
(1990) 06 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 1954 of 1986

Sheshrao Bhaduji Hatwar

APPELLANT

Vs

P.O., First Labour Court and others

RESPONDENT

Date of Decision : 25-06-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 19, 2, 2A

Citation : (1992) 1 LLJ 672

Hon'ble Judges : V.A. Mohta, J;H.D. Patel, J

Bench : Division Bench

Judgement

V.A. Mohta, J.—The First Labour Court, Nagpur, by Award dated October 10, 1985, quashed as untenable the following reference made to it u/s 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947 (I.D. Act) by the Deputy Commissioner of Labour, Nagpur :

"Shri S. B. Hatwar, who had been terminated from the employment of M/s. Saluja Kirana Stores, Rationing Dukan, Untkhana Chowk, Nagpur, should be reinstated with payment of back wages and continuity of service, with effect from August 8, 1982."

Aggrieved thereby, the present petition has been filed by the workman.

2. Having heard the learned counsel for the parties and having perused the language of the dispute and the undisputed background under which it was referred for adjudication, it seems very clear to us that the impugned Award cannot be sustained since it is based on too hypertechnical and a pedantic view of the matter and sacrifices substance for the form, an approach impermissible in labour jurisprudence.

3. What is the undisputed background ? The petitioner workman was in the employment of M/s. Saluja Kirana Stores, Nagpur Respondent No. 2 for a number of years. Sometime prior to August 1982, there was a dispute between the parties over demand for higher wages by the workman. According to the

petitioner when he went to the shop to join duties on August 8, 1982 he was not allowed to resume duties by the employer saying that his services were no more required. The case of the second respondent was that the petitioner did not turn up on duty on August 8, 1982, as alleged, and had voluntarily left the services. Both reiterated their respective positions, first in the exchange of notice and later on before the Conciliation Officer before whom the workman's demand for reinstatement and back wages was sent for settlement. No settlement between the parties could be reached and consequently the Conciliation Officer submitted a failure report u/s 12(4) of the I.D. Act to the Deputy Commissioner of Labour, who, after considering the said report "in respect of the dispute over the demand, mentioned in the Schedule" referred the said dispute for adjudication. Both parties reiterated once again their respective stands before the Labour Court by filing statement between February and August 1983 and the matter was fixed for evidence. On October 9, 1985, the Respondent No. 2 filed an application raising for the first time a preliminary objection to the reference on the ground that it was untenable in law and prayed for its summary disposal on that ground alone. Respondent No. 2's contention was that there was abundant material to come to the conclusion that there was no termination by the employer, the workman had voluntarily abandoned the service and in making reference the Deputy Commissioner of Labour had lost sight of the defence of the employer.

4. The Labour Court upheld the preliminary objection raised by employer that the reference was vitiated due to non-application of mind by the Deputy-Commissioner since it does not refer to the defence of the employer denying the termination and the workman having voluntarily abandoned the service. In coming to this conclusion, reliance was placed upon the decision rendered by a Goa Bench of this Court in the case of *Sitaram Vishnu Shirodkar Vs. The Administrator, Government of Goa and others*, .

5. Section 10(1)(c) of the I.D. Act empowers the appropriate Government to refer the existing or apprehended industrial dispute or any matter appearing to be connected or relevant to the dispute relating to any item specified in the Second Schedule to a Labour Court for adjudication. Section 2(k) of the I.D. Act defined the term "industrial dispute". Any dispute or difference between the employer and individual workman connected with or arising out of discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute u/s 2-A of the I.D. Act. The definition of "industrial dispute" is itself wide enough to include any dispute or difference "connected with the employment or non-employment". There is a long line of decisions of the Supreme Court taking a view that order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The obvious reason for this approach is not only the width of language used in the definition of "industrial dispute" in Sections 2-A and 10 of the I.D. Act but also the object behind the labour legislations.

