decision of the Government being administrative in nature, it is beyond the pale of judicial scrutiny. In reply to the specific averment of the petitioner that no opportunity was granted before passing the impugned order, it has been mentioned that the hearing had been granted by the Conciliation Officer.

4. I have heard learned counsel for the parties.

5. Mr. Pawan Mutneja, learned counsel for the petitioner, has contended that the action of the respondents in passing the impugned order without the grant of any opportunity whatsoever is violation of the principles of natural justice and cannot be sustained. On the other hand, Mr. R.P. Bali, learned counsel for the respondent-workman, has submitted that the Conciliation Officer had heard the petitioner before passing the impugned order.

6. It is clearly established on the record that the State Government had declined to make a reference vide its order dated January 11, 1980 a copy of which has been produced as Annexure P-3 with the writ petition. This order was challenged by the respondent-workman in Civil Writ Petition No. 3216 of 1987 along with three other cases including Civil Writ Petition No. 3176 of 1987. These petitions were dismissed by a Division Bench on December 17, 1987. This order was passed by the Bench after hearing counsel for both the parties. A perusal of the record of the case of Civil Writ Petition No. 3176 of 1987 further shows that even an application for review viz. Review Application No. 85 of 1987 (P-5) was filed. This was disposed of by the Bench on December 16, 1987 with the following order:

"No ground for review is made out, especially so when the applicant-petitioner has filed another application before the Conciliation Officer for conciliation on the basis of fresh facts i.e. his acquittal in the Criminal case, which were not in existence at the time when the demand was previously made and the same was turned down by the State Government on January 22, 1987. Dismissed."

The workman's second attempt to have the matter referred to the Labour Court also failed. The State Government declined to make a reference vide order dated August 10, 1988. Thereafter, the impugned order was passed on January 31, 1989. The dispute relating to the order of termination which had been passed on November 7, 1978 was referred to the Labour Court after a lapse of more than 10 years. The petitioner's complaint is that the Government could not have done so and in any case, it was bound to hear the petitioner before it passed the impugned order.

7. Did the State Government hear the petitioner before passing the impugned order?

8. A perusal of the record shows that after the demand notice had been served by the respondent-workman, the Conciliation Officer had conducted certain proceedings. Thereafter, the State Government had declined (P-6) to make a reference vide its orders dated January 11, 1980 and August 10, 1988. There is nothing on record to indicate that any opportunity whatsoever was given to the petitioner after the matter was decided by the State Government vide order dated August 10, 1988. There is not even an averment to that effect. Mr. Bali submits that the opportunity initially given by the Conciliation Officer was sufficient in the circumstances of the case. This cannot be accepted. Apparently, this opportunity had been given prior to the passing of the order dated August 10, 1988. The petitioner had furnished its comments. Thereafter, the State Government had declined the request of the workman by his order dated August 10, 1988. If later on the Government wanted to take a different view, it should have given an opportunity to the petitioner to put forth its point of view. This is not shown to have been done. Even otherwise, the opportunity should have been given by the authority deciding the matter. The Conciliation Officer does not have the jurisdiction to refer a dispute to the Labour Court. This jurisdiction vests in the "appropriate Government" only. The opportunity should be granted by the authority deciding the matter. This was admittedly not done. Consequently, it is held that the State Government did not afford any opportunity of hearing to the petitioner before passing the impugned Order.

9. Was it necessary to grant an opportunity? It is no doubt correct that the State Government does not exercise any judicial or quasi-judicial functions when it considers a matter u/s 10 of the Act. In fact, this power has been described as "administrative". However, the order passed by the Government has serious consequences for the parties. It affects the rights of the management as well as the workman. It is only fair that the appropriate authority gives an opportunity to both the sides to put forth their respective view points so that the relevant

material is placed before it for consideration. It is also settled that even an administrative authority cannot act arbitrarily or capriciously, It must act fairly. If its order has civil consequences, it must abide by the principles of natural justice. In this view of the matter, it appears clear that the appropriate authority must afford some opportunity to the person who is likely to be affected by its order. Before making a reference, the management or the employer has a right to be heard. Even judicial precedents in this Court support this view. Reference in this behalf may be made to this judgment of a Division Bench of this Court in *Escorts Ltd. v. Industrial Tribunal, Haryana* 1983 LIC 223. Their Lordships were pleased to observe as under:

