
(1958) 04 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 992 of 1957

Shorilal

APPELLANT

Vs

Second Industrial Tribunal Punjab and Another

RESPONDENT

Date of Decision : 10-04-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : AIR 1959 P&H 396 : (1959) 1 LLJ 70

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; Anand Swaroop, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Gosain, J.—The facts giving rise to this case are as under: Messrs Raj Krishna Textile Mills were carrying on the business of manufacturing textiles at Amritsar. On 17-1-1956 they served a notice on all the workmen of the concern that the Mill would be closed with effect from 24-2-1956. It appears that the workmen of the Mill sent letters to the employers that the proposed closure was not bona fide and was only a camouflage to deprive the workmen of their just rights.

The Mill stopped working on 24-2-1956 and the employees laid claims for payment of gratuity and wages etc. etc. An industrial dispute having thus arisen, the Punjab Government made a reference of the matter to the Second Industrial Tribunal, Punjab, by means of a notification on 23-8-1956. The dispute mentioned in the said notification was as under:

"Whether the workmen of Raj Krishna Textile Mills, Amritsar, as per list attached are entitled to gratuity and other benefits admissible under the Industrial Disputes (Amendment) Act, 1953, consequent upon the closure of the said factory and if so, how much is each workman entitled to."

The list attached to the same contains the names of sixteen workers. When the proceedings were taken up by the Tribunal, the Mill pleaded that the Punjab Government had no jurisdiction to refer the aforesaid dispute as the Mill had closed on 24-2-1956 and the point referred for adjudication could not be termed as industrial dispute within the meaning of the words "industrial dispute" as defined in Industrial Disputes Act, 1947,

The main contention was that the industry had ceased to exist on 24-2-1953 and the dispute referred to had arisen after the said date. The Tribunal did not agree with the said contention and gave an award giving to the workmen certain reliefs as specified in the same. Shri Shori Lal, ex-partner of the employer firm, has come up to this Court under Article 226 of the Constitution of India praying for the issuance of a writ in the nature of certiorari for quashing the proceedings resulting in the award dated 5-9-1957 and a writ in the nature of mandamus restraining the State of Punjab from enforcing the said award.

2. The contentions raised in the petition are materially the same which were raised before the Tribunal except that the award of the Tribunal has also been challenged on the ground that the Tribunal had no jurisdiction to decide that the closure of the Mill was not bona fide. On behalf of the petitioner it has vehemently been contended by Mr. Bhagirath Das that the Punjab Government accepted the position that the Mill had been closed bona fide, and the only question referred by them was, "whether the workmen were entitled to gratuity and other benefits consequent upon the closure of the said factory?"

Mr. Anand Swaroop on behalf of the respondents contended that the Punjab Government never accepted that the closure was bona fide and that the words "consequent upon the closure of the said factory" only mean coasequent upon the alleged closure of the said factory. In my opinion, the interpretation put upon the notification by Mr, Bhagirath Das cannot possibly be accepted. The notification does not say whether the closure was bona fida or mala fide.

According to the affidavit filed by the Labour Commissioner, Punjab, the workmen had served notices on the management on 9-2-1956 and 17-2-1938 challenging the Bona fide of the closure. Copies of the said notices have been produced by the Labour Commissioner in this Court as annexures Rule 9 and Rule 3 to the affidavit. In the said notices the employees challenged the bona fides of the closure of the said factory and made claims for their wages and gratuity etc.

It is reasonable to presume that the Punjab Government referred the dispute to the Tribunal in light of Rule 2 and Rule 3. If the Government had accepted that the closure was bona fide, there was no question of making any reference to the Tribunal, because according to law then in force a claim for gratuity etc., could not have been made by the workmen on the bona fide closure of the factory. The word "closure" used in the notification is not preceded by the word "bona fide" or "mala fide", and it is obvious that the Government referred the dispute as a

whole to the Tribunal and it was for the Tribunal to decide whether the alleged closure was bona fide or mala fide and the Tribunal was in my opinion justified in going into this matter.

On the above finding arrived at by me, it is not necessary to go into the second question whether the industry had ceased to exist before the present dispute arose. It was for the Tribunal to decide whether the industry ceased to exist by the bona fide closure of the Mill. If the closure is not bona fide, the industry must be deemed to be existing and the dispute referred to by the Government must be deemed to be an industrial dispute.

On the merits of the second question, however, I am of the opinion that the dispute referred to by the Punjab Government must be held to be an industrial dispute because it did not arise after the closure of the Mill. The rights of the workmen in respect of the closure must be deemed to have arisen simultaneously with the closure and not after the same. They are in fact disputes so intimately connected with the closure that they cannot be said to have arisen after the closure had come into existence.

In a case arising under U. P. Industrial Disputes Act. the provisions of which are analogous to those of the Industrial Disputes Act, it has been held by their Lordships of the Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, that the power of the State to make a reference u/s 3 of the U. P. Industrial Disputes Act must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

3. In the result, I dismiss the petition with costs. Counsel's fee Rs. 100/-.