Industrial peace has to be achieved as early as possible and the battle is generally between unequals. At least one party, namely, the worker cannot afford to fight continuous long drawn battle against the employer and hence technical, formal and procedural points have almost no place in such disputes. Indeed the duty of Courts and Tribunals is to discourage ingenuity on such points and to adjudicate the controversy on merits. Many times the reference is cryptic and vague and is not properly worded. Sometimes it is not even possible to mention therein the defence of the other party. In such cases it is the duty of the adjudicating authority to examine the pleadings, documents etc. and to locate the exact nature of dispute.

6. In this connection, useful reference may be made to certain decisions on the point, *The India Paper Pulp Co. Ltd. v. The India Paper Pulp Workers Union* 1949 I LLJ 258 was a case of a referring order in which merely the word "industrial dispute" was mentioned without even a whisper about its nature. Attack on that order was repelled as merely technical with the following observations (p. 260) :

"The section does not require that the particular dispute should be mentioned in the order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 19 of the Act, however, requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference."

In *The State of Madras Vs. C.P. Sarathy and Another*, it has been held that reference can be made in wider terms without particularizing its nature provided of course that dispute falls within the definition of "Industrial disputes" and the parties between whom it exists are indicated. It is observed (pp. 1179-180) :

"But adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to legal rights of the parties."

The judgment proceeds to add (p. 180) :

"The rules under the Act provide for the Tribunal calling for statements of their respective cases from the parties and the dispute would thus get crystallized before the Tribunal proceeds to make its Award. On the other hand, it is significant that there is no procedure provided in the Act or in the rules for the Government ascertaining the particulars of the disputes from or before referring them to a Tribunal u/s 10(1)."

In the case of *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, it is observed (p. 431) :

"In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the

various points about which the parties were at variance leading to the trouble. In this case, the reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which has been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. u/s 10(4) of the Act it is not competent to the Tribunal to entertain such a question."

7. Legal position is thus clear that the mere wording of the reference is not decisive in the matter of tenability of a reference. It may contain the defence or may not. If points of difference are discernible from the material before the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference. From the order the reference dated December 6, 1982 made in the case at hand, it is clear that the Schedule referred to the demand of the worker. It has reference also to the report of the Conciliation Officer which spells out the controversy between the parties. In this background it cannot be said that the reference is made on the assumption that it was a case of termination and the only point left for adjudication was about the nature of relief to be granted to the workman. Undoubtedly, the reference is not happily worded. Unfortunately, that is generally the case as Supreme Court has observed. But that will not justify short-circuiting the reference by ignoring the basic background and subjecting the poor workman to untold misery and hardship involved in moving the machinery over again after a period of 8 years. That would be wholly unjust and empty formality. Even in civil jurisprudence mere framing of a vague issue does not vitiate the trial in the absence of prejudice. It is nobody's case before us that they did not know what controversy was really referred. Very fairly the learned Counsel for the parties did not dispute that inspiration behind the approach of everyone to the point was the case of Sitaram Shirodkar (*supra*).

8. In Sitaram Shirodkar, reference read thus :

"Whether the action of the Management of M/s. Hotel Cafe Regal, Panaji in terminating the services of Shri Shanu Mengo Kunkolienkar, with effect from March 1, 1978 is legal and justified. If the answer be in the negative, to what relief, if any, the aforementioned workman entitled to ?"

There is a difference in the phraseology of the above reference and the reference at hand. We are not sure whether the basic background is similar or not. Perhaps the decision was influenced by the peculiar language used from which it was held that there was an assumption that it was a case of termination, as contended by the workman, and not of voluntary absence, as contended by the employer. Under the circumstances, it is not possible to agree with the conclusion that the ratio of that decision applies on all fours to the present case.