"Though Section 10(1) does not in terms prescribe for recording of reasons before rejecting a claim for reference with regard to an industrial dispute, yet it is now the settled law by the final Court that an order of this nature must indicate the reasons for declining the reference. Though no detailed speaking order is necessary in this context, yet it is well established that a total absence of any reason for rejecting the reference may vitiate the same. Therefore, reading Section 10(1) along with its authoritative construction it would follow that the earlier rejection of a claim to a reference of an industrial dispute has to be indicated and recorded reasons. Even though the exercise of the power here and the order passed may be termed as essentially administrative it nevertheless requires a clear application of mind and an indication of the reasons for the decision. Therefore, without holding that such an order would give any perpetual vested right to either of the parties affected (P-8) thereby, it nevertheless seems to follow that at a lower level it does clothe one or the other of the parties with some legal interest therein (and consequently civil consequences therefrom) which may well attach at least right of hearing before such an administrative order is reviewed and the earlier rejection is recalled."

Similarly, another Division Bench of this Court consisting of Honble the Chief Justice v. Ramaswami and Ujjagar Singh, J. (as their Lordships then were) allowed Civil Writ Petition No. 7319 of 1987 (*Punjab Tractors v. State of Punjab*) with the following observations:

"The writ petition is allowed. We issued notice to the respondents. They are represented by a counsel. On the admitted facts that for the second time before making the order for reference in pursuance of the decision of this Court, the management- petitioner had not been heard. That vitiates the order. We accordingly set aside the order without going into the merits of the case and direct the Government to reconsider the same in accordance with law after issuing notices both to the management- petitioner and the workman-respondent. The order shall be made within a period of eight weeks from the date of receipt: of this order." February 10, 1988.

A similar question has also been considered by a Full Bench of the Karnataka High Court in *Management of Theatre Sanjaya Vs. The State and Others*,). By majority their Lordships were pleased to hold as under: (p 419)

"The principle of *audi alteram partem* is applicable to a case in which the Government having declined to make a reference of dispute for industrial adjudication u/s 10(1) for the Act recording and communicating such decision in accordance with the latter part of Section 12(5) of the I.D. Act proposes to refer the same dispute for adjudication subsequently except when:

a) the reference becomes necessary under circumstances set out in Section 10(5) of the I.D. Act, or

b) the Government finds that there are exceptional circumstances in which any delay in making the reference is fraught with serious consequences to industrial peace, and therefore, affording of an opportunity to the party concerned is inexpedient."

10. In the present case, the claim of the workman for a reference to the Labour Court had been declined in the year 1980. A writ petition against this order was dismissed by a Division Bench of this Court. In spite of that, the workman has again served a notice of demand. The State Government after considering the matter had again declined to make reference on August 10, 1988. Thereafter, there appears to be nothing on record which may indicate the circumstances in which the impugned order had been passed. Surely, if the petitioner had been afforded an opportunity, it could have shown that the order of the State Government passed on January 11, 1980 had been upheld by the High Court and the State had reiterated its earlier decision on August 10, 1988. The petitioner could have also pointed out that a long delay had occurred and thus a stale claim should not be considered. The relevant evidence may not be available on account of lapse of time. These facts were relevant for the decision of the case. The action of the State Government in denying an opportunity to the petitioner prevented it from putting forth relevant material for the consideration of the Court. For obvious reasons, it resulted in material miscarriage of justice. Mr. Bali is right in his contention that the action is administrative and the State Government was not debarred from reconsidering the matter. However, it could not have done so without the grant of an opportunity. None having been granted, the order cannot be sustained.

11. Accordingly, the writ petition is allowed. The orders of reference, copies of which have been attached as Annexure P-7 in all the cases, are set aside. However, in the circumstances of the cases, there will be no order as to costs.