9. That apart, it seems to us that the attention of the Goa Bench was not drawn

to various Supreme Court decisions on the point and thus the decision rendered is per incuriam. These are the basic facts of that case :

The workman raised a dispute that his service was wrongfully terminated. The employer took the stand that the workman absented from the job and never turned up. Conciliation failed. Failure report was submitted and a reference was made by the Goa Government to the Tribunal. Case was fought on merits. The Tribunal held that it was not a case of abandonment of service by the workman but of termination by the employer and that the termination was wrongful. Consequently, the workman was ordered to be reinstated with back wages. The said Award was challenged in the High Court on the ground that in view of the wording of the reference, the Tribunal had no jurisdiction to decide whether the workman had abandoned the job and that Award should be set aside only on the ground that reference was bad. High Court accepted the preliminary objection raised for the first time before it and held *Sitaram Vishnu Shirodkar Vs. The Administrator, Government of Goa and others*, :

"The Tribunal could not travel beyond the reference and decide the question whether the Respondent No. 4 had abandoned his services. That the petitioner had terminated the services of the Respondent No. 4 was an act fastened on the petitioner by this reference and the only question left open for decision was whether the termination was legal and proper."

10. At this stage, useful reference may be made to the unreported judgment delivered by this Court at Bombay in the case of *Sharadabai Ganpat Deshmukh v. Bharat Hardware Industries, Nashik & Anr.* Writ Petition No. 698 of 1985, decided on January 9, 1986 wherein controversy of similar type arose. Reference in that case read thus :

"I, Smt. Sharadabai Deshmukh, demand that I should be reinstated with continuity of service and paid back wages from December 30, 1974."

The workman had alleged that she was orally terminated and the employer had contended that she had voluntarily abandoned the service. Conciliation failed and on the basis of failure report the above reference was made. Both the parties reiterated their stand before the Tribunal and led oral evidence. The Tribunal finding itself bound by the case of *Sitaram Shirodkar* (supra) held that reference was bad and disposed of the matter on that ground alone. The Award was quashed by the High Court holding that a hypertechnical view of the matter and the phraseology was unjustifiedly taken by the Tribunal ignoring the background and the difference between the phraseology used in the two references. We respectfully concur with the approach adopted in this decision. The learned counsel for the employer contended that there is a conflict of view in these two cases and hence the matter should be referred to a Full Bench. The learned counsel for the workman opposed this request and contended that it is necessary because (i) the language of the references and background are different, (ii) decision in *Sitaram Shirodkar* is per incuriam. It seems to us that the submission

made by the learned counsel for the workman is correct. Reference to a Full Bench is, therefore, not called for and will unnecessarily delay the matter further.

11. All that survives for consideration is the Delhi High Court decision in the case of *M/s. Indian Tourism Development Corporation, New Delhi v. Delhi Administration, Delhi & Ors* 1982 LIC 1309 which has been the basis of *Sitaram Shirodkar's* case (supra) and upon which strong reliance is placed by the learned counsel for the employer. Reference in that case read thus :

"Whether the workmen as shown in Annexure "A" are entitled to wages for a period of lockout w.e.f. January 1, 1981 and if so, what directions are necessary in this respect ?"

Delhi High Court examined the entire background against which the reference was made by the Delhi Administration and not merely the wording of the reference and quashed the same on the ground that the real dispute was not referred and the Tribunal could not adjudicate upon what was in fact not referred. There the claim of the workman was that there was lock-out and the claim of the employer was that there was a closure. The Delhi Administration had reached a final conclusion in the order simultaneously passed u/s 10(3) I.D. Act that the employer had declared a lock-out. Moreover, in the affidavit filed on behalf of the Administration, it was stated that the contention of the management that there was a closure and not lock-out was transparently frivolous. Delhi High Court after considering the above wealth of material placed on record held that there was no justification to hold the stand of the management as frivolous and that in any case the appropriate Government could not conclude that controversy because that would normally be within the jurisdiction of the Tribunal. In that light, the High Court held that reference had assumed that there was a lock-out and real dispute was not referred as a result, the reference was bad. Now we are unable to see how the ratio decidendi of this Delhi decision can at all apply to the instant case.

12. To conclude, petition is allowed. Impugned Award is quashed and set aside and the matter is remanded to the First Labour Court Nagpur, for adjudication of dispute on merits and granting consequential reliefs, if any. We also direct that the matter be decided on priority basis.

13. Rule absolute accordingly. No costs.

14. Parties are directed to appear before the Labour Court on July 19, 1990.